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Announcement

CFR SUPPLEMENTS

(As of January 1, 1960)

The following Supplements are now available:

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

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Rules and Regulations

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES AND OTHER OPERATIONS

[1960 C.C.C. Grain Price Support Bulletin 1, Supp. 1, Wheat]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Wheat Loan and Purchase Agreement Program

A price support program has been announced for the 1960 crop of wheat. The 1960 C.C.C. Grain Price Support Bulletin 1 (25 F.R. 2380), issued by the Commodity Credit Corporation and containing the regulations of a general nature with respect to price support operations for certain grains and other commodities produced in 1960 is supplemented as follows:

Sec.

421.5036 Purpose.
421.5037 Availability of price support.
421.5038 Eligible wheat.
421.5039 Warehouse receipts.
421.5040 Determination of quantity.
421.5041 Determination of quality.
421.5042 Maturity of loans.
421.5043 Determination of support rates.
421.5044 Warehouse charges.
421.5045 Inspection of wheat under purchase agreement.
421.5046 Settlement.

AUTHORITY: §§ 421.5036 to 421.5046 issued under sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054; Title II, 73 Stat. 178, 15 U.S.C. 714c, 7 U.S.C. 1441, 1421.

§ 421.5036 Purpose.

Sections 421.5036 to 421.5046 state additional specific requirements which, together with the general regulations contained in the 1960 C.C.C. Grain Price Support Bulletin 1 (§§ 421.5001 to 421.5022) apply to loans and purchase agreements under the 1960-crop wheat price support program.

§ 421.5037 Availability of price support.

(a) *Method of support.* Price support will be made available through farm-storage and warehouse-storage loans and through purchase agreements.

(b) *Area.* Farm-storage and warehouse-storage loans and purchase agreements will be available wherever wheat is grown in the United States, except that farm-storage loans will not be available in areas where the State committee determines that wheat cannot be safely stored on the farm.

(c) *Where to apply.* Application for price support should be made at the office of the county committee which keeps the farm-program records for the farm.

(d) *When to apply.* Loans and purchase agreements will be available from the time of harvest through January 31, 1961. The applicable documents must be signed by the producer and delivered to the office of the county committee not later than such date. Applicable documents include the Producer's Note and Loan Agreement for warehouse-storage loans, the Producer's Note and Supplemental Loan Agreement and the Commodity Chattel Mortgage for farm-storage loans, and the Purchase Agreement for purchase agreements.

§ 421.5038 Eligible wheat.

Wheat to be eligible for price support, must meet all the applicable requirements set forth in this section.

(a) The wheat must have been produced in the United States in 1960 by an eligible producer.

(b) (1) At the time the wheat is placed under loan or delivered under a purchase agreement, the beneficial interest in the wheat must be in the eligible producer tendering the wheat for loan or for delivery under a purchase agreement, and must always have been in him, or must have been in him and a former producer whom he succeeded before the wheat was harvested. Any producer who is in doubt as to whether his interest in the commodity complies with the requirements of this subpart should make available to the county committee all pertinent information, prior to filing an application, which will permit a determination to be made by CCC as to his eligibility for price support.

(2) To meet the requirements of succession to a former producer, the rights, responsibilities, and interest of the former producer with respect to the farming unit on which the wheat was produced shall have been substantially assumed by the producer claiming succession. Mere purchase of the crop prior to harvest, without acquisition of any additional interest in the farming unit, shall not constitute succession. The county committee shall determine whether the requirements with respect to succession have been met.

(c) Wheat at the time it is placed under loan, and wheat under purchase agreement which is in approved warehouse storage prior to notification by the producer of his intention to sell to CCC, must meet the following requirements:

(1) The wheat must be (i) wheat of any class grading No. 3 or better; (ii) wheat of any class grading No. 4 or 5 on the factor of "test weight" and/or because of containing "Durum" and/or "Red Durum" but otherwise grading No. 3 or better; or (iii) wheat of the class Mixed wheat, consisting of mixtures of grades of eligible wheat as specified in subdivision (i) or (ii) of this subparagraph provided such mixtures are the natural products of the field.

(2) Wheat grading Tough, Weevily, Ergoty, or Treated shall not be eligible, except that wheat represented by warehouse receipts grading "Tough" will be eligible if the warehouseman certifies on the supplemental certificate or on a statement attached to the warehouse receipt substantially as follows: "On wheat grading 'Tough' delivery will be made of the same country-run quality, quantity, grade and protein (if any), not tough, and no lien for processing will be claimed by the warehouseman from Commodity Credit Corporation or any subsequent holder of said warehouse receipt."

(3) Except as provided in subparagraph (2) of this paragraph with respect to wheat grading "Tough", wheat of the class hard red spring, durum, or red durum, shall not contain more than 14½ percent moisture, and wheat of any other class shall not contain more than 14 percent moisture.

(4) If offered as security for a farm-storage loan, the wheat must have been stored in the granary at least 30 days prior to its inspection for measurement, sampling, and sealing, unless otherwise approved by the State committee.

(d) Sanitation requirements: The sanitation requirements prescribed herein apply to wheat when placed under loan, wheat in approved warehouse storage prior to notification by the producer of his intention to sell to CCC under a purchase agreement, and wheat when delivered under loan or purchase agreement. Such wheat (1) must not contain one or more rodent pellets, or comparable amounts of other filth, per pint of wheat (liquid measure), nor 1 percent or more by weight of kernels visibly damaged by weevils or other insects, and (2) must not contain mercurial compounds or other substances poisonous to man or animals.

(e) Except as otherwise provided in § 421.5045(a), wheat under purchase agreement stored in other than approved warehouse storage, shall not be eligible for sale to CCC if it does not meet the requirements of paragraphs (c) (1), (2), (3), and (d) of this section on the basis of a predelivery inspection performed by a representative of the county committee, unless the producer complies with the conditions specified in § 421.5045(a) and the wheat on the basis of the inspection made at the time of delivery meets the requirements set forth in paragraphs (c) (1), (2), (3), and (d) of this section.

§ 421.5039 Warehouse receipts.

Warehouse receipts representing wheat in approved warehouse storage to be placed under a warehouse storage loan or delivered in satisfaction of a farm storage loan or acquired under a pur-

chase agreement, must meet the following requirements of this section.

(a) Warehouse receipts presented for warehouse storage loans must be issued in the name of the producer and for deliveries under farm-storage loans or purchase agreements, in the name of the producer or CCC, and must be properly endorsed in blank, when issued in the name of the producer, so as to vest title in the holder. The receipts must be issued by a warehouse for which a Uniform Grain Storage Agreement is in effect and which is approved by CCC for price support purposes or must be receipts issued on warehouses operated by Eastern common carriers under tariffs approved by the Interstate Commerce Commission for which custodian agreements are in effect.

(b) (1) Each warehouse receipt or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt must show: (i) Gross weight and net bushels, (ii) class and subclass, (iii) grade (including special grades), (iv) test weight, (v) dockage, (vi) protein content, where determined by protein analysis or station average (actual analysis and not station average shall be used if protein analysis has been made), (vii) any other grading factor(s) when such factor(s) and not test weight, determine the grade, and (viii) whether the wheat arrived by rail, truck or barge. In the case of wheat delivered by rail or barge, the grading factors, classes and subclasses, and protein content (where determined by protein analysis) on the warehouse receipt must agree with the inbound inspection and protein certificates for the car or barge if such certificates are issued.

(2) If the warehouseman has furnished a statement as provided in § 421.5038(c)(2), the supplemental certificate must show the numerical grade and the grading factors of the wheat to be delivered. Where the grade and grading factors shown on the supplemental certificate do not agree with the warehouse receipt, the factors shown on the supplemental certificate shall take precedence.

(c) In the case of wheat delivered by rail or barge, the protein content, as determined by a recognized protein testing laboratory, must be shown on each warehouse receipt (or supplemental certificate accompanying the warehouse receipt) representing wheat of the classes hard red spring and hard red winter and the varieties Baart and Bluestem of the subclass hard white wheat, except that protein content need not be shown for the subclasses hard winter and yellow hard winter produced in States or areas tributary to markets where a showing of protein content is not customarily required.

(d) A separate warehouse receipt must be submitted for each grade and subclass of wheat.

(e) The warehouse receipt may be subject to liens for warehouse charges only to the extent indicated in § 421.5044.

(f) Warehouse receipts representing wheat which has been shipped by rail or water from a country shipping point to a designated terminal point, or shipped by rail or water from a country shipping point to a storage point and stored in transit to a designated terminal point, must be accompanied by registered freight bills, or by a certificate containing similar information. These registered freight bills or certificates must be representative as to origin and date of movement of the grain shipped. The form of these certificates will be prescribed by the CSS commodity office and shall be signed by the warehouseman and may be made a part of the supplemental certificate.

(g) If the receipt is issued for wheat of which the warehouseman is the owner either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. Such receipts shall also be registered or recorded with appropriate State or local officials when required by State law. In States where the pledge of warehouse receipts by a warehouseman on his own wheat is not valid under State law and the warehouseman elects to deliver wheat to CCC under a purchase agreement for which he is eligible under this program, the warehouse receipt shall be issued in the name of CCC.

(h) Each warehouse receipt or accompanying supplemental certificate representing grain stored in an approved warehouse operating under the Uniform Grain Storage Agreement shall indicate that the wheat is insured, in accordance with such agreement. Each warehouse receipt or accompanying supplemental certificate issued on warehouses operated by Eastern common carriers and representing wheat to be placed under loan shall indicate that the wheat is insured at the full market value against loss or damage by fire, lightning, inherent explosion, windstorm, cyclone and tornado. The cost of such insurance shall not be for the account of CCC.

§ 421.5040 Determination of quantity.

(a) The quantity of wheat placed under farm-storage loan may be determined either by weight or by measurement. The quantity of wheat delivered under a farm-storage loan or under a purchase agreement shall be determined by weight. The quantity of wheat on which a warehouse storage loan shall be made and the quantity of wheat delivered to or acquired by CCC in an approved warehouse under a farm storage loan or a purchase agreement shall be the net weight of wheat specified on the warehouse receipt or on the supplemental certificate, if applicable.

(b) When the quantity is determined by weight, a bushel shall be 60 pounds of wheat free of dockage. In determining the quantity of sacked wheat by weight, a deduction of ¾ of a pound for each sack shall be made.

(c) When the quantity of wheat is determined by measurement, a bushel shall be 1.25 cubic feet of wheat testing 60 pounds per bushel. The quantity determined shall be adjusted by the following percentage of the quantity determined for 60-pound wheat:

For wheat testing:	Percent
65 pounds or over	108
64 pounds or over, but less than 65 pounds	107
63 pounds or over, but less than 64 pounds	105
62 pounds or over, but less than 63 pounds	103
61 pounds or over, but less than 62 pounds	102
60 pounds or over, but less than 61 pounds	100
59 pounds or over, but less than 60 pounds	98
58 pounds or over, but less than 59 pounds	97
57 pounds or over, but less than 58 pounds	95
56 pounds or over, but less than 57 pounds	93
55 pounds or over, but less than 56 pounds	92
54 pounds or over, but less than 55 pounds	90
53 pounds or over, but less than 54 pounds	88
52 pounds or over, but less than 53 pounds	87
51 pounds or over, but less than 52 pounds	85
50 pounds or over, but less than 51 pounds	83

(d) The percentage of dockage shall be determined and the weight of such dockage shall be deducted from the gross weight of the wheat in determining the net quantity available for loan or purchase. A quantity deduction for smut shall also be made in the manner provided in § 421.5041(b).

§ 421.5041 Determination of quality.

(a) The class, subclass, grade, grading factors, and all other quality factors shall be determined in accordance with the methods set forth in the Official Grain Standards of the United States for Wheat, whether or not such determinations are made on the basis of an official inspection: *Provided,* That determinations with respect to sanitation requirements specified in § 421.5038(d) shall be made in accordance with instructions issued by CCC.

(b) In the States of California, Idaho, New Mexico, Nevada, Oregon, Utah, Washington, and the counties in Montana where it is a normal practice to determine smut on a percentage basis, the quantity of smut shall be stated in terms of half percent when smut dockage is present in a quantity equal to less than one percent, and in terms of whole percent when present in a quantity equal to one percent or more. A fraction of a half percent shall be disregarded when smut dockage is present in a quantity equal to less than one percent, and a fraction of a percent shall be disregarded when smut dockage is present in a quantity equal to one percent or more. The quantity of smut so determined in pounds shall be deducted from the weight of the wheat after deduction of dockage. Elsewhere the smut condition of the wheat shall be determined on a degree basis. Where applicable the words "Light Smutty" or "Smutty" shall be added to, and made a part of the grade determination.

(c) The garlicky condition of the wheat shall be made a part of the grade designation by addition of the words "Light Garlicky" or the word "Garlicky".

§ 421.5042 Maturity of loans.

Nonrecourse loans mature on demand but not later than February 28, 1961, in the States of Alabama, Arkansas, Con-

necticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia and West Virginia, and not later than March 31, 1961 in all other States. Recourse loans mature on January 31, 1962. The maturity date for a loan shall be the maturity date for the State where the wheat is stored.

§ 421.5043 Determination of support rates.

Basic support rates for wheat will be set forth in 1960 C.C.C. Grain Price Support Bulletin 1, Supplement 2, Wheat. Support rates will be established for wheat stored in approved warehouse storage at designated terminal markets, and for wheat stored in approved country warehouses and in approved farm storage. The support rate for the quality of wheat placed under a loan or delivered under a purchase agreement shall be the applicable basic support rate adjusted in accordance with the provisions of this section and 1960 C.C.C. Grain Price Support Bulletin 1, Supplement 2, Wheat.

(a) *Support rates at designated terminal markets.* (1) (i) In order to be eligible for loan or purchase at the support rate established for designated terminal markets the wheat must have been shipped on a domestic interstate freight rate basis. The support rate at the designated terminal market on any wheat shipped at other than the domestic interstate freight rate, shall be reduced by the difference between the freight rate paid and the domestic interstate freight rate.

(ii) The support rates established for designated terminal markets apply to wheat which has been shipped by rail or water from a country shipping point to one of the designated terminal markets as evidenced by paid freight bills duly registered for transit privileges: *Provided,* That in the event the amount of paid-in freight is insufficient to guarantee the minimum proportional domestic interstate freight rate, if any, from the terminal market to a recognized market as determined by CCC there shall be deducted from the applicable terminal support rate the difference between the amount of freight actually paid in and the amount required to be paid in to guarantee outbound movement at the minimum proportional domestic interstate freight rate.

(2) (i) Notwithstanding the foregoing provisions of this paragraph, the support rate for wheat which is shipped by rail or water and stored at any designated terminal market and for which neither registered freight bills nor registered freight certificates are presented shall be equal to the terminal rate minus 12 cents per bushel.

(ii) The support rate for wheat received by truck and stored at any designated terminal market shall be determined by making a deduction from the terminal rate an amount to be announced at a later date by an amendment to this subdivision.

(3) (i) Notwithstanding the foregoing provisions of this paragraph, the support rate for wheat shipped by rail or water and stored at any of the following terminal markets shall be equal to the applicable terminal rate:

Los Angeles, San Francisco, Stockton, and Oakland, Calif.
New Orleans and Baton Rouge, La.
Baltimore, Md.
Duluth, Minn.
Portland and Astoria, Oreg.
Albany and New York, N.Y.
Philadelphia, Pa.
Galveston, Houston, Corpus Christi, and Port Arthur, Tex.
Norfolk, Va.
Seattle, Longview, Tacoma, and Vancouver, Wash.
Superior, Wis.

(ii) Notwithstanding the foregoing provisions of this paragraph, the support rate for wheat received by truck and stored at any of the terminal markets listed in subdivision (i) of this subparagraph shall be determined by making a deduction from the terminal rate of an amount to be announced at a later date by an amendment to this subdivision, plus the transportation cost, if any, as determined by the appropriate CSS commodity office, for moving the wheat to a tidewater loading facility located within the same switching limits.

(b) *Support rates for wheat in approved warehouse storage at other than designated terminal markets.* (1) Except for the States designated in subparagraph (2) of this paragraph, the support rate for wheat which is shipped by rail or water and which is stored in approved warehouses (other than those situated in the designated terminal markets) shall be determined by deducting from the rate for the appropriate designated terminal market, as determined by CCC, an amount equal to the transit balance, if any, of the through freight rate from point of origin for such wheat to such terminal market: *Provided,* That on any wheat shipped at other than the domestic interstate freight rate, the support rate shall be further reduced by the difference between the freight rate paid and the domestic interstate freight rate from the point of origin of such wheat to the point of storage: *And provided further,* That in the case of wheat stored at any railroad transit point, taking a penalty by reason of out-of-line movement to the appropriate designated market, or for any other reason, there shall be added to such transit balance an amount equal to any out-of-line costs or other costs incurred in storing wheat in such position.

(2) In the States of Delaware, Kentucky, Maryland, New Jersey, North Carolina, Tennessee, Virginia and West Virginia, the CSS commodity office shall, upon request of the county committee, determine the support rate for wheat stored in approved warehouses (except those situated at designated terminal markets) which was shipped by rail in the movement of natural market direction as approved by CCC, by adding to the county rate for the county from which the wheat was shipped an amount per bushel equal to the receiving and loading-out charges computed in accordance with the applicable rates of the Uniform Grain Storage Agreement in effect at the time the loan is made and an amount equal to the transit value of the freight paid from the points of origin to markets designated by CCC. The warehouse receipts must be accompanied by the original paid freight bills or a certificate signed by the warehouseman as set forth in § 421.5039(f). If the wheat is stored in approved warehouses located at transit points, taking a penalty by reason of backhaul, or out-of-line of normal market movements, such penalty or other costs by reason of such movement, as determined by CCC shall be deducted from the support rates as determined in this paragraph.

(c) *Discounts and premiums.* (1) The basic support rates shall be adjusted by all applicable premiums and discounts listed in 1960 C.C.C. Grain Price Support Bulletin 1, Supplement 2, Wheat. Included in the discount schedule will be a special discount of 20 cents per bushel for the following undesirable varieties of wheat, listed by classes.

Class	*Variety*[1]
Hard Red Winter	Blue Jacket, Cache (except in Utah and Idaho), Chiefkan, Cimarron, Early Blackhull, Kan King, Karkof MC 22, New Chief, Pawnee Sel. 33, Purkof, Red Chief, Red Hull, Red Jacket, Stafford, Wasatch (except in Utah, Idaho, and Colorado), and Yogo.
Soft Red Winter	Kan Queen, Kawvale, Nured, and Seabreeze.
Hard Red Spring	C. T. 231, Gasser, Henry (except in Wisconsin, Oregon, and Washington), Kinney, Premier, Progress, Russell (except in Wisconsin), Spinkcota, and Sturgeon.
Durum	Golden Ball, Peliss, and Pentad.
White	Fiftyfold, Florence, Greeson, Rex, and Sonora.

[1] Variety discount not applicable to any varieties of wheat produced in the State of Alaska.

(2) The basic support rates in 1960 C.C.C. Grain Price Support Bulletin 1, Supplement 2, Wheat will also be subject to the following provisions applicable to wheat affected by State, District or county weed control laws: Where the State committee determines that State, district or county weed control laws, as administered, affect the wheat crop, the support rate in the case of farm storage shall be 10 cents per bushel below the applicable county support rate unless the producer obtains a certificate from the appropriate weed control official indicating that the wheat complies with the weed control laws. In the case of warehouse storage, whenever the State committee of the State in which the wheat is stored determines that State, district or county weed control laws, as administered, affect wheat stored in approved warehouses,

the rate shall be 10 cents per bushel below the applicable support rate unless the producer obtains a certificate from either the appropriate State, county or district weed control official or the storing warehouseman that the wheat complies with the weed control laws, and in the case of the warehouseman, that he will save CCC harmless from loss or penalty because of the weed control laws. The certificate of the warehouseman may be in substantially the following form:

CERTIFICATION

This is to certify that the grain evidenced by warehouse receipt No. ------ issued to ---------- is not subject to seizure or other action under weed control laws or regulations in effect at point of storage. It is further certified and agreed that should such grain be taken over by CCC in settlement of a loan or be purchased under the purchase agreement program that the undersigned will save CCC from loss or penalty under weed control laws or regulations in effect at the point the grain was stored under the above warehouse receipt.

(Signature)

(Address)

(Date)

§ 421.5044 Warehouse charges.

(a) (1) Warehouse receipts and the wheat represented thereby stored in approved warehouses operating under the Uniform Grain Storage Agreement may be subject to liens for warehouse handling and storage charges at not to exceed the Uniform Grain Storage Agreement rates from the date the wheat is deposited in the warehouse for storage: *Provided,* That the warehouseman shall not be entitled to satisfy the lien by sale of the commodity when CCC is holder of the warehouse receipt. Where the date of deposit (the date of the warehouse receipt if the date of deposit is not shown) on warehouse receipts representing wheat stored in warehouses operating under the Uniform Grain Storage Agreement is on or before the applicable maturity date to be determined in accordance with § 421.5042, there shall be deducted in computing the amount of the loan or purchase price the storage charges per bushel to be announced later by an amendment to this paragraph unless written evidence has been submitted with the warehouse receipt that all warehouse charges, except receiving and loading out charges, have been prepaid through the applicable maturity date to be determined in accordance with § 421.5042. In the case of recourse loans, there shall also be deducted the receiving and loading out charges per bushel for the commodity to be announced later by an amendment to this paragraph unless written evidence has been submitted with the warehouse receipt that such charges have been prepaid.

(2) Notwithstanding the foregoing provisions of this paragraph, if the date the storage charges start against the holders of the warehouse receipt is shown on the warehouse receipt or supplemental certificate and such date is prior to the maturity date of loans for the commodity, but subsequent to the date of deposit of the commodity in the warehouse, the deduction for storage in computing the amount of loan or purchase price shall be for the period from the date storage charges start against holders of the warehouse receipt through the applicable maturity date to be determined in accordance with § 421.5042.

(b) Warehouse receipts and the wheat represented thereby stored in approved warehouses operated by Eastern common carriers may be subject to liens for warehouse elevation (receiving and delivering) and storage charges from the date of deposit at rates approved by the Interstate Commerce Commission: *Provided,* That the warehouseman shall not be entitled to satisfy the lien by sale of the commodity when CCC is holder of the warehouse receipt. There shall be deducted in computing the amount of the loan or purchase price the amount of the approved tariff rates for storage (not including elevation), which will accumulate from the date of deposit through the applicable maturity date to be determined in accordance with § 421.5042 and in the case of recourse loans the approved tariff rate for elevation charges, unless written evidence has been submitted with the warehouse receipt that such charges have been prepaid. The county office shall request the CSS commodity office to determine the amount of such charges. Where the producer presents evidence showing that elevation charges have been prepaid, the amount of the storage charges to be deducted, in the case of nonrecourse price support, shall be reduced by the amount of the elevation charges prepaid by the producer.

§ 421.5045 Inspection of wheat under purchase agreement.

(a) *Pre-delivery inspection.* Where the producer has given written notice within the 30-day period prior to the nonrecourse loan maturity date of his intent to sell his wheat stored in other than an approved warehouse under purchase agreement to CCC, the county office shall make an inspection of the wheat and obtain a sample of the wheat and submit it for grade analysis prior to delivery of the wheat. If the wheat on the basis of the predelivery inspection is of a quality which meets the requirements for a farm-storage loan, the county office shall issue delivery instructions on or after the date of inspection. The producer must then complete delivery within a 15-day period immediately following the date the county office issued delivery instructions unless the county office determines that more time is needed for delivery. The producer whose wheat is stored in other than an approved warehouse and whose wheat is not of a quality eligible for a loan at the time of predelivery inspection shall be notified in writing by the county office that his wheat is not eligible for purchase by CCC. If, nevertheless, the producer informs the county office that he will condition the wheat or otherwise take action to make the wheat eligible and insists upon delivery of the wheat, the county office shall issue delivery instructions. In such case the producer shall be further informed that if such wheat upon delivery and before purchase, does not meet the eligibility requirements of § 421.5038(c) (1), (2), (3), and (d) as determined on the basis of a sample taken at the time of delivery, the wheat will not be accepted for purchase by CCC. A predelivery inspection shall not be made on wheat stored commingled in warehouses not approved for storage or on wheat in an approved warehouse which is stored so that the identity of the producer's wheat is maintained but a predelivery inspection is not possible. When a predelivery inspection is not made such wheat at the time of delivery must meet the eligibility requirements of § 421.5038(c) (1), (2), (3), and (d).

(b) *Inspection of wheat stored by producer after maturity date.* The producer may be required to retain the wheat stored in other than approved warehouse storage under purchase agreement for a period of 60 days after the nonrecourse loan maturity date without any cost to CCC. CCC will not assume any loss in quantity or quality of wheat covered by a purchase agreement occurring prior to delivery to CCC, except for quality deterioration under the following circumstances. If a producer has properly requested delivery instructions for wheat which was determined to be of an eligible grade and quality at the time of the predelivery inspection, and CCC cannot accept delivery within the 60-day period following the nonrecourse loan maturity date, the producer may notify the county office at any time after such 60-day period that the wheat is going out of condition or is in danger of going out of condition. Such notice must be confirmed in writing. If the county office determines that the wheat is going out of condition or is in danger of going out of condition and that the wheat cannot be satisfactorily conditioned by the producer, and delivery cannot be accepted within a reasonable length of time, the county committee shall obtain an inspection and grade and quality determination. When delivery is completed, settlement shall be made on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, and on the basis of the quantity actually delivered.

§ 421.5046 Settlement.

(a) *Settlement value.* (1) Nonrecourse farm-storage loans: In the case of eligible wheat delivered to CCC from farm storage under nonrecourse loan, settlement shall be made at the applicable support rate determined in accordance with paragraph (b) of this section. The support rate shall be for the grade and quality of the total quantity of wheat eligible for delivery. If, upon delivery, the wheat under nonrecourse farm-storage loan is of a grade or quality for which no support rate has been established, the settlement value shall be computed at the support rate established for the grade and quality of the wheat placed under loan, less the difference, if any at the time of delivery,

between the market price for the grade and quality placed under loan and the market price of the wheat delivered, as determined by CCC: *Provided, however,* That if such wheat is sold by CCC in order to determine its market price, the settlement value shall not be less than such sales price: *And provided further,* That if upon delivery the wheat is of a quality which does not meet sanitation requirements of § 421.5038(d)(1), the wheat shall be sold for uses other than food for human consumption and beverages, and in the event it does not meet the requirements of § 421.5038(d)(2), the wheat shall be sold for seed (in accordance with applicable State seed laws and regulations), fuel, or industrial uses where the end product will not be consumed by man or animal, and in each instance covered by this proviso, the settlement value shall be the same as the sales price: *Provided further,* That if CCC is unable to sell such commodity for the use specified above, the settlement value shall be the market value determined by CCC, as of the date of delivery.

(2) Nonrecourse warehouse-storage loans: Settlement for eligible wheat under nonrecourse warehouse-storage loans not redeemed on maturity and represented by warehouse receipts issued by an approved warehouse shall be made on the basis of weight, grade, and other quality factors shown on the warehouse receipts or accompanying documents at the applicable support rate determined in accordance with paragraph (b) of this section.

(3) Purchase agreements: Subject to the provisions of § 421.5019 the following shall apply:

(i) *Delivery from farm storage.* Settlement for wheat delivered to CCC from farm storage meeting the eligibility requirements of § 421.5038 (c) (1), (2), (3), and (d), as determined by a reinspection at the time of delivery, shall be made at the applicable support rate for the grade and quality of the quantity eligible for delivery on the basis of such inspection. Such support rate shall be determined in accordance with paragraph (b) of this section. If wheat, which was determined to be eligible at the time of the predelivery inspection is, upon delivery, of a grade or quality for which no support rate has been established, the settlement value shall be computed at the support rate established for the grade and quality of the eligible wheat as determined at the time of the predelivery inspection, less the difference, if any, at the time of delivery between the market price for the grade and quality of the wheat, determined by the predelivery inspection, and the market price of the wheat delivered as determined by CCC: *Provided, however,* That if such wheat is sold by CCC in order to determine the market price, the settlement value shall not be less than such price: *And provided further,* That if upon delivery the wheat is of a quality which does not meet sanitation requirements of § 421.5038(d)(1), the wheat shall be sold for uses other than food for human consumption and beverages, and in the event it does not meet the requirements of § 421.5038(d)(2) the wheat shall be sold for seed (in accordance with applicable State seed laws and regulations), fuel, or industrial uses where the end product will not be consumed by man or animals and in each instance covered by this proviso, the settlement value shall be the same as the sales price: *Provided further,* That if CCC is unable to sell such wheat for the use specified above, the settlement value shall be the market value, as determined by CCC, as of the date of delivery.

(ii) *Delivery from approved warehouse storage.* In the case of eligible wheat stored commingled in an approved warehouse, the producer must, not later than the day following the loan maturity date, or during such period of time thereafter as may be specified by the county committee, submit to the office of the county committee warehouse receipts under which the warehouseman guarantees quality and quantity for the quantity of wheat he elects to sell to CCC. Settlement for eligible wheat delivered under purchase agreement to CCC by submission of warehouse receipts issued by an approved warehouse shall be made on the basis of the weight, grade, and other quality factors shown on the warehouse receipt or accompanying documents at the applicable support rate determined in accordance with paragraph (b) of this section.

(iii) *Delivery from unapproved warehouse storage.* Settlement for wheat which is stored commingled, or which is stored so that the identity of the producer's wheat is maintained but a predelivery inspection is not possible, which is delivered to CCC from a warehouse not approved for storage and which meets the eligibility requirements of § 421.5038 (c) (1), (2), (3), and (d) shall be made at the applicable support rate for the grade and quantity eligible for delivery. Such support rate shall be determined in accordance with paragraph (b) of this section. If a predelivery inspection of the producer's wheat can be made, settlement will be the same as for wheat delivered under a purchase agreement from farm-storage as provided in subdivision (i) of this subparagraph.

(iv) *Wheat ineligible for delivery inadvertently accepted by CCC.* The settlement provisions of this subparagraph (iv) shall apply to the following categories of wheat ineligible for delivery which is inadvertently accepted by CCC and which CCC determines it is not in a position to reject: (*a*) Wheat which was of an ineligible grade or quality both at the time of predelivery inspection and at the time of delivery as determined by a reinspection; (*b*) wheat of an ineligible grade or quality which is delivered to CCC in excess of the maximum quantity stated in the purchase agreement; and (*c*) wheat in a warehouse not approved for storage which is stored commingled or stored so that the identity of the producer's wheat is maintained but a predelivery inspection is not possible, and which at the time of delivery does not meet the eligibility requirements of § 421.5038 (c) (1), (2), (3), and (d). The settlement value shall be the market price for the grade, quality, and quantity of such ineligible wheat delivered as determined by CCC: *Provided, however,* That if such wheat is sold by CCC in order to determine its market price, the settlement value shall not be less than the sales price: *And provided further,* That if upon delivery, the wheat is of a quality which does not meet sanitation requirements of § 421.5038(d)(1) the wheat shall be sold for uses other than food for human consumption and beverages, and in the event it does not meet the requirements of § 421.5038(d)(2) shall be sold for seed (in accordance with applicable State seed laws and regulations), fuel, or industrial uses where the end product will not be consumed by man or animals, and in each instance covered by this proviso, the settlement value shall be the same as the sales price: *Provided further,* That if CCC is unable to sell such wheat for the use specified above, the settlement value shall be the market value, as determined by CCC as of the date of delivery. If wheat delivered is of an eligible grade and quality but in excess of the maximum quantity stated in the purchase agreement and such wheat is inadvertently accepted by CCC, the settlement value shall be the sales price if the wheat is immediately sold. If the wheat is not immediately sold, the settlement value shall be the applicable support rate or the market price, as determined by CCC, whichever is lower.

(4) Notwithstanding the foregoing, if a warehouseman has made a certification on the warehouse receipt or supplemental certificate as specified in § 421.5038(c)(2), settlement for wheat delivered to or acquired by CCC in an approved warehouse under a nonrecourse farm storage loan or purchase agreement shall be based on the quality specified in such certification.

(5) Recourse farm-storage and warehouse-storage loans: Settlement of recourse farm-storage and warehouse-storage loans shall be effected in accordance with the applicable provisions of § 421.5019 of 1960 CCC Grain Price Support Bulletin 1.

(b) *Applicable support rate for settlement of nonrecourse loans and eligible quantities delivered under purchase agreements.* Subject to the provisions of § 421.5019 the support rate for settlement of nonrecourse loans and eligible quantities delivered under purchase agreements shall be determined as follows:

(1) In the case of wheat stored in an approved warehouse, settlement shall be made at the applicable support rate determined in accordance with § 421.5043, except as otherwise provided in subparagraphs (4) and (5) of this paragraph.

(2) In the case of wheat delivered from other than approved warehouse storage, settlement shall be made at the applicable support rate for the county in which the producer's customary shipping point (as determined by the county committee) is located, except as otherwise provided in subparagraphs (3), (4), and (5) of this paragraph.

(3) If the producer is directed to deliver his wheat to a terminal market for which a support rate is established, settlement shall be based on the support rate for such terminal market.

(4) If two or more approved warehouses are located at the same or adjoining towns, villages, or cities having the same domestic interstate freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point, and the same settlement rate shall apply even though such warehouses are not all located in the same county. Such settlement rate shall be the highest support rate of the counties involved.

(5) In the case of wheat stored in an approved warehouse or delivered to CCC under loan or purchase agreement from other than approved warehouse storage, if the wheat is produced in the commercial wheat-producing area, and stored or delivered outside the commercial wheat-producing area, or if the wheat is produced in the non-commercial wheat-producing area and stored or delivered in the commercial wheat-producing area, settlement shall be made at the support rate for the county or terminal where the wheat is stored or delivered adjusted to the percentage level of price support for the area where the wheat was produced.

(c) *Storage deduction for early delivery.* No deduction for storage shall be made for farm-stored wheat under nonrecourse loan or purchase agreement authorized to be delivered to CCC prior to the loan maturity date, except where it is necessary to call the loan through fault or negligence on the part of the producer or where the producer requests early delivery and the county committee approves the early delivery and determines such early delivery is solely for the convenience of the producer. The deduction for storage shall be made in accordance with the schedule of deductions for warehouse charges in § 421.5044.

(d) *Refund of prepaid handling charges.* In case a warehouseman charges the producer for the receiving or the receiving and loading-out charges on wheat under nonrecourse loan or purchase agreement stored in an approved warehouse, the producer shall, upon delivery of the wheat to CCC, be reimbursed or given credit by the county office for such prepaid charges in an amount not to exceed the charges specified in the storage agreement, provided, the producer furnishes to the county committee written evidence signed by the warehouseman that such charges have been paid. In case an approved warehouse operated by an eastern common carrier charges the producer for the elevation charges on wheat under nonrecourse loan or purchase agreement, the producer shall, upon delivery of the wheat to CCC, be reimbursed or given credit by the County office for such prepaid charges in an amount not to exceed the charges specified in the applicable approved tariff; provided the producer furnishes to the County Committee written evidence signed by the warehouseman that such charges have been paid and CCC has not previously given the producer credit for such charges as provided in § 421.5084(b).

(e) *Storage payment where CCC is unable to take delivery of wheat stored in other than an approved warehouse under nonrecourse loan or purchase agreement.* The producer may be required to retain wheat stored in other than an approved warehouse under nonrecourse loan or purchase agreement for a period of 60 days after the nonrecourse maturity date without any cost to CCC. However, if CCC is unable to take delivery of such wheat within such 60-day period after maturity, the producer shall be paid a storage payment upon delivery of the wheat to CCC: *Provided, however,* That a storage payment shall be paid a producer whose wheat is stored in other than an approved warehouse under purchase agreement only if he has properly given notice of his intention to sell the wheat to CCC and delivery cannot be accepted within such 60-day period after maturity. The period for earning such storage payment shall begin the day following the expiration of the 60-day period after maturity date and extend through the final date of delivery, or the final date for delivery as specified in the delivery instructions issued to the producer by the county office, whichever is earlier. The storage payment shall be computed at the storage rates for wheat provided for in the Uniform Grain Storage Agreement in effect at the time of such storage.

(f) *Track-loading payment.* A track-loading payment of 3 cents per bushel shall be made to the producer on nonrecourse price support wheat delivered to CCC on track at a county point.

(g) *Compensation for hauling.* If the producer is directed by the county office to deliver his nonrecourse price support wheat to a point other than his customary shipping point, the producer shall be allowed compensation (as determined by CCC, at not to exceed the common carrier truck rate or the rate available from local truckers) for the additional cost of hauling the wheat any distance greater than the distance from the point where the wheat is stored by the producer to the customary shipping point: *Provided,* That if the producer is directed to deliver his wheat to a terminal market for which a support rate is established, no compensation shall be allowed for hauling.

(h) *Method of payment under purchase agreement settlements.* When delivery of wheat under purchase agreement is completed, payment will be made by sight draft drawn on CCC by the county office. The producer shall direct on Commodity Purchase Form 4 to whom payment of the proceeds shall be made.

Issued this 2d day of May 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 60-4109; Filed, May 5, 1960; 8:50 a.m.]

[1960 C.C.C. Grain Price Support Bulletin 1, Supp. 1, Grain Sorghums]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Grain Sorghums Loan and Purchase Agreement Program

A price support program has been announced for the 1960 crop of grain sorghums. The C.C.C. Grain Price Support Bulletin 1 (25 F.R. 2380), issued by the Commodity Credit Corporation and containing the regulations of a general nature with respect to price support operations for grains and certain other commodities produced in 1960 is supplemented as follows:

Sec.
421.5226 Purpose.
421.5227 Availability of price support.
421.5228 Eligible grain sorghums.
421.5229 Warehouse receipts.
421.5230 Determination of quantity.
421.5231 Determination of quality.
421.5232 Maturity of loans.
421.5233 Determination of support rates.
421.5234 Warehouse charges.
421.5235 Inspection of grain sorghums under purchase agreement.
421.5236 Settlement.

AUTHORITY: §§ 421.5226 to 421.5236 issued under sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended, Title II, 73 Stat. 178, 15 U.S.C. 714c, 7 U.S.C. 1421, 1441.

§ 421.5226 Purpose.

Sections 421.5226 to 421.5236 state additional specific regulations which, together with the general regulations contained in the 1960 C.C.C. Grain Price Support Bulletin 1 (§§ 421.5001 to 421.5022), apply to loans and purchase agreements under the 1960-Crop Grain Sorghums Price Support Program.

§ 421.5227 Availability of price support.

(a) *Method of support.* Price support will be made available through farm-storage and warehouse-storage loans and through purchase agreements.

(b) *Area.* Farm-storage and warehouse-storage loans and purchase agreements will be available wherever grain sorghums are grown in the United States, except that farm-storage loans will not be available in areas where the State committee determines that grain sorghums cannot be safely stored on the farm.

(c) *Where to apply.* Application for price support should be made at the office of the county committee which keeps the farm program records for the farm.

(d) *When to apply.* Loans and purchase agreements will be available from the time of harvest through January 31, 1961, and the applicable documents must be signed by the producer and delivered to the office of the county committee not later than such date. Applicable documents include the Producer's Note and Loan Agreement for warehouse-storage loans, the Producer's Note and Sup-

plemental Loan Agreement and the Commodity Chattel Mortgage for farm-storage loans, and the Purchase Agreement for purchase agreements.

§ 421.5228 Eligible grain sorghums.

Grain sorghums, to be eligible for price support, must meet all of the applicable requirements set forth in this section.

(a) The grain sorghums must have been produced in the United States in 1960 by an eligible producer.

(b) At the time the grain sorghums are placed under loan or delivered under a purchase agreement the beneficial interest in the grain sorghums must be in the eligible producer tendering the grain sorghums for loan or for delivery under a purchase agreement, and must always have been in him, or must have been in him and a former producer whom he succeeded before the grain sorghums were harvested. Any producer who is in doubt as to whether his interest in the commodity complies with the requirements of this subpart should make available to the county committee all pertinent information, prior to filing an application, which will permit a determination to be made by CCC as to his eligibility for price support. To meet the requirements of succession to a former producer, the rights, responsibilities and interest of the former producer with respect to the farming unit on which the grain sorghums were produced shall have been substantially assumed by the producer claiming succession. Mere purchase of the crop prior to harvest, without acquisition of any additional interest in the farming units, shall not constitute succession. The county committee shall determine whether requirements with respect to succession have been met.

(c) Grain sorghums, at the time they are placed under loan, and grain sorghums under purchase agreement which are in approved warehouse storage prior to notification by the producer of his intention to sell to CCC, must meet the following requirements:

(1) The grain sorghums must be of any class grading No. 4 or better, No. 4 "Smutty" or better, or No. 4 "Discolored" or better.

(2) Grain sorghums grading "Weevily," or containing mercurial compounds or other substances poisonous to man or animals, or containing in excess of 13 percent moisture, shall not be eligible, except that grain sorghums represented by warehouse receipts which indicate that the grain sorghums are ineligible because of moisture content only, will be eligible if the warehouseman certifies on the supplemental certificate or on a statement attached to the warehouse receipt that grain sorghums of 13 percent moisture or less of an eligible grade which meets the requirements of this subparagraph and subparagraph (1) (2) of this paragraph will be delivered. The certification shall be as shown in subdivision (i) of this subparagraph if the grain sorghums received in the warehouse contain from 13.1 to 15.0 percent moisture and as shown in subdivision (ii) of this subparagraph if the grain sorghums received in the warehouse contain moisture over 15.0 percent but not in excess of 18 percent moisture:

(i) On grain sorghums containing over 13 percent moisture and not in excess of 15 percent moisture, delivery will be made of grain sorghums which grade No. _____, which contain not in excess of 13 percent moisture, and which are otherwise of the same quality or better and of the same quantity as the grain sorghums described on warehouse receipt No. _____. No lien for processing will be claimed by the warehouseman from Commodity Credit Corporation or from any subsequent holder of the warehouse receipt.

(ii) On grain sorghums containing over 15 percent moisture, but not in excess of 18 percent moisture, delivery will be made of grain sorghums which grade No. _____, which contain not in excess of 13 percent moisture, which are otherwise of the same quality or better as the grain sorghums described on warehouse receipt No. _____ and which are the actual quantity obtained after drying the grain sorghums described in such receipt to not in excess of 13 percent moisture. No lien for processing will be claimed by the warehouseman from Commodity Credit Corporation or any subsequent holder of the warehouse receipt.

(3) If offered as security for a farm-storage loan the grain sorghums must have been stored in the granary at least 30 days prior to their inspection for measurement, sampling and sealing, unless otherwise approved by the State committee.

(d) Except as otherwise provided in § 421.5235(a), grain sorghums under purchase agreement stored in other than approved warehouse storage shall not be eligible for sale to CCC if they do not meet the requirements of paragraph (c) (1) and (2) of this section on the basis of a predelivery inspection performed by a representative of the county committee, unless the producer complies with the conditions specified in § 421.5235(a) and the grain sorghums on the basis of the inspection made at the time of delivery meet the requirements set forth in paragraph (c) (1) and (2) of this section.

§ 421.5229 Warehouse receipts.

Warehouse receipts representing grain sorghums in approved warehouse storage to be placed under a warehouse-storage loan or delivered in satisfaction of a farm-storage loan or acquired under a purchase agreement, must meet the following requirements of this section:

(a) Warehouse receipts presented for warehouse-storage loans must be issued in the name of the producer and for deliveries under farm-storage loans or purchase agreements, in the name of the producer or CCC, and must be properly endorsed in blank when issued in the name of the producer so as to vest title in the holder. The receipts must be issued by a warehouse for which a Uniform Grain Storage Agreement is in effect and which is approved by CCC for price support purposes, or must be receipts issued on warehouses operated by Eastern common carriers under tariffs approved by the Interstate Commerce Commission for which custodian agreements are in effect.

(b) (1) Each warehouse receipt or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt must show (i) gross weight and net weight, (ii) class, (iii) grade (including special grades), (iv) test weight, (v) moisture, (vi) dockage, (vii) any other grading factor(s) when such factor(s) and not test weight, determine the grade and (viii) whether the grain sorghums arrived by rail, truck, or barge. In the case of grain sorghums delivered by rail or barge, the grading factors on the warehouse receipt must agree with the inbound inspection certificate for the car or barge if such certificate is issued.

(2) If the warehouseman has furnished a statement as provided in § 421.5228(c)(2) (i) or (ii), the supplemental certificate must show the numerical grade, grading factors and the quantity of the grain sorghums to be delivered. Where the grade, grading factors or the quantity of the grain sorghums shown on the supplemental certificate do not agree with the warehouse receipt, the grade, grading factors and quantity shown on the supplemental certificate shall take precedence.

(c) A separate warehouse receipt must be submitted for each grade and class of grain sorghums.

(d) The warehouse receipt may be subject to liens for warehouse charges only to the extent indicated in § 421.5234.

(e) Warehouse receipts representing grain sorghums which have been shipped by rail or water from a country shipping point to a designated terminal point or shipped by rail or water from a country shipping point and stored in transit to a designated terminal point, must be accompanied by registered freight bills, or by a certificate containing similar information. These registered freight bills or certificates must be representative as to origin and date of movement of the grain. The form of these certificates will be prescribed by the CSS commodity office and shall be signed by the warehouseman and may be made a part of the supplemental certificate.

(f) If the receipt is issued for grain of which the warehouseman is the producer and the owner either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. Such receipts shall also be registered or recorded with appropriate State or local officials when required by State law. In States where the pledge of warehouse receipts by a warehouseman on his own grain sorghums is not valid under State law and the warehouseman elects to deliver grain sorghums to CCC under a purchase agreement for which he is eligible under the program, the warehouse receipt shall be issued in the name of CCC.

(g) Each warehouse receipt or accompanying supplemental certificate representing grain stored in an approved

warehouse operating under the Uniform Grain Storage Agreement shall indicate that the grain sorghums are insured, in accordance with such Agreement. Each warehouse receipt or accompanying supplemental certificate issued on warehouses operated by Eastern common carriers and representing grain sorghums to be placed under loan shall indicate that the grain sorghums are insured at the full market value against loss or damage by fire, lightning, inherent explosion, windstorm, cyclone and tornado. The cost of such insurance shall not be for the account of CCC.

§ 421.5230 Determination of quantity.

(a) The quantity of grain sorghums placed under farm-storage loan may be determined either by weight or by measurement. The quantity of grain sorghums delivered under a farm-storage loan or under a purchase agreement shall be determined by weight. The quantity of grain sorghums on which a warehouse-storage loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse under a farm-storage loan or purchase agreement shall be the net weight of the grain sorghums represented by the warehouse receipt or on the supplemental certificate if applicable. If the warehouseman has made the certification provided in § 421.5228 (c) (2) (ii), such quantity shall be the net weight obtained after drying the grain sorghums to not in excess of 13 percent moisture.

(b) When the quantity is determined by weight, a unit of 100 pounds shall be determined to be 100 pounds of grain sorghums free of dockage. In determining the quantity of sacked grain sorghums by weight, a deduction of three-fourths of a pound for each sack shall be made.

(c) When the quantity of grain sorghums is determined by measurement, 100 pounds shall be 2.25 cubic feet of grain sorghums testing 56 pounds per bushel. The quantity determined by measurement of grain sorghums having a test weight of other than 56 pounds per bushel shall be adjusted by applying the applicable percentage as shown in the following table:

For grain sorghums testing:	*Percent*
60 pounds or over	107
59 pounds or over, but less than 60 pounds	106
58 pounds or over, but less than 59 pounds	104
57 pounds or over, but less than 58 pounds	102
56 pounds or over, but less than 57 pounds	100
55 pounds or over, but less than 56 pounds	98
54 pounds or over, but less than 55 pounds	96
53 pounds or over, but less than 54 pounds	95
52 pounds or over, but less than 53 pounds	93
51 pounds or over, but less than 52 pounds	91
50 pounds or over, but less than 51 pounds	89
49 pounds or over, but less than 50 pounds	87

(d) The percentage of dockage shall be determined and the weight of such dockage shall be deducted from the gross weight of the grain sorghums in determining the net quantity available for loan or purchase.

§ 421.5231 Determination of quality.

The class, subclass, grade, grading factors, and all other quality factors shall be determined in accordance with the methods set forth in the Official Grain Standards of the United States for Grain Sorghums, whether or not such determinations are made on the basis of an official inspection.

§ 421.5232 Maturity of loans.

Nonrecourse loans mature on demand but not later than March 31, 1961. Recourse loans mature on January 31, 1962.

§ 421.5233 Determination of support rates.

Basic support rates for grain sorghums placed under loan or delivered under a purchase agreement will be set forth in 1960 C.C.C. Grain Price Support Bulletin 1, Supplement 2, Grain Sorghums. Support rates will be established for grain sorghums stored in approved warehouse storage at designated terminal markets, and for grain sorghums stored in approved country warehouses and in approved farm storage. The support rate for the quality of grain sorghums placed under a loan or delivered from a purchase agreement shall be the applicable basic support rate adjusted in accordance with the provisions of this section and 1960 C.C.C. Grain Price Support Bulletin 1, Supplement 2, Grain Sorghums.

(a) *Support rates at designated terminal markets.* (1) (i) In order to be eligible for loan or purchase at the support rate established for designated terminal markets, the grain sorghums must have been shipped on a domestic interstate freight rate basis. The support rate at the designated terminal market on any grain sorghums shipped at other than the domestic interstate freight rate, shall be reduced by the difference between the rate of the freight paid and the domestic interstate freight rate.

(ii) The support rates established for designated terminal markets apply to grain sorghums which have been shipped by rail or water from a country shipping point to one of the designated terminal markets, as evidenced by paid freight bills duly registered for transit privileges: *Provided,* That in the event the amount of paid-in freight is insufficient to guarantee the minimum proportional domestic interstate freight rate, if any, from the terminal market to a recognized market as determined by CCC, there shall be deducted from the applicable terminal support rate the difference between the amount of freight actually paid in and the amount required to be paid in to guarantee outbound movement at the minimum proportional domestic interstate freight rate.

(2) (i) Notwithstanding the foregoing provisions of this paragraph, the support rate for grain sorghums which are shipped by rail or water and stored at any designated terminal market, for which neither registered freight bills nor registered freight certificates are presented shall be equal to the terminal rate minus 12 cents per 100 pounds.

(ii) The support rate for grain sorghums received by truck and stored at any designated terminal market, shall be determined by making a deduction from the terminal rate an amount to be announced at a later date by an amendment to this subdivision.

(3) (i) Notwithstanding the foregoing provisions of this paragraph the support rate for grain sorghums shipped by rail or water and stored at any of the following terminal markets shall be equal to the applicable terminal rate:

Los Angeles, Calif.; San Francisco, Calif.; Stockton, Calif.; Oakland, Calif.; Astoria, Oreg.; Portland, Oreg.; Corpus Christi, Tex.; Galveston, Tex.; Houston, Tex.; Port Arthur, Tex.; Longview, Wash.; Seattle, Wash.; Tacoma, Wash.; Vancouver, Wash.; Baton Rouge, La.; and New Orleans, La.

(ii) Notwithstanding the foregoing provisions of this paragraph, the support rate for grain sorghums received by truck and stored at any of the terminal markets listed in subdivision (i) of this subparagraph shall be determined by making a deduction from the terminal rate of an amount to be announced at a later date by an amendment to this subdivision, plus the transportation cost, if any, as determined by the appropriate CSS commodity office for moving the grain sorghums to a tidewater loading facility located within the same switching limits.

(b) *Support rates for grain sorghums in approved warehouse storage at other than designated terminal markets.* (1) The support rates for grain sorghums which are shipped by rail or water and stored in approved warehouses (other than those situated in the designated terminal markets) shall be determined by deducting from the rates for the appropriate designated terminal market, as determined by CCC, an amount equal to the transit balance, if any, of the through-freight rate from point of origin for such grain sorghums to such terminal market: *Provided,* That on any grain sorghums shipped at other than the domestic interstate freight rate the support rate shall be further reduced by the difference between the rate of freight paid and the domestic interstate freight rate from the point of origin of such grain sorghums to the point of storage: *And provided further,* That in the case of grain sorghums stored at any railroad transit point taking a penalty by reason of out-of-line movement or for any other reason, to the appropriate designated market, there shall be added to such transit balance an amount equal to any out-of-line costs or other costs incurred in storing grain sorghums in such position.

(2) The warehouse receipts must be accompanied by the original paid freight bills or certificates of the warehousemen and other required documents as set forth in § 421.5229.

(c) *Discounts and premiums.* (1) The basic support rates shall be adjusted by all applicable discounts listed in 1960 C.C.C. Grain Price Support Bulletin 1, Supplement 2, Grain Sorghums.

(2) The basic support rates in 1960 C.C.C. Grain Price Support Bulletin 1,

Supplement 2, Grain Sorghums, will also be subject to the following provisions applicable to grain sorghums affected by State, district, or county weed control laws: Where the State committee determines that State, district, or county weed control laws, as administered, affect the grain sorghums crop, the support rate in the case of farm storage shall be 15 cents below the applicable county support rate unless the producer obtains a certificate from the appropriate weed control official indicating that the grain sorghums comply with the weed control laws. In the case of warehouse storage, whenever the State committee of the State in which the grain sorghums are stored determines that State, district or county weed control laws, as administered, affect grain sorghums stored in approved warehouses, the rate shall be 15 cents below the applicable support rate unless the producer obtains a certificate from either the appropriate State, county or district weed control official or the storing warehouseman that the grain sorghums comply with the weed control laws, and in the case of the warehouseman, that he will save CCC harmless from loss or penalty because of the weed control laws. The certificate of the warehouseman may be in substantially the following form:

CERTIFICATION

This is to certify that the grain evidenced by warehouse receipt No. _____ issued to _____ is not subject to seizure or other action under weed control laws or regulations in effect at point of storage. It is further certified and agreed that should such grain be taken over by CCC in settlement of a loan or be purchased under the purchase agreement program that the undersigned will save CCC from loss or penalty under weed control laws or regulations in effect at the point the grain was stored under the above warehouse receipt.

_____
(Signature)

_____
(Address)

_____
(Date)

§ 421.5234 Warehouse charges.

(a) (1) Warehouse receipts and the grain sorghums represented thereby stored in approved warehouses operating under the Uniform Grain Storage Agreement may be subject to liens for warehouse handling and storage charges at not to exceed the Uniform Grain Storage Agreement rates from the date the grain sorghums are deposited in the warehouse for storage: *Provided,* That the warehouseman shall not be entitled to satisfy the lien by sale of the commodity when CCC is holder of the warehouse receipt. Where the date of deposit (the date of the warehouse receipt if the date of deposit is not shown) on warehouse receipts representing grain sorghums stored in warehouses operating under the Uniform Grain Storage Agreement is on or before the applicable maturity date to be determined in accordance with § 421.5232, there shall be deducted in computing the amount of the loan or purchase price the storage charges per hundredweight, to be announced later by an amendment to this paragraph, unless written evidence has been submitted with the warehouse receipt that all warehouse charges, except receiving and loading out charges, have been prepaid through the applicable maturity date to be determined in accordance with § 421.5232. In the case of recourse loans there shall also be deducted the receiving and loading out charges per bushel for the commodity, to be announced later by an amendment to this paragraph, unless written evidence has been submitted with the warehouse receipt that such charges have been prepaid.

(2) Notwithstanding the foregoing provisions of this paragraph, if the date the storage charges start against the holders of the warehouse receipt is shown on the warehouse receipt or supplemental certificate and such date is prior to the maturity date of loans for the commodity but subsequent to the date of deposit of the commodity in the warehouse, the deduction for storage in computing the amount of loan or purchase price shall be for the period from the date storage charges start against holders of the warehouse receipt through the applicable maturity date to be determined in accordance with § 421.5232.

(b) Warehouse receipts and the grain sorghums represented thereby stored in approved warehouses operated by Eastern common carriers may be subject to liens for warehouse elevation (receiving and delivering) and storage charges from the date of deposit at rates approved by the Interstate Commerce Commission: *Provided,* That the warehouseman shall not be entitled to satisfy the lien by sale of the commodity when CCC is holder of the warehouse receipt. There shall be deducted in computing the loan or purchase price, the amount of the approved tariff rate for storage (not including elevation), which will accumulate from the date of deposit through the applicable maturity date to be determined in accordance with § 421.5232, and in the case of recourse loans the approved tariff rate for elevation charges, unless written evidence is submitted with the warehouse receipt that such charges have been prepaid. The county office shall request the CSS commodity office to determine the amount of such charges. Where the producer presents evidence showing that elevation charges have been prepaid, the amount of the storage charges to be deducted, in the case of nonrecourse price support, shall be reduced by the amount of the elevation charges prepaid by the producer.

§ 421.5235 Inspection of grain sorghums under purchase agreement.

(a) *Predelivery inspection.* Where the producer has given written notice within the 30-day period prior to the nonrecourse loan maturity date of his intent to sell his grain sorghums stored in other than an approved warehouse under purchase agreement to CCC, the county office shall make an inspection of the grain sorghums and obtain a sample of the grain sorghums and submit it for grade analysis prior to delivery of the grain sorghums. If the grain sorghums on the basis of the predelivery inspection are of a quality which meets the requirements for a farm-storage loan, the county office shall issue delivery instructions on or after the date of inspection. The producer must then complete delivery within a 15-day period immediately following the date the county office issues delivery instructions unless the county office determines that more time is needed for delivery. The producer whose grain sorghums are stored in other than an approved warehouse and whose grain sorghums are not of a quality eligible for a loan at the time of the predelivery inspection shall be notified in writing by the county office that his grain sorghums are not eligible for purchase by CCC. If, nevertheless, the producer informs the county office that he will condition the grain sorghums, or otherwise take action to make the grain sorghums eligible and insists upon delivery of the grain sorghums, the county office shall issue delivery instructions. In such case the producer shall be further informed that if such grain sorghums, upon delivery and before purchase, do not meet the eligibility requirements of § 421.5228(c) (1) and (2) as determined on the basis of a sample taken at the time of delivery, the grain sorghums will not be accepted for purchase by CCC. A predelivery inspection shall not be made on grain sorghums stored commingled in warehouses not approved for storage or on grain sorghums in an unapproved warehouse which are stored so that the identity of the producer's grain sorghums is maintained but a predelivery inspection is not possible. When a predelivery inspection is not made such grain sorghums, at the time of delivery, must meet the eligibility requirements of § 421.5228(c) (1) and (2).

(b) *Inspection of grain sorghums stored by producer, after maturity date.* The producer may be required to retain the grain sorghums stored in other than approved warehouse storage under purchase agreement for a period of 60 days after the nonrecourse loan maturity date without any cost to CCC. CCC will not assume any loss in quantity or quality of the grain sorghums covered by a purchase agreement occuring prior to delivery to CCC, except for quality deterioration under the following circumstances. If a producer has properly requested delivery instructions for grain sorghums which were determined to be of an eligible grade and quality at the time of the predelivery inspection, and CCC cannot accept delivery within the 60-day period following the nonrecourse loan maturity date, the producer may notify the county office at any time after such 60-day period that the grain sorghums are going out of condition or are in danger of going out of condition. Such notice must be confirmed in writing. If the county office determines that the grain sorghums are going out of condition or are in danger of going out of condition and that the grain sorghums cannot be satisfactorily conditioned by the producer, and delivery cannot be accepted within a reasonable length of time, the county office shall obtain an inspection and grade and quality determination. When delivery is completed, settlement shall be made on the

basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, and on the basis of the quantity actually delivered.

§ 421.5236 Settlement.

(a) *Settlement value.* (1) Nonrecourse farm-storage loans: In the case of eligible grain sorghums delivered to CCC from farm storage under nonrecourse loan, settlement shall be made at the applicable support rate determined in accordance with paragraph (b) of this section. The support rate shall be for the grade and quality of the total quantity of grain sorghums eligible for delivery. If, upon delivery, the grain sorghums under nonrecourse farm-storage loan are of a grade or quality for which no support rate has been established, the settlement value shall be computed at the support rate established for the grade and quality of the grain sorghums placed under loan, less the difference, if any, at the time of delivery, between the market price for the grade and quality placed under loan and the market price of the grain sorghums delivered, as determined by CCC: *Provided, however,* That if such grain sorghums are sold by CCC in order to determine their market price, the settlement value shall not be less than such sales price: *And provided further,* That if upon delivery the grain sorghums contain mercurial compounds or other substances poisonous to man or animals, such grain sorghums shall be sold for seed (in accordance with applicable State seed laws and regulations), fuel, or industrial uses where the end product will not be consumed by man or animals, and the settlement value shall be the same as the sales price, except that if CCC is unable to sell such commodity for the use specified above, the settlement value shall be the market value, if any, as determined by CCC, as of the date of delivery.

(2) Nonrecourse warehouse-storage loans: Settlement for eligible grain sorghums under nonrecourse warehouse-storage loans not redeemed on maturity and represented by warehouse receipts issued by an approved warehouse shall be made on the basis of the weight, grade, and other quality factors shown on the warehouse receipts or accompanying documents at the applicable support rate determined in accordance with paragraph (b) of this section.

(3) Purchase agreements: Subject to the provisions of § 421.5019 the following shall apply:

(i) *Delivery from farm storage.* Settlement for grain sorghums delivered to CCC from farm storage meeting the eligibility requirements of § 421.5228(c) (1) and (2), as determined by a reinspection at the time of delivery, shall be made at the applicable support rate for the grade and quality of the quantity eligible for delivery on the basis of such inspection. Such support rate shall be determined in accordance with paragraph (b) of this section. If grain sorghums, which were determined to be eligible at the time of the predelivery inspection are, upon delivery, of a grade or quality for which no support rate has been established, the settlement value shall be computed at the support rate established for the grade and quality of the eligible grain sorghums as determined at the time of the predelivery inspection, less the difference, if any, at the time of delivery between the market price for the grade and quality of the grain sorghums, determined by the predelivery inspection, and the market price of the grain sorghums delivered, as determined by CCC: *Provided, however,* That if such grain sorghums are sold by CCC in order to determine the market price, the settlement value shall not be less than such sales price: *And provided further,* That, if upon delivery, the grain sorghums contain mercurial compounds or other substances poisonous to man or animals, such grain sorghums shall be sold for seed (in accordance with applicable State seed laws and regulations), fuel or industrial uses where the end product will not be consumed by man or animals and the settlement value shall be the same as the sales price, except that if CCC is unable to sell such grain sorghums for the use specified above, the settlement value shall be the market value, if any, as determined by CCC, as of the date of delivery.

(ii) *Delivery from approved warehouse storage.* In the case of eligible grain sorghums stored commingled in an approved warehouse, the producer must, not later than the day following the loan maturity date, or during such period of time thereafter as may be specified by the county committee, submit to the office of the county committee warehouse receipts under which the warehouseman guarantees quality and quantity for the quantity of grain sorghums he elects to sell to CCC. Settlement for eligible grain sorghums delivered under purchase agreement to CCC by submission of warehouse receipts issued by an approved warehouse shall be made on the basis of the weight, grade, and other quality factors shown on the warehouse receipt or accompanying documents at the applicable support rate determined in accordance with paragraph (b) of this section.

(iii) *Delivery from unapproved warehouse storage.* Where the producer has properly given the county office written notice of his intent to sell to CCC, grain sorghums in a warehouse not approved for storage which are stored commingled, or which are stored so that the identity of the producer's grain sorghums is maintained, but a predelivery inspection is not possible, the county office will issue instructions on or after the nonrecourse loan maturity date for delivery of the grain sorghums. Settlement for such grain sorghums delivered to CCC which meet the eligibility requirements of § 421.5228(c) (1) and (2) shall be made at the applicable support rate for the grade and quantity eligible for delivery. Such support rate shall be determined in accordance with paragraph (b) of this section. If a predelivery inspection of the producer's grain sorghums can be made, the provisions of § 421.5235 shall apply and settlement will be the same as for grain sorghums delivered under a purchase agreement from farm storage as provided in subdivision (i) of this subparagraph.

(iv) *Grain sorghums ineligible for delivery, inadvertently accepted by CCC.* The settlement provisions of this subparagraph (iv) shall apply to the following categories of grain sorghums ineligible for delivery which are inadvertently accepted by CCC and which CCC determines it is not in a position to reject: (*a*) grain sorghums which were of an ineligible grade or quality both at the time of the predelivery inspection and at the time of delivery as redetermined by a reinspection; (*b*) grain sorghums of an ineligible grade or quality which are delivered to CCC in excess of the maximum quantity stated in the purchase agreement; (*c*) grain sorghums in other than approved warehouse storage on which a predelivery inspection was not performed, and which at the time of delivery does not meet the eligibility requirements of § 421.5228(c) (1) and (2). The settlement value shall be the market price for the grade, quality, and quantity of such ineligible grain sorghums delivered, as determined by CCC: *Provided, however,* That if such grain sorghums are sold by CCC in order to determine their market price, the settlement value shall not be less than the sales price: *And provided further,* That, if upon delivery, the grain sorghums contain mercurial compounds or other substances poisonous to man or animals, such grain sorghums shall be sold for seed (in accordance with applicable State seed laws and regulations) fuel or industrial uses where the end product will not be consumed by man or animals and the settlement value shall be the same as the sales price, except that if CCC is unable to sell such grain sorghums for the use specified above, the settlement value shall be the market value, if any, as determined by CCC as of the date of delivery. If grain sorghums delivered are of an eligible grade and quality but in excess of the maximum quantity stated in the purchase agreement and such grain sorghums are inadvertently accepted by CCC, the settlement value shall be the sales price if the grain sorghums are immediately sold. If the grain sorghums are not immediately sold, the settlement value shall be the applicable support rate or the market price, as determined by CCC, whichever is lower.

(4) Notwithstanding the foregoing, if a warehouseman has made a certification on the warehouse receipt or supplemental certificate as specified in § 421.5228(c) (2), settlement for grain sorghums delivered to or acquired by CCC in an approved warehouse under a nonrecourse farm-storage loan or purchase agreement shall be based on the quality specified in such certification.

(5) Recourse farm-storage and warehouse-storage loans: Settlement of recourse farm-storage and warehouse-storage loans shall be effected in accordance with the applicable provisions of § 421.5019 of 1960 C.C.C. Grain Price Support Bulletin 1.

(b) *Applicable support rate for settlement of nonrecourse loans and eligible quantities delivered under purchase*

agreements. Subject to the provisions of § 421.5019, the support rate for settlement of nonrecourse loans and eligible quantities delivered under purchase agreements shall be determined as follows:

(1) In the case of grain sorghums stored in an approved warehouse, settlement shall be made at the applicable support rate determined in accordance with § 421.5233 except as otherwise provided in subparagraph (4) of this paragraph.

(2) In the case of grain sorghums delivered from other than approved warehouse storage, settlement shall be made at the applicable support rate for the county in which the producer's customary shipping point (as determined by the county committee) is located, except as otherwise provided in subparagraphs (3) and (4) of this paragraph.

(3) If the producer is directed to deliver his grain sorghums to a terminal market for which a support rate is established, settlement shall be based on the support rate for such terminal market.

(4) If two or more approved warehouses are located at the same or adjoining towns, villages, or cities having the same domestic interstate freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point, and the same settlement rate shall apply even though such warehouses are not all located in the same county. Such settlement rate shall be the highest support rate of the counties involved.

(c) *Storage deduction for early delivery.* No deduction for storage shall be made for farm-stored grain sorghums under nonrecourse loan or purchase agreement authorized to be delivered to CCC prior to the loan maturity date, except where it is necessary to call the loan through fault or negligence on the part of the producer or where the producer requests early delivery and the county committee approves the early delivery and determines such early delivery is solely for the convenience of the producer. The deduction for storage shall be made in accordance with the schedule of deductions for warehouse charges in § 421.5234.

(d) *Refund of prepaid handling charges.* In case a warehouseman charges the producer for the receiving or the receiving and loading out charges on grain sorghums under nonrecourse loan or purchase agreement stored in an approved warehouse the producer shall, upon delivery of the grain sorghums to CCC be reimbursed or given credit by the county office for such prepaid charges in an amount not to exceed the charges specified in the storage agreement, provided the producer furnishes to the county committee written evidence signed by the warehouseman that such charges have been paid. In case an approved warehouse operated by an Eastern common carrier charges the producer for the elevation charges on grain sorghums under nonrecourse loan or purchase agreement, the producer shall, upon delivery of the grain sorghums to CCC, be reimbursed or given credit by the county office for such prepaid charges in an amount not to exceed the charges specified in the applicable approved tariff; provided the producer furnishes to the county committee written evidence signed by the warehouseman that such charges have been paid and that CCC has not previously given the producer credit for such charges as provided in § 421.5234(b).

(e) *Storage payment where CCC is unable to take delivery of grain sorghums stored in other than an approved warehouse under nonrecourse loan or purchase agreement.* The producer may be required to retain grain sorghums stored in other than an approved warehouse under nonrecourse loan or purchase agreement for a period of 60 days after the nonrecourse maturity date without any cost to CCC. However, if CCC is unable to take delivery of such grain sorghums within such 60-day period after maturity, the producer shall be paid a storage payment upon delivery of the grain sorghums to CCC. *Provided, however,* That a storage payment shall be paid a producer whose grain sorghums are stored in other than approved warehouse under purchase agreement only if he has properly given notice of his intention to sell the grain sorghums to CCC and delivery cannot be accepted within such 60-day period after maturity. The period for earning such storage payment shall begin the day following the expiration of the 60-day period after the maturity date and extend through the final date of delivery, or the final date for delivery as specified in the delivery instructions issued to the producer by the county office, whichever is earlier. The storage payment shall be computed at the storage rates for grain sorghums provided for in the Uniform Grain Storage Agreement in effect at the time of such storage.

(f) *Track-loading payment.* A track-loading payment of 6 cents per 100 pounds shall be made to the producer on nonrecourse price support grain sorghums delivered to CCC on track at a country point.

(g) *Compensation for hauling.* If the producer is directed by the county office to deliver his nonrecourse price support grain sorghums to a point other than his customary shipping point, the producer shall be allowed compensation (as determined by CCC, at not to exceed the common carrier truck rate or the rate available from local truckers) for the additional cost of hauling the grain sorghums any distance greater than the distance from the point where the grain sorghums are stored by the producer to the customary shipping point: *Provided,* That, if the producer is directed to deliver his grain sorghums to a terminal market for which a support rate is established, no compensation shall be allowed for hauling.

(h) *Method of payment under purchase agreement settlements.* When delivery of grain sorghums under purchase agreement is completed, payment will be made by sight draft drawn on CCC by the county office. The producer shall direct on Commodity Purchase Form 4 to whom payment of the proceeds shall be made.

Issued this 2d day of May 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 60-4108; Filed, May 5, 1960; 8:50 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 1—COVERAGE AND DEFINITIONS

PART 25—FEDERAL EMPLOYEES' PAY REGULATIONS

Definitions and Demotions

1. Paragraph (a) of § 1.102 is amended as set out below.

§ 1.102 Definitions.

* * * * *

(a) "Agency" means any executive department, military department, or independent establishment of the Federal Government, including a Government owned or controlled corporation, and any portion of the legislative and judicial branches and of the Government of the District of Columbia insofar as they have positions subject to the Civil Service Rules and Regulations.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

2. Section 25.408 is amended as set out below.

§ 25.408 Demotion in a reduction in force.

Salary retention does not apply to a demotion in a reduction in force either (a) from a lack of funds for personal services in the competitive area when such lack of funds results from a limitation imposed upon the department or any one of the military departments by outside authority; or (b) from a curtailment of the number of man hours required to perform the current work of the department in the competitive area.

(Sec. 1101, 63 Stat. 971, sec. 113, 68 Stat. 1108; 5 U.S.C. 1072, 1072a)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant.

[F.R. Doc. 60-4065; Filed, May 5, 1960; 8:45 a.m.]

Title 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

PART 1—ADMINISTRATIVE REGULATIONS

Subpart H—Delegation of Authority

Part 1, Subtitle A, Title 7 of the Code of Federal Regulations is amended by the

addition of a new Subpart H, entitled Delegation of Authority, as follows:

§ 1.201 General delegation of authority.

The head of each agency shall, under the general direction and supervision of the Secretary of Agriculture and the Under Secretary, and the Assistant Secretary, the Administrative Assistant Secretary, or the Assistant to the Secretary in charge of Agricultural Credit to whom is assigned the general direction and supervision of his agency, direct and supervise the activities of the employees of his agency. Subject to any reservation of authority contained in delegations heretofore or hereafter published in the FEDERAL REGISTER, the head of any agency is hereby delegated authority to take any action, including the authority to execute any document, authorize any expenditure, and promulgate any rule, regulation, order or instruction, required by law or deemed by him to be necessary and proper to the discharge of the functions assigned to his agency. The head of any such agency may, consistent with and with due regard to his personal responsibility for the proper discharge of the functions assigned to his agency, delegate and provide for the redelegation of his authority to appropriate officers and employees.

(R.S. 161; 5 U.S.C. 22)

Done at Washington, D.C., this 3d day of May 1960.

[SEAL] E. T. BENSON,
Secretary.

[F.R. Doc. 60-4112; Filed, May 5, 1960; 8:51 a.m.]

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

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND PRODUCTS THEREOF

Subpart A—Regulations

SUPPLEMENTAL INSTRUCTIONS AND PROCEDURES FOR INSPECTION OF CARGO WHEAT FOR PROTEIN CONTENT; FEES AND CHARGES FOR INSPECTION SERVICE

Pursuant to sections 203 and 205 of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622, 1624) the provisions for inspection and certification of certain agricultural commodities and products thereof (7 CFR, Part 68, Subpart A, as amended), are hereby amended as follows:

A. Section 68.4a(a)(1)(ii) is amended to read:

(ii) The Supervising Inspector will, as instructed by the Director, submit the sample of wheat to a Federal, State, or commercial laboratory approved by the Director, for analysis to determine the protein content of the wheat. In submitting the sample, the Supervising Inspector will request the laboratory to determine the protein content on the "as is" moisture basis or on a "14.0 percent" moisture basis, as requested by the applicant. If the protein content is to be determined on the "as is" moisture basis, the Supervising Inspector will show no percentage of moisture. If the protein content is to be determined on a "14.0 percent" moisture basis, the Supervising Inspector will show the percentage of moisture in the wheat as stated on the last outstanding certificate of grade or, if there is no certificate of grade, as determined by the Supervising Inspector.

B. Section 68.4a(a)(1)(iii) is amended to read:

(iii) The laboratory will, as requested by the Supervising Inspector, determine the protein content of the wheat on the "as is" moisture basis or on a "14.0 percent" moisture basis; and will report the results of the determination, in terms of whole percent and tenths of a percent, to the Supervising Inspector. In determining the protein contnet on a "14.0 percent" moisture basis, the laboratory will use, for the purpose of calculation, the percentage of moisture in the wheat as shown by the Supervising Inspector.

C. Section 68.4a(a)(1)(iv) is amended to read:

(iv) A Federal inspection certificate will be issued by the Supervising Inspector showing the identity of the sample, the quantity of wheat in the sample, and the protein content of the wheat. The protein content will be stated in terms of whole percent and tenths of a percent and will be shown on the "as is" moisture basis unless the applicant specifically requests that the protein content be shown on a "14.0 percent" moisture basis. If the protein content is shown on a "14.0 percent" moisture basis, that fact will be stated on the certificate. The percentage of moisture in the wheat, as shown on the last outstanding certificate of grade or, if there is no certificate of grade, as determined by the Supervising Inspector, will also be shown on the certificate. The following statement will be shown on the certificate in the space provided for remarks:

Sample identified by licensed inspector ---------- as a portion of
(Name of inspector)
the sample used in the inspection and grading of the wheat as loaded aboard the ----------
(Name of vessel)

D. Section 68.4a(a)(2)(ii) is amended to read:

(ii) The Supervising Inspector will, as instructed by the Director, submit the sample of wheat to a Federal, State, or commercial laboratory approved by the Director, for analysis to determine the protein content of the wheat. In submitting the sample, the Supervising Inspector will request the laboratory to determine the protein content on the "as is" moisture basis or on a "14.0-percent" moisture basis as requested by the applicant. If the protein content is to be determined on the "as is" moisture basis, the Supervising Inspector will show no percentage of moisture. If the protein content is to be determined on a "14.0-percent" moisture basis, the Supervising Inspector will show the percentage of moisture in the wheat as stated on the last outstanding certificate of grade or, if there is no certificate of grade, as determined by the Supervising Inspector.

E. Section 68.4a(a)(2)(iii) is amended to read:

(iii) The laboratory will, as requested by the Supervising Inspector, determine the protein content of the wheat on the "as is" moisture basis or on a "14.0-percent" moisture basis; and will report the results of the determination, in terms of whole percent and tenths of a percent, to the Supervising Inspector. In determining the protein content on a "14.0-percent" moisture basis, the laboratory will use, for the purpose of calculation, the percentage of moisture in the wheat as shown by the Supervising Inspector.

F. Section 68.4a(a)(2)(iv) is amended to read:

(iv) A Federal inspection certificate will be issued by the Supervising Inspector showing the quantity of wheat in the cargo, the identity of the wheat by name of vessel and place of stowage in the vessel, and the protein content of the wheat. The protein content will be stated in terms of whole percent and tenths of a percent and will be shown on the "as is" moisture basis unless the applicant specifically requests that the protein content be shown on a "14.0 percent" moisture basis. If the protein content is shown on a "14.0 percent" moisture basis, that fact will be stated on the certificate. The percentage of moisture, as shown on the last outstanding certificate of grade or, if there is no certificate of grade, as determined by the Supervising Inspector, will also be shown on the certificate.

G. New section 68.4a(a)(3) is issued to read:

(3) *Reinspection and certification.* Reinspection and certification of the protein content of a sample of cargo wheat, or the protein content of a cargo, or an identified part of a cargo of wheat, will be performed in accordance with the provisions of §§ 68.17 to 68.20 and other applicable provisions in this part: *Provided,* That the application for the reinspection, and the reinspection, may be made after the commodity has left the place where the original inspection was made.

H. A new § 68.4a(a)(4) is issued to read:

(4) *Appeal inspection and certification.* Appeal inspection and certification of the protein content of a sample of cargo wheat, or the protein content of a cargo, or an identified part of a cargo of wheat, will be performed in accordance with the provisions of §§ 68.21 to 68.28 and other applicable provisions in this part: *Provided,* That the application for the appeal inspection, and the appeal inspection, may be made after the commodity has left the place where the inspection appealed from was made, and/or after the entire lot of the commodity is no longer available and accessible for sampling and examination.

I. Section 68.4a(c) is amended to read:

(c) Inspection and certification of cargo wheat for protein content is not required by, and does not meet the requirements of, the United States Grain Standards Act. Inspection and certification service for protein content will be performed only upon request. Application for such service should be filed with the office of the Grain Division at or nearest the place where the service is desired. Application should be made, if possible, at least 48 hours before the loading of the wheat into the vessel is expected to begin.

J. Section 68.17 is amended by adding the figures and word "§ 68.4a or" immediately preceding the figures "§ 68.14."

K. Section 68.42a(c)(4) is amended to read:

(4) Fees and charges for inspection and certification of cargo wheat for protein content:

(i) The fee for each sample inspection and certification will be $20.00.

(ii) The fee for each lot inspection and certification will be $20.00: *Provided,* That in addition charges will be made at the rates prescribed in subdivision (vi) of this subparagraph to cover the sampling of the wheat in those cases where an appeal was not taken on the wheat under the United States Grain Standards Act or the wheat was not inspected and graded in Canada under the regulations in this part.

(iii) The fee for each reinspection and certification will be $15.00.

(iv) The fee for each appeal inspection and certification will be $15.00: *Provided,* That no fee or charge shall be assessed if the Supervising Inspector who makes the appeal inspection finds that there is a material error in the inspection from which the appeal is taken.

(v) However the fee for each inspection, reinspection, or appeal inspection, and certification, for each additional sample, (see paragraph (a)(2)(v) of this section), will be $15.00: *Provided,* That no fee or charge shall be assessed if the Supervising Inspector who makes the appeal inspection finds that there is a material error in the inspection from which the appeal is taken.

(vi) (*a*) The fees prescribed in subdivisions (i) through (v) of this subparagraph shall cover the preparation and handling of samples, protein tests, moisture tests if any, communications and postage, and certification and record.

(*b*) The sampling charges prescribed in subdivision (ii) of this subparagraph shall be at the rate of $4.50 per hour during the regular tour of duty, and at the rate of $5.80 per hour for overtime, night, and holiday work. If travel is performed in obtaining the sample or samples, additional charges shall be made to cover the cost of per diem at the rate of $12.00 per day or quarter portion thereof, mileage at the rate of eight cents per mile for travel by automobile, the cost of other travel, if any, and other items of cost incurred in obtaining the sample or samples.

(*c*) In addition to the fees and charges prescribed in subdivisions (i) through (v) of this subparagraph, charges may be made to cover the cost of travel performed at the request of the applicant in connection with the obtaining of samples from licensed inspectors, the delivery of samples to laboratories, and/or other travel performed at the request of the applicant in connection with the inspection, reinspection, or appeal inspection of cargo wheat for protein content. Such additional charges shall include the costs of travel, per diem, time, overtime, and other expenses, if any, at rates prescribed in this paragraph.

L. Section 68.42a(d) is amended to read:

(d) *Reinspection and appeal inspection fees and charges.* The fees and charges for reinspections, and for appeal inspections for which a fee or charge is to be made under § 68.44, with respect to commodities and products covered by this schedule, shall be the same as those for inspection of such commodities and products except as otherwise prescribed in paragraph (c)(4) of this section.

The foregoing amendments pertain to procedures for voluntary inspection services. The amendments of §§ 68.4a and 68.17 are intended to prevent the potentially misleading certification, now possible, of the protein content of cargo wheat on a basis other than on an "as is" or a "14.0 percent" moisture basis; and to provide for the handling of reinspections and appeal inspections after the wheat has left the place of inspection. It does not appear that notice and other public rule-making procedure would make additional information available to the Department on these amendments. The amendments of § 68.42a are for coordination with § 68.4a and relate to the costs of inspection, a matter on which the Department of Agriculture also has complete information. Therefore, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public rule-making procedure on the amendments are impracticable and unnecessary.

(Secs. 203 and 205, 60 Stat. 1087 and 1090, as amended, 7 U.S.C. 1622, 1624)

The amendments of §§ 68.4a, 68.17, and 68.42a set forth above shall become effective on June 6, 1960, except that the amendments of § 68.4a(a)(1) and (2) shall not apply with respect to cargo wheat which is delivered in fulfillment, or partial fulfillment, of executory contracts which (1) are pending on the date of publication hereof, and (2) which specifically provide for the delivery of cargo wheat on a protein basis other than an "as is" or a "14.0-percent" moisture basis.

Done at Washington, D.C., this 3d day of May 1960.

ROY W. LENNARTSON,
Deputy Administrator,
Agricultural Marketing Service.

[F.R. Doc. 60-4106; Filed, May 5, 1960; 8:50 a.m.]

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

PART 723—CIGAR-FILLER TOBACCO, CIGAR-BINDER TOBACCO, AND CIGAR-FILLER AND BINDER TOBACCO

Cigar-Binder (Types 51 and 52) Tobacco, Cigar-Filler and Binder (Types 42, 43, 44, 53, 54, and 55) Tobacco Marketing Quota Regulations, 1960–61 Marketing Year

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723.1161 Information confidential.

AUTHORITY: §§ 723.1130 to 723.1161 issued under secs. 301, 313, 314, 372–375, 52 Stat. 38, as amended, 47, as amended, 48, as amended,

65, as amended, 66, as amended, sec. 401, 63 Stat. 1054, as amended, sec. 125, 70 Stat. 198; 7 U.S.C. 1301, 1313, 1314, 1372–1375, 1421, 1813.

GENERAL

§ 723.1130 Basis and purpose.

Sections 723.1130 to 723.1161 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, the Agricultural Act of 1949 and the Agricultural Act of 1956, and govern the issuance of marketing cards for marketing and price support purposes, the identification of tobacco for purpose of marketing restrictions and price support, the collection and refund of penalties, and the records and reports incident thereto on the marketing of cigar-binder (types 51 and 52) tobacco, and cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco during the 1960–61 marketing year. Prior to preparing §§ 723.1130 to 723.1161, public notice (25 F.R. 2059) of their formulation was given in accordance with the Administrative Procedure Act (5 U.S.C. 1003). The data, views and recommendations pertaining to §§ 723.1130 to 723.1161 which were submitted have been duly considered within the limits permitted by the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Acts of 1949 and 1956. Since farmers are now engaged in 1960 farming operations, it is hereby determined that compliance with the provisions of the Administrative Procedure Act with respect to the effective date is contrary to the public interest. Sections 723.1130 to 723.1161 shall therefor become effective upon filing with the Director, Division of the Federal Register.

§ 723.1131 Definitions.

As used in §§ 723.1130 to 723.1161, and in all instructions, forms and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires. The following words and phrases shall have the meanings assigned to them in the regulations contained in part 719 of this chapter: "Community Committee," "County Committee," "County Office Manager," "Deputy Administrator," "Farm," "Operator," and "Secretary."

(a) "Act" means the Agricultural Adjustment Act of 1938, as amended.

(b) "Buyer" means a person who engages to any extent in the business of acquiring tobacco from producers without regard to whether such person is registered as a dealer. In the case of a person who employs person(s) to negotiate contracts with producers to purchase their tobacco such person rather than such employed person(s) is the buyer of such tobacco.

(c) "Carry-over" tobacco means, with respect to a farm, tobacco produced prior to the beginning of the calendar year 1960 which has not been marketed or which has not otherwise been disposed of prior to the beginning, as established by the Act, of the 1960–61 marketing year.

(d) "Director" means the Director or Acting Director, Tobacco Division, Commodity Stabilization Service, United States Department of Agriculture.

(e) "Market" means the disposition in raw or processed form of tobacco by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. "Marketing" and "marketed" shall have corresponding meanings to the term "market."

(f) "Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity, and wherever applicable, a State, a political subdivision of a State or any agency thereof.

(g) "Pound" means that amount of tobacco which, if weighed in its unstemmed form and in the condition in which it is usually marketed by producers, would equal one pound standard weight.

(h) "Producer" means a person who as owner, landlord, tenant or sharecropper, is entitled to share in the tobacco available for marketing from the farm or in the proceeds thereof.

(i) "Sale" means the first marketing of farm tobacco on which the gross amount of the sales price therefor has been or could be readily determined.

(j) "Sale date" means the date on which the gross amount of the sales price of the first marketing of farm tobacco has been or could be readily determined.

(k) "State administrative officer" means the person employed by the State committee to execute the policies of the State committee and be responsible for the day-to-day operations of the ASC State office, or the person acting in such capacity.

(l) "State committee" means the persons in a State designated by the Secretary as the Agricultural Stabilization and Conservation State committee.

(m) "Tobacco" means:

(1) The types set forth below, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the Bureau of Agricultural Economics of the United States Department of Agriculture, or all such types of tobacco as indicated by the context.

(i) Type 42 tobacco, that type of cigar-leaf tobacco commonly known as Gebhardt, Ohio Seedleaf, or Ohio Broadleaf, produced principally in the Miami Valley section of Ohio and extending into Indiana;

(ii) Type 43 tobacco, that type of cigar-leaf tobacco commonly known as Zimmer, Spanish, or Zimmer Spanish, produced principally in the Miami Valley section of Ohio and extending into Indiana;

(iii) Type 44 tobacco, that type of cigar-leaf tobacco commonly known as Dutch, Shoestring Dutch, or Little Dutch, produced principally in the Miami Valley section of Ohio;

(iv) Type 51 tobacco, that type of cigar-leaf tobacco commonly known as Connecticut Valley Broadleaf or Connecticut Broadleaf, produced primarily in the valley area of Connecticut;

(v) Type 52 tobacco, that type of cigar-leaf tobacco commonly known as Connecticut Valley Havana Seed, or Havana Seed of Connecticut and Massachusetts, produced primarily in the Connecticut Valley area of Massachusetts and Connecticut;

(vi) Type 53 tobacco, that type of cigar-leaf tobacco commonly known as York State Tobacco, or Havana Seed of New York and Pennsylvania, produced principally in the Big Flats section of New York, extending into Pennsylvania and in the Onondaga section of New York State:

(vii) Type 54 tobacco, that type of cigar-leaf tobacco commonly known as Southern Wisconsin cigar-leaf or Southern Wisconsin binder type produced principally south and east of the Wisconsin River; and

(viii) Type 55 tobacco, that type of cigar-leaf tobacco commonly known as Northern Wisconsin cigar-leaf or Northern Wisconsin binder type, produced principally north and west of the Wisconsin River.

(2) Any tobacco that has the same characteristics and corresponding qualities, colors, and lengths as either cigar binder (types 51 and 52) tobacco or cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco shall be considered respectively either cigar binder (types 51 and 52) tobacco or cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco, regardless of any factors of historical or geographical nature which cannot be determined by examination of the tobacco. The term "tobacco" shall include all leaves harvested, including trash.

(3) For the purpose of discovering and identifying all tobacco subject to marketing quotas the term "tobacco" with respect to any farm located in an area in which either cigar binder (types 51 and 52) tobacco or cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco is normally produced shall include all acreage of tobacco (without regard to the definition of "tobacco" herein), unless (i) the county committee with the approval of the State committee determines that all or a part of such acreage should not be considered as cigar binder (types 51 and 52) tobacco or cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco under subparagraph (2) of this paragraph or (ii) the county committee with the approval of the State committee determines from satisfactory proof furnished by the operator of the farm that a part or all of the production of such acreage has been classified pursuant to Part 29 of this title when marketed as a kind of tobacco not subject to marketing quotas. Any amount of tobacco so determined as a kind of tobacco not subject to marketing quotas shall be converted to acres on the basis of the average yield per harvested acre of tobacco grown on the farm in 1960 for the purpose of determining the harvested acreage of such kind of tobacco produced on the farm.

(n) "Tobacco available for marketing" means all tobacco produced on the farm in the calendar year 1960 plus any carryover tobacco, less any tobacco disposed of in accordance with § 723.1145.

(o) "Tobacco subject to marketing quotas" means any cigar-binder (types 51 and 52) tobacco or any cigar-filler and

binder (types 42, 43, 44, 53, 54 and 55) tobacco marketed during the period October 1, 1960 to September 30, 1961, inclusive, and any cigar-binder (types 51 and 52) tobacco or any cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco produced in the calendar year 1960 and marketed prior to October 1, 1960.

(p) "Trucker" means a person operating as a common carrier or private carrier who engages to any extent in the business of trucking or hauling tobacco for producers to a point where it may be marketed or otherwise disposed of in the form and in the condition in which it is usually marketed by producers.

§ 723.1132 Instructions and forms.

The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by, and the instructions shall be issued by, the Deputy Administrator.

§ 723.1133 Extent of calculations and rule of fractions.

(a) *Harvested acreage.* The acreage of tobacco harvested on a farm in 1960 shall be expressed in hundredths and fractions of less than one hundredth of an acre shall be dropped. For example, 1.550, 1.555, or 1.559 acres would be 1.55 acres.

(b) *Percent excess.* The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the "percent excess" shall be expressed in tenths percent and calculations thereof rounded to the nearest tenth percent. Computations shall be carried two decimal places beyond the required number of decimal places. In rounding, digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by "1". For example, 6.732 would be 6.7; 6.750 would be 6.7; 6.751 would be 6.8; and 6.782 would be 6.8.

(c) *Converted rate of penalty.* The amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the "converted rate of penalty" shall be expressed in tenths of a cent and calculations thereof rounded to the nearest tenth of a cent, except that if the resulting converted rate of penalty is less than a tenth of a cent, it shall be expressed in hundredths of a cent and calculations thereof rounded to the nearest hundredth of a cent. Computations shall be carried two decimal places beyond the required number of decimal places. In rounding, digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by "1". For example, expressions in tenths calculated as 6.732 would be 6.7; 6.750 would be 6.7; 6.751 would be 6.8; and 6.782 would be 6.8; and expressions in hundredths calculated as 0.0536 would be 0.05; 0.0550 would be 0.05; 0.0551 would be 0.06; and 0.0582 would be 0.06.

(d) *Amount of penalty.* The amount of penalty on any lot of tobacco marketed shall be expressed in dollars and cents and calculations thereof rounded to the nearest cent. In rounding, digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by "1". For example, 10.5536 would be 10.55; 10.5550 would be 10.55; 10.5551 would be 10.56; and 10.5582 would be 10.56.

IDENTIFICATION AND LOCATION OF FARMS AND DETERMINATION OF ACREAGE

§ 723.1134 Identification and location of farms.

(a) Each farm as operated for the 1960 crop of tobacco shall be identified by a farm serial number assigned by the county office manager and all records pertaining to marketing quotas for the 1960 crop of tobacco shall be identified by such number.

(b) A farm shall be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon, it shall be regarded as located in the county in which the major portion of the farm is located.

§ 723.1135 Determination of tobacco acreage.

(a) *County committees.* For the purpose of ascertaining with respect to each farm whether there is excess tobacco of the 1960 crop available for marketing, the county committee shall determine the acreage of tobacco on each farm in the county for which a 1960 tobacco acreage allotment has been established and on any other farms in the county on which the county committee has reason to believe tobacco was planted. The county committee's determination shall be based upon acreage and performance determined as provided in the applicable provisions of Part 718 of this chapter.

(b) *Variance in measured acreage.* For the purpose of §§ 723.1130 to 723.1161, inclusive, and subject to the rule of fractions heretofore provided in § 723.1133(a), if the tobacco acreage determined for the farm does not exceed the farm tobacco allotment by more than the larger of one-hundredth (0.01) acre or two percent of such allotment not to exceed nine-hundredths (0.09) acre, the farm tobacco acreage shall be considered within the allotment. If the tobacco acreage determined for the farm exceeds the allotment by more than this amount, the tobacco acreage shall be considered in excess of the farm allotment and disposition shall not be limited to the acreage necessary to bring the acreage within the prescribed administrative variance. In such cases, the farm will not be considered in compliance unless disposition is made of all acreage in excess of the allotment.

(c) *Notice to farm operators.* The county committee, as to each farm, shall notify the farm operator the results of the measurement of tobacco acreage.

(d) *Harvested acreage of tobacco for purpose of issuing marketing card.* The acreage of tobacco determined or as redetermined for a farm by the county committee pursuant to this section shall be the harvested acreage of tobacco for the farm for the purpose of issuing the correct marketing card for the farm as provided in § 723.1138 unless the farm operator furnishes to the county committee satisfactory proof that a portion of the acreage planted will not be harvested or that tobacco representative of the production of the acreage physically harvested will be disposed of other than by marketing, in which case the harvested acreage shall be the acreage as adjusted by taking into account the portion of the acreage planted which will not be harvested or the portion of the production of the acreage physically harvested which will be disposed of other than by marketing.

(e) *Amount of excess acreage for purpose of issuing marketing card if acreage determination refused.* If the farm operator or his representative prevents the county committee from obtaining information necessary to determine the correct acreage of tobacco on a farm, in addition to any other liability which might be imposed upon the operator, and until the farm operator or his representative permits a determination of the correct acreage, all acreage of tobacco on the farm shall be deemed to be in excess of the farm acreage allotment for the purpose of issuing a marketing card for the farm.

(f) *Prior measurements.* Measurements made prior to the effective date of this section, and in accordance with procedures then in effect may be utilized where pertinent for the purpose of ascertaining with respect to any farm the 1960 tobacco acreage and the tobacco acreage in excess of the 1960 farm tobacco acreage allotment.

FARM MARKETING QUOTAS AND MARKETING CARDS

§ 723.1136 Amount of farm marketing quotas.

(a) *Actual production.* The marketing quota for a farm shall be the actual production of tobacco on the farm acreage allotment as established for the farm in accordance with Cigar-Binder and Cigar-Filler and Binder Tobacco Marketing Quota Regulations 1960–61 Marketing Year (24 F.R. 6889, 7243). The actual production of the farm acreage allotment shall be the average yield per acre of the entire acreage of tobacco harvested on the farm in 1960 times the farm acreage allotment.

(b) *Excess production.* The excess tobacco on any farm shall be (1) that quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm in 1960 times the number of acres harvested in excess of the farm acreage allotment, plus (2) any excess carry-over tobacco.

§ 723.1137 Transfer of farm marketing quotas.

There shall be no transfer of farm marketing quotas except as provided in Cigar-Binder and Cigar-Filler and Binder Tobacco Marketing Quota Regulations, 1960–61 Marketing Year (Sections 723.1120, 723.1126; 24 F.R. 6889, 7243).

§ 723.1138 Issuance of marketing cards.

(a) *Marketing card.* A marketing card shall be issued for each farm having tobacco available for marketing. The kind of card to be issued for each farm shall be determined pursuant to paragraphs (b) to (e) of this section. Cards shall be issued in the name of the farm operator except that cards issued for tobacco grown for experimental purposes only shall be issued in the name of the experiment station and cards issued under § 723.1141, shall be issued in the name of the successor in interest.

(b) *Excess marketing card (MQ–77—Tobacco).* The provisions of this paragraph govern the issuance of excess marketing cards except with respect to the issuance of marketing cards for the identification of tobacco grown for experimental purposes only, as provided in paragraph (c)(2) of this section.

(1) *Excess marketing card showing full rate of penalty.* An excess marketing card (ineligible for price support loans) showing the full rate of penalty to be set forth in § 723.1147(b) shall be issued for a farm in any case:

(i) Where tobacco is harvested in 1960 from a farm for which no 1960 acreage allotment was established, or

(ii) Where tobacco is harvested in 1960 from a farm and as provided in § 723.1135(e) the farm operator or his representative prevents the county committee or its representative from obtaining information necessary to determine the correct acreage of tobacco on the farm.

(iii) Where tobacco is harvested in 1960 from a farm for which, under § 723.1152(g) the 1960 allotment is cancelled.

(2) *Excess marketing card showing converted rate of penalty or zero penalty.* An excess marketing card (ineligible for price support loans) showing the extent to which marketings of tobacco from a farm are subject to penalty, determined as provided in § 723.1144 (including zero penalty except where the provisions of subdivision (ii) of this subparagraph apply), shall be issued in any case:

(i) Where tobacco is harvested in 1960 from a farm in excess of the farm acreage allotment therefor, or

(ii) Where tobacco is to be marketed from a farm in 1960 having carry-over tobacco available for marketing and the percent excess determined pursuant to § 723.1144(b) exceeds zero percent, or

(iii) Where tobacco is produced on land owned by the Federal Government in violation of the provisions of a lease restricting the production of tobacco.

(3) *Excess marketing cards showing zero penalty only.* An excess marketing card (ineligible for price support loans) showing zero penalty only shall be issued under the following conditions:

(i) If more than one kind of tobacco is produced on a farm in 1960, a zero penalty excess marketing card shall be issued for each kind of tobacco produced thereon for which the harvested acreage is not in excess of the farm acreage allotment therefor if at the time of issuing marketing cards for the farm the harvested acreage of any kind of tobacco is in excess of the farm acreage allotment for such kind of tobacco; or

(ii) For any kind of tobacco produced on a farm in 1960 the acreage of which is in excess of the farm acreage allotment therefor and the operator or other producer on the farm fails, within ten (10) days from the date of mailing of Form CSS–590, Notice of Excess Acreage (with deposit to cover the cost as determined by the county committee and approved by the State committee), to notify the county ASC office of his intention to dispose of any excess tobacco acreage or to request remeasurement of the tobacco acreage, and the tobacco produced on the excess acreage is disposed of in accordance with § 723.1145, unless the county committee, or the county office manager on behalf of the county committee, determines that failure to so notify or request was due to circumstances beyond the control of the farm operator or producer, or

(iii) For any kind of tobacco physically harvested from a farm in 1960 from an acreage in excess of the acreage allotment for the farm and disposed of in accordance with § 723.1145(a) unless the county committee, or the county office manager on behalf of the county committee, determines that the acreage of tobacco was not measured or remeasured, as the case may be, in sufficient time to afford the farm operator an opportunity to dispose of the excess acreage prior to harvest.

(c) *Within Quota Marketing Card (MQ–76—Tobacco).* In any case where an excess marketing card is not required to be issued for a farm under paragraph (b) of this section, a Within Quota Marketing Card (eligible for price support loans and marketing without penalty) shall be issued for such farm under the following conditions:

(1) If the harvested acreage of tobacco for the farm in 1960 is not in excess of the farm acreage allotment therefor and any excess carry-over tobacco can be marketed without penalty under the provisions of § 723.1144(b).

(2) If the Director of a publicly owned Agricultural Experiment Station furnishes to the ASC State office a list by counties showing the following information with respect to each kind of tobacco and farms on which tobacco is grown for experimental purposes only:

(i) Name and address of the publicly owned experiment station,

(ii) Name of the owner, and name of the operator if different from the owner of each farm on which tobacco is grown for experimental purposes only,

(iii) The amount of acreage of tobacco grown on each farm for experimental purposes only, and

(iv) A certification signed by the Director of the publicly owned agricultural experiment station to the effect that such acreage of tobacco was grown on each farm for experimental purposes only; the tobacco was grown under his direction; and the acreage on each plot was considered necessary for carrying out the experiment: *Provided, however,* That if the Director of a publicly owned agricultural experiment station does not furnish the information and certification as required above in this subparagraph, an excess marketing card showing zero penalty shall be issued for the purpose of identifying tobacco produced for experimental purposes only under the direction of such Director. The list required in this subparagraph shall be posted and kept available for public inspection in the ASC office of the county in which the farms included in the list are located.

(d) *Stamping Within Quota Marketing Cards (MQ–76) to show producer indebtedness.* (1) If any producer on a farm is indebted to the United States and such indebtedness is listed on the county debt register, any within quota marketing card (MQ–76) issued for such farm in accordance with paragraph (c) of this section shall bear the notation "Indebted to U.S." on the front cover thereof and on the county office copy of each memorandum of sale, and the name of the debtor and the amount of the indebtedness shall be shown on the inside back cover of the marketing card: *Provided,* That if the producer named as debtor on the card objects to the issuance of or after issuance to the use of a within quota marketing card (MQ–76) bearing the notation and information of indebtedness to the United States thereon as provided in this subparagraph, an excess marketing card (ineligible for price support loans) showing "zero penalty" shall be issued for such farm. The acceptance and use of a within quota marketing card bearing a notation and information of indebtedness to the United States by the producer named as debtor on such card, shall constitute an authorization by such producer to any tobacco loan organization to pay to the United States the price support advance due the producer to the extent of his indebtedness set forth on such card but not to exceed that portion of the price support advance remaining after deduction of usual loan organization charges, authorized price support charges and amounts due prior lien holders. The acceptance and use of a within quota marketing card bearing a notation and information of indebtedness to the United States shall not constitute a waiver of any right by the producer to contest the validity of such indebtedness by appropriate administrative appeal or legal action.

(2) Any marketing card may be stamped for the purpose of notifying loan organizations that the tobacco being marketed pursuant to such card is subject to a lien held by the United States.

(e) *Replacing or issuing additional marketing cards or reissuing the same marketing card.* Subject to the approval of the county office manager, two or more marketing cards may be issued for any farm. Upon the return to the ASC issuing office of the marketing card after all of the memoranda of sale have been issued therefrom and before the marketings of tobacco from the farm have been completed, a new marketing card of the same kind, bearing the same name, information and identification as the used card shall be issued for the farm. A new marketing card of the same kind shall be issued to replace a card which has been determined by the county office manager, who issued the card, to have been lost, destroyed or stolen. The

county office manager who issued the marketing card may, under § 723.1152 (b), reissue the same marketing card or issue a new marketing card for any farm from which the marketing of tobacco has not been completed by June 1, 1961.

§ 723.1139 Person authorized to issue marketing cards.

(a) The county office manager shall be responsible for the issuance of tobacco marketing cards for farms in the county, including farms on which tobacco is grown for experimental purposes by a publicly owned agricultural experiment station.

(b) Each marketing card shall bear the actual or facsimile signature of the county office manager who issues the card. The facsimile signature may be affixed by an employee of the ASC county office.

§ 723.1140 Rights of producers in marketing cards.

Each producer having a share in the tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing his proportionate share.

§ 723.1141 Successors in interest.

Any person who succeeds, other than as a buyer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm shall, to the extent of such succession, have the same rights as the producer to the use of the marketing card for the farm.

§ 723.1142 Invalid cards.

(a) A marketing card shall be invalid if:

(1) It is not issued or delivered in the form and manner prescribed;

(2) Entries are omitted or incorrect;

(3) It is lost, destroyed, stolen, or becomes illegible; or

(4) Any erasure or alteration has been made and not properly initialed.

(b) In the event any marketing card becomes invalid (other than by loss, destruction, or theft, or by omission, alteration or incorrect entry which has been corrected by the county office manager who issued the card), the farm operator, or the person having the card in his possession, shall return it to the ASC office at which it was issued.

(c) If an entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county office manager who issued the card, then such card shall become valid.

§ 723.1143 Report of misuse of marketing card.

Any information which causes a member of a State, county, or community committee, or an employee of an ASC State or county office, to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm shall be reported immediately by such person to the ASC county or State office.

MARKETING OR OTHER DISPOSITION OF TOBACCO AND PENALTIES

§ 723.1144 Extent to which marketings from a farm are subject to penalty.

(a) Marketings of tobacco from a farm having no carry-over tobacco available for marketing shall be subject to penalty by the percent excess determined, as follows: Divide the acreage of tobacco harvested in excess of the farm acreage allotment and not disposed of under § 723.1145 by the total acreage of tobacco harvested from the farm.

(b) Marketings of tobacco from a farm having carry-over tobacco available for marketing shall be subject to penalty by the percent excess determined as follows:

(1) Determine the number of "carry-over acres" by dividing the number of pounds of carry-over tobacco from the prior years by the normal yield for the farm for that year.

(2) Determine the number of "within quota carry-over acres" by multiplying the "carry-over acres" (subparagraph (1) of this paragraph) by the "percent within quota" (i.e., 100 percent minus the "percent excess") for the year in which the carry-over tobacco was produced except that if the excess portion of the carry-over tobacco has been disposed of under § 723.1145, the "percent within quota" shall be 100.

(3) Determine the "total acres" of tobacco by adding the "carry-over acres" (subparagraph (1) of this paragraph) and the acreage of tobacco harvested in the current year.

(4) Determine the "excess acres" by subtracting from the "total acres" (subparagraph (3) of this paragraph) the sum of the 1960 allotment and the "within quota carry-over acres" (subparagraph (2) of this paragraph).

(5) Determine the percent excess by dividing the "total acres" into the "excess acres" (subparagraph (4) of this paragraph).

(c) For the purpose of determining the penalty due on each marketing by a producer of tobacco subject to penalty, the converted rate of penalty per pound shall be determined by multiplying the applicable rate of penalty by the percent excess obtained under paragraph (a) or (b) of this section. The memorandum of sale issued to identify each such marketing shall show the amount of penalty due.

§ 723.1145 Disposition of excess tobacco.

(a) The farm operator may elect to give satisfactory proof of disposition of excess tobacco prior to the marketing of any tobacco from the farm by furnishing to the county committee satisfactory proof that excess tobacco representative of the entire crop will not be marketed.

(b) If the 1960 harvested acreage is less than the 1960 allotment an amount of any tobacco from the farm which was placed under storage for a prior marketing year equal to the normal production of the acreage by which the 1960 harvested acreage plus any acreage added with respect to any excess carry-over tobacco for the farm pursuant to § 723.1144(b) is less than the 1960 allotment may be marketed penalty free.

§ 723.1146 Identification of marketing.

Each marketing of tobacco from a farm shall be identified by an executed memorandum of sale from the 1960 marketing card (MQ–76—Tobacco or MQ–77—Tobacco) issued for the farm on which the tobacco was produced.

(a) *Memorandum of sale.* (1) If a memorandum of sale is not issued by the buyer to identify a sale of producer's tobacco by the end of the sale date and recorded and reported on MQ–95, Buyer's Record, by the 10th day of the calendar month next following the month during which the sale date occurred, the marketing shall be identified on MQ–95, Buyer's Record, as a marketing of excess tobacco, and reported not later than the 10th day of the calendar month next following the month during which the sale date occurred.

(2) Each excess memorandum of sale issued by a buyer shall be verified by the buyer to determine whether the amount of penalty shown to be due has been correctly computed and such buyer shall not be relieved of any liability with respect to the amount of penalty due because of any error which may occur in issuing the memorandum of sale.

§ 723.1147 Rate of penalty.

Marketings of excess tobacco from a farm shall be subject to a penalty per pound equal to seventy-five (75) percent of the average market price for the 1959–60 marketing year as determined by the Crop Reporting Board, Agricultural Marketing Service, United States Department of Agriculture. The rate of penalty per pound shall be calculated to the nearest whole cent. In rounding, digits of 50 or less beyond the required number of decimal places shall be dropped, if 51 or more, the last required decimal place shall be increased by "1".

(a) *Average market price.* The average market price as determined by the Crop Reporting Board, Agricultural Marketing Service, United States Department of Agriculture, for the 1959–60 marketing year for the kinds of tobacco covered by these regulations will be issued by an amendment.

(b) *Rate of penalty per pound.* The penalty per pound upon marketings of excess tobacco during the 1960–61 marketing year for the kinds of tobacco covered by these regulations will be issued by an amendment.

(c) *Proportional rate of penalty.* With respect to tobacco marketed from farms having tobacco available for marketing in excess of the farm marketing quota, the penalty shall be paid upon that percentage of each lot of tobacco marketed which the tobacco available for marketing in excess of the farm marketing quota is of the total amount of tobacco available for marketing from the farm as determined under § 723.1144.

§ 723.1148 Persons to pay penalty.

The person to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Sale.* The penalty due on tobacco purchased directly from a producer, other than a buyer outside the United States, shall be paid by the buyer of the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) *Marketing through an agent.* The penalty due on marketings by a producer through an agent who is not a buyer shall be paid by the agent who may deduct an amount equivalent to the penalty from the price paid to the producer.

(c) *Marketings outside the United States.* The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 723.1149 Penalties considered to be due from buyers and other persons excluding the producer.

Any marketing of tobacco under any one of the following conditions shall be considered to be a marketing of excess tobacco:

(a) *Without memorandum of sale.* Any sale of tobacco by a producer which is not identified by a valid memorandum of sale by the end of the sale date shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the buyer who may deduct an amount equivalent to the penalty from the amount due the producer.

(b) *Unrecorded sale.* Any sale which is not recorded in MQ–75—Tobacco by the 10th day of the month next following the month during which the sale date occurred, shall be considered to be a marketing of excess tobacco unless and until the buyer furnishes proof acceptable to the State administrative officer showing that such marketing is not a marketing of excess tobacco. The penalty thereon shall be paid by the buyer.

(c) *Marketings falsely identified by a person other than the producer.* If any marketing of tobacco by a person other than the producer thereof is identified by a marketing card other than the marketing card issued for the farm on which such tobacco was produced, such marketing shall be presumed, subject to rebuttal, to be a marketing of excess tobacco and the penalty thereon shall be paid by such person.

§ 723.1149a Producers' penalties; false identification, failure to account, incorrectly determined acreage.

(a) *Penalties for false identification or failure to account.* (1) If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, an amount of tobacco equal to the normal yield of the number of acres harvested in 1960 in excess of the farm acreage allotment shall be deemed to have been a marketing of excess tobacco from such farm. The penalty thereon for false identification or failure to account shall be paid by the producer and shall be due on the date of the false identification or failure to account. The filing of a report by a producer under § 723.1152(c) which the State committee finds to be incomplete or incorrect or the failure to file such a report as required by said regulations, shall constitute a failure to account for disposition of tobacco produced on the farm.

(2) If any producer who manufactures tobacco products from tobacco produced by or for him fails to make the reports, or makes a false report, required under § 723.1152(c), he shall be deemed to have failed to account for the disposition of tobacco produced on the farm and shall be subject to penalty on such tobacco. The penalty thereon for false identification or failure to account shall be paid by the producer and shall be due on the date of false identification or failure to account. The filing of a report by a producer under § 723.1152 (c) or (e) which the State committee finds to be incomplete or incorrect shall constitute a failure to account for the disposition of tobacco produced on the farm.

(b) *Redetermined excess harvested acreage.* If, after part or all of the tobacco produced on a farm has been marketed, the State or county committee redetermines that the harvested acreage for the farm was more than that shown by the prior determination, and if the harvested acreage may not be deemed to be within the farm acreage allotment pursuant to paragraph (d) of this section, any penalty due on the basis of the harvested acreage as redetermined pursuant to § 723.1135 shall be paid by the producer.

(c) *Cancelled allotment.* If, after part or all of the tobacco produced on a farm has been marketed and the allotment therefor has been cancelled under section 723.1152(g), any penalty due thereon shall be paid by such producer.

(d) *Erroneous notice of measured acreage.* If it is determined that the tobacco acreage on a farm is larger than the tobacco farm acreage allotment approved under § 723.1127 (24 F.R. 6889, 7243), such farm shall be deemed to have not exceeded its allotment if the county committee, with the approval of the State administrative officer, determines from the facts and circumstances that:

(1) The excess acreage was caused by reliance in good faith by the farm operator on an erroneous notice of measured acreage;

(2) Neither the farm operator nor any producer on the farm had actual knowledge of the error in time to adjust the excess acreage prior to completion of marketing of tobacco from the farm;

(3) The incorrect notice was the result of an error made by the performance reporter or by another employee of the county or State office in reporting, computing, or recording the acreage for the farm;

(4) Neither the farm operator nor any producer on the farm was in any way responsible for the error; and

(5) The extent of the error in the notice was such that the farm operator would not reasonably be expected to question the acreage of which he was erroneously notified.

§ 723.1150 Payment of penalty.

(a) *Date due.* Penalties shall become due at the time the tobacco is marketed, except (1) in the case of tobacco removed from storage as provided in § 723.1145 (b), or (2) in the case of false identification or failure to account for disposition of tobacco, penalty shall be due on the date of such false identification or failure to account for disposition. Penalty shall be paid by remitting the amount thereof to the ASC State office, not later than the 10th day of the calendar month next following the month in which the tobacco became subject to penalty. A draft, money order, or check drawn payable to the Commodity Stabilization Service may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Converted penalty rate.* The penalty due on any sale of tobacco by a producer as determined under §§ 723.1130 to 723.1161 shall be subject to the converted rate of penalty for the farm on which the tobacco was produced and shall be paid as specified in § 723.1148 even though the penalty may exceed the proceeds for the sale of tobacco.

§ 723.1151 Request for return of penalty.

Any producer of tobacco after the marketing of all tobacco available for marketing from the farm and any other person who bore the burden of the payment of any penalty may request the return of the amount of such penalty which is in excess of the amount required under §§ 723.1130 to 723.1161 to be paid. Such request shall be filed on MQ–85—Tobacco with the ASC county office within two (2) years after the payment of the penalty. Approval of return of penalty to producers shall be by the county committee.

RECORDS AND REPORTS

§ 723.1152 Producer's records and reports.

(a) *Report of tobacco acreage.* The farm operator or any producer on the farm shall execute and file a report with the ASC county office or a representative of the county committee on Form CSS–578, Report of Acreage, showing all fields of tobacco on the farm in 1960. If any producer on a farm files or aids or acquiesces in the filing of any false report with respect to the acreage of tobacco grown on the farm, even though the farm operator or his representative refuses to sign such report, the allotment next established for such farm and kind of tobacco shall be reduced pursuant to applicable tobacco marketing quota regulations for determining acreage allotments and normal yields, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) the filing of, aiding, or acquiescing in the filing of, such false report was not intentional on the part of any producer on the farm and that no producer on the farm could reasonably have been expected to know that the report was false, provided the filing of the report will be construed as intentional unless the report is corrected and the payment of all additional penalty is made, or (2) no person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in the filing of the false acreage report.

(b) *Report on marketing card.* The operator of each farm on which tobacco is produced in 1960 shall return to the ASC county office the marketing card(s) issued for the farm whenever marketings from the farm are completed and in no event later than June 1, 1961. Failure to return the marketing card(s) within fifteen (15) days after written request by certified mail from the county office manager shall constitute failure to account for disposition of tobacco marketed from the farm unless disposition of all tobacco marketed from the farm is accounted for as provided in paragraph (e) of this section. The county office manager who issued the marketing card may reissue the same marketing card or issue a new marketing card for any farm from which the marketing of tobacco has not been completed by June 1, 1961.

(c) *Reports by producer-manufacturers.* (1) Each producer who manufactures tobacco products from tobacco produced by or for him as a producer shall report to the ASC State office as follows with respect to such tobacco.

(i) If the 1960 harvested acreage is not in excess of the 1960 farm tobacco acreage allotment, the producer-manufacturer shall furnish the ASC State office a report, as soon as the tobacco has been weighed, and not later than a date specified in writing by the State administrative officer, showing the total pounds of tobacco produced, the date(s) on which such tobacco was weighed, the farm serial number of the farm on which it was produced, and the estimated value of such tobacco.

(ii) If the 1960 harvested acreage is in excess of the 1960 farm acreage allotment, the producer-manufacturer shall furnish the ASC State office a report, as soon as the tobacco has been weighed, and not later than a date specified in writing by the State administrative officer, showing the total pounds of tobacco produced on the farm, the date(s) on which the tobacco was weighed, the farm serial number of the farm on which it was produced, the estimated value of the tobacco, and the location of the tobacco. Unless it has become penalty free under circumstances described in § 723.1144(b), or unless he makes the reports outlined in this section, penalty shall be paid on the tobacco by the producer-manufacturer, at the converted rate of penalty shown on the marketing card issued for the farm, when it is moved from the place where it can be conveniently inspected by the county committee at any time separate and apart from any other tobacco.

(2) If the producer-manufacturer has excess tobacco and does not pay the penalty thereon at the converted rate of penalty shown on the marketing card, as provided in this section, he shall notify the buyer of the manufactured product, or the buyer of any residue resulting from processing the tobacco, in writing, at time of sale of such product or residue of the precise amount of penalty due on such manufactured product or residue. In such event, the producer-manufacturer shall immediately notify the Director and shall account for the disposition of such tobacco by furnishing the Director a report, on a form to be furnished him by the Director, showing the name and address of the buyer of the manufactured products or residue, a detailed account of the disposition of such tobacco and the exact amounts of penalty due with respect to each such sale of such products or residue, together with copies of the written notice of the exact amounts of the penalty due given to the buyer of such products or residue. Failure to file such report, or the filing of a report which is found by the State committee to be incomplete or incorrect, shall be considered failure of the producer-manufacturer to account for the disposition of tobacco produced on the farm and the allotment next established for the farm shall be reduced for such failure pursuant to applicable tobacco marketing quota regulations for determining acreage allotments and normal yields, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (i) the failure to furnish such report of disposition was unintentional and the producer-manufacturer on such farm could not reasonably have been expected to furnish such report of disposition, provided such failure will be construed as intentional unless such report of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the allotment is being established, caused, aided or acquiesced in the failure to furnish such report. The producer-manufacturer shall be liable for the payment of penalty as provided in § 723.1149 (d).

(3) The reports required by this paragraph shall be in addition to the reports required by paragraph (a) of this section with respect to tobacco produced by or for the producer-manufacturer but not used by him in the manufacture of products therefrom.

(d) *False identification.* If tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on the acreage allotment for any farm which in fact was produced on a different farm, the acreage allotments next established for both such farms and kind of tobacco shall be reduced pursuant to applicable tobacco marketing quota regulations for determining acreage allotments and normal yields, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing, provided the marketing shall be construed as intentional unless all tobacco from the farm is accounted for and payment of all additional penalty is made, or (2) no person connected with such farm for the year for which the allotment is being established caused, aided or acquiesced in such marketing.

(e) *Report of production and disposition.* In addition to any other reports which may be required under §§ 723.1130 to 723.1161, the operator on each farm or any producer on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for the farm) shall upon written request by certified mail from the State administrative officer within fifteen (15) days after the deposit of such request in the United States mails, addressed to such person at his last known address, furnish the Secretary on Form MQ–108—Tobacco a written report of the acreage, production and disposition of all tobacco produced on the farm by sending the same to the ASC State office showing, as to the farm at the time of filing such report, (1) the number of fields (patches or areas) from which tobacco was harvested, the acres of tobacco harvested from each such field, and the total acreage of tobacco harvested from the farm, (2) the total pounds of tobacco produced, (3) the amount of tobacco on hand and its location, (4) as to each lot of tobacco marketed, the name and address of the buyer or other person to or through whom such tobacco was marketed and the number of pounds marketed, the gross price and the date of the marketing, and (5) complete details as to any tobacco disposed of other than by sale. Failure to file MQ–108 as requested, the filing of a false MQ–108, or the filing of a MQ–108 which is found by the State committee to be incomplete or incorrect shall constitute failure of the producer to account for disposition of tobacco produced on the farm and the allotment next established for such farm and kind of tobacco shall be reduced pursuant to applicable tobacco marketing quota regulations for determining acreage allotments and normal yields, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (i) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition, provided such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the allotment is being established caused, aided or acquiesced in the failure to furnish such proof.

(f) *Harvesting second tobacco crop from same acreage.* If in the calendar year 1960 more than one crop of tobacco is grown from the same tobacco plants, or different tobacco plants, and is harvested for marketing from the same acreage of a farm, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco has been so grown and harvested.

(g) *Cancellation of new farm allotment.* Any new farm allotment approved under §§ 723.1111 to 723.1128 which was determined by the county committee on the basis of incorrect information knowingly furnished the county committee by the applicant for the new farm allotment shall be can-

celled as of the date the allotment was established.

§ 723.1153 Buyer's records.

(a) *Record of marketing.* (1) Each buyer shall keep such records as will enable him to furnish the ASC State office with respect to each sale of tobacco made by producers to such buyer the following information:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the seller and the seller's address in the case of a sale by a person other than the farm operator.

(ii) Date of sale.

(iii) The serial number of the memorandum of sale used to identify the sale.

(iv) Number of pounds sold.

(v) Gross sale price.

(vi) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer(s).

(2) Any buyer or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the ASC State office the name of the farm operator and the amount of each grade of tobacco obtained from the grading of tobacco from each farm.

(b) *Identification of sale on buyer's records.* The serial number of the memorandum of sale issued to identify each sale by a producer, including tobacco obtained under paragraph (a)(2) of this section, shall be recorded on the buyer's copy of the MQ–95—Tobacco and on the check register or check stub for the check written with respect to such sale of tobacco.

(c) *Marketing card and memorandum of sale.* A valid memorandum of sale to cover each sale of tobacco by a producer, including tobacco obtained under § 723.1153(a)(2), shall be properly issued by the buyer. The buyer shall also properly record the sale on the marketing card.

(d) *Records of buyer's disposition of tobacco.* Each buyer shall maintain records which will show the disposition made by him of all tobacco purchased by or for him from producers.

§ 723.1154 Buyer's reports.

(a) *Report of buyer's name, address and registration number.* Each buyer shall properly execute, detach and promptly forward to the ASC State office "Receipt for Buyer's Record" contained in MQ–95—Tobacco which is issued to the buyer.

(b) *Record and report of purchases of tobacco from producers.* (1) Each buyer shall keep a record and make reports on MQ–95—Tobacco, Buyer's Record, showing all purchases of tobacco made by or for him from producers. Such record and report shall show for each sale, the sale date, the name of the farm operator (and the name and address of the person selling the tobacco if other than the farm operator), the serial number of the memorandum of sale issued with respect to the sale, the pounds of tobacco represented in the sale, the gross amount; the rate of penalty shown on the memorandum of sale and the amount of penalty. If no marketing card is presented by the producer, the buyer shall record and report the purchase as provided above except that the buyer shall enter the word "none" in the space for the serial number of the memorandum of sale, the applicable rate of penalty per pound to be shown in § 723.1147(b) in the space for rate of penalty, and shall show the name and address of the seller in the space for the seller's name.

(2) The original of MQ–95—Tobacco, the memoranda of sale, and a remittance for all penalties shown by the entries on MQ–95—Tobacco and on the memoranda of sale to be due shall be forwarded to the ASC State office not later than the 10th day of the calendar month next following the month during which the sale date occurred.

§ 723.1155 Buyers not exempt from regular records and reports.

No buyer shall be exempt from keeping the records and making the reports required by the regulations in this part. Any organization which received tobacco from producers for (a) the purpose of selling it for the producer, or (b) the purpose of placing it under a Federal loan, shall keep the records, make the reports, and remit penalties in case of receiving such tobacco for sale, as required in §§ 723.1130 to 723.1161 for buyers.

§ 723.1156 Records and reports of truckers and persons sorting, stemming, packing, or otherwise processing tobacco.

(a) Each person operating as a common carrier or private carrier who is engaged to any extent in the business of trucking or hauling tobacco for producers to a point where it may be marketed or otherwise disposed of in the form and in the condition in which it is usually marketed by producers shall keep such records as will enable him to furnish the ASC State office a report with respect to each lot of tobacco received by him showing:

(1) The name and address of the farm operator.

(2) The date of receipt of the tobacco,

(3) The number of pounds received, and

(4) The name and address of the person to whom it was delivered.

(b) Each person engaged to any extent in the business of sorting, stemming, packing, or otherwise processing tobacco for producers shall keep such records as will enable him to furnish the Director a report showing:

(1) The information required above for truckers, and in addition,

(2) The purpose for which the tobacco was received,

(3) The amount of advance made by him on the tobacco, and

(4) The disposition of the tobacco.

§ 723.1157 Separate records and reports from persons engaged in more than one business.

Any person who is required to keep any record or make any report as a buyer or as a person engaged in the business of sorting, stemming, packing, or otherwise processing tobacco for producers and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 723.1158 Failure to keep records or make reports or making false report or records.

(1) *Misdemeanor provisions.* Any buyer, processor, trucker, or person engaged in the business of sorting, stemming, packing, or otherwise processing tobacco for producers, who fails to make any report or keep any record as required under §§ 723.1130 to 723.1161 or who makes any false report or record, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500; and any tobacco buyer who fails to remedy such violation by making a complete and accurate report or keeping a complete and accurate record as required under these regulations within fifteen days after notice to him of such violation shall be subject to an additional fine of $100 for each ten thousand pounds of tobacco, or fraction thereof, bought or sold by him after the date of such violation: *Provided,* That such fine shall not exceed $5,000; and notice of such violation shall be served upon the tobacco buyer by mailing the same to him by registered mail or by posting the same at an established place of business operated by him, or both. Notice of any violation by a buyer or trucker shall be given by the State administrative officer and notice of violation by a person engaged in the business of sorting, stemming, packing or otherwise processing tobacco for producers shall be given by the Director.

(2) *Criminal law.* The penalties which may be imposed under subparagraph (1) of this paragraph are in addition to, and not exclusive of any other remedies or penalties under existing law, including the provisions of U.S. Code, Title 18, section 371 relating to acts of conspiracy and U.S. Code, Title 18, section 1001 relating to acts of fraud.

§ 723.1159 Examination of records and reports.

For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report but not so furnished, any buyer, processor, trucker, or person engaged in the business of sorting, stemming, packing, or otherwise processing tobacco for producers shall make available at one convenient place for examination by employees of the ASC State office, and by employees of the Compliance and Investigation Division, Audit Division, and of the Tobacco Division of the Commodity Stabilization Service, United States Department of Agriculture, and upon written request by the State administrative officer or Director, all such books, papers, records, accounts, correspondence, contracts, cancelled checks, check registers, check stubs, and documents and memoranda as the State administrative officer or Director has reason to believe are relevant and are within the control of such person.

§ 723.1160 Length of time records and reports to be kept.

Records required to be kept and copies of the reports required to be made by any person under §§ 723.1130 to 723.1161 for the 1960–61 marketing year shall be kept by him until September 30, 1963. Records shall be kept for such longer period of time as may be requested in writing by the State administrative officer or the Director.

§ 723.1161 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of §§ 723.1130 to 723.1161 shall be kept confidential by all officers and employees of the United States Department of Agriculture and by all members of county and community committees and all ASC county office employees and only such data so reported or acquired as the Deputy Administrator deems relevant shall be disclosed by them and then only in a suit or administrative hearing under Title III of the act.

NOTE: The recordkeeping and reporting requirements of these regulations have been approved by and subsequent reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D.C., this 2d day of May, 1960.

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

[F.R. Doc. 60–4110; Filed, May 5, 1960; 8:50 a.m.]

PART 725—BURLEY, FLUE-CURED, FIRE-CURED, DARK AIR-CURED, AND VIRGINIA SUN-CURED TOBACCO

Marketing Quota Regulations, 1960–61 Marketing Year

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AUTHORITY: §§ 725.1130 to 725.1161 issued under secs. 301, 313, 314, 372–375, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 65, as amended, 66, as amended, sec. 401, 63 Stat. 1054, as amended, sec. 125, 70 Stat. 198; 7 U.S.C. 1301, 1313, 1314, 1372–1375, 1421, 1813.

GENERAL

§ 725.1130 Basis and purpose.

Sections 725.1130 to 725.1161 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, the Agricultural Act of 1949, and the Agricultural Act of 1956, and govern the issuance of marketing cards for marketing and price support purposes, the identification of tobacco for purposes of marketing restrictions and price support, the collection and refund of penalties, and the records and reports incident thereto on the marketing of burley, flue-cured, fire-cured, dark air-cured, and Virginia sun-cured tobacco during the 1960–61 marketing year. Prior to preparing §§ 725.1130 to 725.1161, public notice (25 F.R. 2059) of their formulation was given in accordance with the Administrative Procedure Act (5 U.S.C. 1003). The data, views, and recommendations pertaining to §§ 725.1130 to 725.1161, which were submitted have been duly considered within the limits permitted by the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Acts of 1949 and 1956. Since county committees are now determining the acreage of tobacco on farms, and since some farmers are disposing of excess tobacco, it is hereby determined that compliance with the provisions of the Administrative Procedure Act with respect to the effective date is contrary to the public interest. Sections 725.1130 to 725.1161 shall therefore become effective upon filing with the Director, Division of the Federal Register.

§ 725.1131 Definitions.

As used in §§ 725.1130 to 725.1161, and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires. The following words and phrases shall have the meanings assigned to them in the regulations contained in Part 719 of this chapter: "Community Committee," "County Committee," "County Office Manager," "Deputy Administrator," "Farm," "Operator," "Secretary."

(a) "Act" means the Agricultural Adjustment Act of 1938, as amended.

(b) "Buyers Corrections Account" means the account required to be kept by the warehouseman of any tobacco purchased at auction by the buyer but not delivered to the buyer, or any tobacco returned by the buyer because of rejection by the buyer, lost ticket, or any other valid reason, and which is turned back to the warehouseman and supported by an adjustment invoice from the buyer. Buyers Corrections Account shall include from each adjustment invoice the pounds and amounts deducted resulting from short baskets and short weights, and pounds and amounts added resulting from long baskets and long weights which buyers credit or debit to the warehouseman and support with adjustment invoices.

(c) "Carry-over" tobacco means, with respect to a farm, tobacco produced prior to the beginning of the calendar year 1960 which has not been marketed or which has not otherwise been disposed of prior to the beginning, as established by the Act, of the 1960–61 marketing year.

(d) "Dealer" or "buyer" means a person who engages to any extent in the business of acquiring tobacco from producers.

(e) "Director" means Director or Acting Director, Tobacco Division, Commody Stabilization Service, United States Department of Agriculture.

(f) "Field assistant" or "marketing recorder" means any duly authorized employee of the United States Department of Agriculture and any duly authorized employee of an Agricultural Stabilization and Conservation (ASC) county office whose duties involve the preparation and handling of recrds and reports pertaining to tobacco marketing quotas.

(g) "Floor sweepings" means scraps of tobacco or leaves other than bundles, of tobacco which accumulate on the warehouse floor in the regular course of business and resales of such accumulated tobacco.

(h) "Leaf account tobacco" means all tobacco purchased by or for the account of the warehouse regardless of whether it is whole or parts of leaves or bundles and in addition tobacco, other than floor sweepings, which accumulates on the warehouse floor and is gathered up by the warehouseman for sale, and sales and resales of such tobacco including tobacco from Buyers Corrections Account. Scrap tobacco obtained through grading tobacco for farmers or furnishing farmers curing or stripping space, and floor sweepings purchased from another warehouseman or dealer shall be considered leaf account tobacco.

(i) "Market" means the disposition in raw or processed form of tobacco by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. "Marketing" and "marketed" shall have corresponding meanings to the term "market".

(j) "Nonwarehouse sale" means any first marketing of farm tobacco other than by sale at public auction through a warehouse in the regular course of business.

(k) "Person" means an individual, partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, and wherever applicable, a State, a political subdivision of a State or any agency thereof.

(l) "Pound" means that amount of tobacco which, if weighed in its unstemmed form and in the condition in which it is usually marketed by producers would equal one pound standard weight.

(m) "Producer" means a person who, as owner, landlord, tenant or sharecropper is entitled to share in the tobacco available for marketing from the farm or in the proceeds thereof.

(n) "Resale" means the disposition by sale, barter, exchange, or gift inter vivos, of tobacco which has been marketed previously.

(o) "Sale day" means the period at the end of which the warehouseman bills to buyers the tobacco purchased by them during such period.

(p) "Scrap tobacco" means the residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

(q) "State administrative officer" means the person employed by the State committee to execute the policies of the State committee and be responsible for the day-to-day operations of the ASC State office, or the person acting in such capacity.

(r) "State committee" means the persons in the State designated by the Secretary as the Agricultural Stabilization and Conservation State committee.

(s) "Suspended sale" means any first marketing of farm tobacco at a warehouse sale for which a memorandum of sale is not issued by the end of the sale day on which such marketing occurred.

(t) "Tobacco" means each one or all, as indicated by the context, of the kinds of tobacco listed in this paragraph comprising the types specified, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the Bureau of Agricultural Economics of the United States Department of Agriculture.

Burley tobacco, comprising type 31;
Flue-cured tobacco, comprising types 11, 12, 13, and 14;
Fire-cured tobacco, comprising type 21;
Fire-cured tobacco, comprising types 22, 23, and 24;
Dark air-cured tobacco, comprising types 35 and 36;
Virginia sun-cured tobacco, comprising type 37.

(1) "Discount Variety" means any of the flue-cured tobacco seed varieties designated as Coker 139, Coker 140 or Dixie Bright 244 or a mixture or strain of such seed varieties (also hereinafter referred to as "discount varieties" or "limited support variety"): *Provided,* That where there is growing in a field off-type plants of not more than two (2) percent, such off-type plants shall not be considered in determining the flue-cured tobacco variety being produced. Off-type plants are due to genetic or environmental factors and shall be considered as variation within the variety. Flue-cured tobacco which is not determined to be discount variety shall be considered as "acceptable variety."

(2) Any tobacco that has the same characteristics and corresponding qualities, colors, and lengths as either burley, flue-cured, fire-cured, dark air-cured, or Virginia sun-cured tobacco shall be considered respectively either burley, flue-cured, fire-cured, dark air-cured, or Virginia sun-cured tobacco regardless of any factors of historical or geographical nature which cannot be determined by examination of the tobacco.

(3) For the purpose of discovering and identifying all tobacco subject to marketing quotas the term "tobacco" with respect to any farm located in an area in which burley, flue-cured, fire-cured, dark air-cured, or Virginia sun-cured tobacco is normally produced shall include all acreage of tobacco (without regard to the definition of "tobacco" herein), unless (i) the county committee with the approval of the State committee determines that all or a part of such acreage should not be considered as burley, flue-cured, fire-cured, dark air-cured, or Virginia sun-cured tobacco under subparagraph (2) of this paragraph, or (ii) the county committee with the approval of the State committee determines from satisfactory proof furnished by the operator of the farm that a part or all of the production of such acreage has been classified pursuant to Part 29 of this title when marketed as a kind of tobacco not subject to marketing quotas. Any amount of tobacco so determined as a kind of tobacco not subject to marketing quotas shall be converted to acres on the basis of the average yield per harvested acre of tobacco grown on the farm in 1960 for the purpose of determining the harvested acreage of such kind of tobacco produced on the farm.

(u) "Tobacco available for marketing" means all tobacco produced on the farm in the calendar year 1960 plus any carryover tobacco, less any tobacco disposed of in accordance with § 725.1145.

(v) "Tobacco subject to marketing quotas" means:

(1) Any burley, fire-cured, dark air-cured or Virginia sun-cured tobacco marketed during the period October 1, 1960 to September 30, 1961, inclusive, and any burley, fire-cured, dark air-cured or Virginia sun-cured tobacco produced in the calendar year 1960 and marketed prior to October 1, 1960.

(2) Any flue-cured tobacco marketed during the period July 1, 1960 to June 30, 1961 inclusive, and any flue-cured tobacco produced in the calendar year 1960 and marketed prior to July 1, 1960.

(w) "Trucker" means a person operating as a common carrier or private carrier who engages to any extent in the business of trucking or hauling tobacco for producers to a point where it may be marketed or otherwise disposed of in the form and in the condition in which it is usually marketed by producers.

(x) "Warehouseman" means a person who engages to any extent in the business of holding sales of tobacco at public auction at a warehouse.

(y) "Warehouse gross sales" means the sum of the weights of all marketings of tobacco at auction on a warehouse floor for producers, dealers and the warehouseman.

(z) "Warehouse sale" means a marketing of tobacco by a sale at public auction through a warehouse in the regular course of business, and shall include all lots or baskets of tobacco marketed by sale at public auction in sequence at a given time.

§ 725.1132 Instructions and forms.

The Director shall cause to be prepared and issued such forms as are necessary and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by, and the instructions shall be issued by the Deputy Administrator.

§ 725.1133 Extent of calculations and rule of fractions.

(a) *Harvested acreage.* The acreage of tobacco harvested on a farm in 1960 shall be expressed in hundredths and fractions of less than one hundredth of an acre shall be dropped. For example, 1.550, 1.555, or 1.559 acres would be 1.55 acres.

(b) *Percent excess.* The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the "percent excess" shall be expressed in tenths percent and calculations thereof rounded to the nearest tenth percent. Computations shall be carried two decimal places beyond the required number of decimal places. In rounding, digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by "1." For example, 6.732 would be 6.7; 6.750 would be 6.7; 6.751 would be 6.8; and 6.782 would be 6.8.

(c) *Converted rate of penalty.* The amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the "converted rate of penalty" shall be expressed in tenths of a cent and calculations thereof rounded to the nearest tenth of a cent, except that if the resulting converted rate of penalty is less than a tenth of a cent, it shall be expressed in hundredths of a cent and calculations thereof rounded to the nearest hundredth of a cent. Computations shall be carried two decimal places beyond the required number of decimal places. In rounding, digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by "1." For example, expressions in tenths calculated as 6.732 would be 6.7; 6.750 would be 6.7; 6.751 would be 6.8; and 6.782 would be 6.8; and expressions

in hundredths calculated as 0.0536 would be 0.05; 0.0550 would be 0.05; 0.0551 would be 0.06; and 0.0582 would be 0.06.

(d) *Amount of penalty.* The amount of penalty on any lot of tobacco marketed shall be expressed in dollars and cents and calculations thereof rounded to the nearest cent. In rounding, digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by "1." For example, 10.5536 would be 10.55; 10.5550 would be 10.55; 10.5551 would be 10.56; and 10.5582 would be 10.56.

IDENTIFICATION AND LOCATION OF FARMS, DETERMINATION OF ACREAGE AND FLUE-CURED TOBACCO SEED VARIETIES

§ 725.1134 Identification and location of farms.

(a) Each farm as operated for the 1960 crop of tobacco shall be identified by a farm serial number assigned by the county office manager and all records pertaining to marketing quotas for the 1960 crop of tobacco shall be identified by such number.

(b) A farm shall be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon it shall be regarded as located in the county in which the major portion of the farm is located.

§ 725.1135 Determination of tobacco acreage and seed varieties.

(a) *County committees.* For the purpose of ascertaining with respect to each farm whether there is excess tobacco of the 1960 crop available for marketing, the county committee shall determine the acreage of tobacco on each farm in the county for which a 1960 tobacco acreage allotment has been established and on any other farms in the county on which the county committee has reason to believe tobacco was planted. The county committee's determination shall be based upon acreage and performance determined as provided in the applicable provisions of Part 718 of this chapter.

(b) *Variance in measured acreage.* For the purpose of §§ 725.1130 to 725.1161 inclusive and subject to the rule of fractions heretofore provided in § 725.1133 (a), if the tobacco acreage determined for the farm does not exceed the farm tobacco allotment by more than the larger of one-hundredth (0.01) acre or two percent of such allotment not to exceed nine-hundredths (0.09) acre, the farm tobacco acreage shall be considered within the allotment. If the tobacco acreage determined for the farm exceeds the allotment by more than this amount, the tobacco acreage shall be considered in excess of the farm allotment and disposition shall not be limited to the acreage necessary to bring the acreage within the prescribed administrative variance. In such cases, the farm will not be considered in compliance unless disposition is made of all acreage in excess of the allotment.

(c) *Notice to farm operators.* The county committee, as to each farm, shall notify the farm operator of the results of the measurement of tobacco acreage.

(d) *Harvested acreage of tobacco for purpose of issuing marketing card.* The acreage of tobacco determined or as redetermined for a farm by the county committee pursuant to this section shall be the harvested acreage of tobacco for the farm for the purpose of issuing the correct marketing card for the farm as provided in § 725.1138 unless the farm operator furnishes to the county committee satisfactory proof that a portion of the acreage planted will not be harvested or that tobacco representative of the production of the acreage physically harvested will be disposed of other than by marketing, in which case the harvested acreage shall be the acreage as adjusted by taking into account the portion of the acreage planted which will not be harvested or the portion of the production of the acreage physically harvested which will be disposed of other than by marketing.

(e) *Amount of excess acreage for purpose of issuing marketing card if acreage determination refused.* If the farm operator or any producer on the farm prevents the county committee from obtaining information necessary to determine the correct acreage of tobacco on a farm, in addition to any other liability which might be imposed upon the operator, and until the farm operator or any producer on the farm permits a determination of the correct acreage, all acreage of tobacco on the farm shall be deemed to be in excess of the farm acreage allotment for the purpose of issuing a marketing card for the farm.

(f) *Prior measurements.* Measurements made prior to the effective date of this section, and in accordance with procedures then in effect may be utilized where pertinent for the purpose of ascertaining with respect to any farm the 1960 tobacco acreage and the tobacco acreage in excess of the 1960 farm tobacco acreage allotment.

(g) *Identification and determination of flue-cured tobacco seed varieties and application for review examination.* (1) The county committee shall determine for any farm on which flue-cured tobacco is grown in 1960 whether any tobacco plants on such farm having growth characteristics of discount varieties of flue-cured tobacco have been planted in fields on such farm. Such determination of the county committee shall be based upon information contained in Form MQ–32—Flue-Cured, Certification of Flue-Cured Tobacco Varieties Planted filed by the operator or any producer on the farm as provided in § 725.1152(b) as well as the failure of the operator or any producer on the farm to file such report; or upon information obtained as hereafter provided in this paragraph from inspecting, sampling or photographing flue-cured tobacco, or tobacco plants produced or grown on such farm in 1960 including such plants allowed to go to flower.

(2) Members of the county committee and State committee and any employee of the ASC county office designated by the county office manager as a reporter, or any other such employee or employee of the Department of Agriculture designated by the county office manager as a specialist qualified to examine and identify seed varieties of flue-cured tobacco or any employee of the ASC State office or employee of the Department of Agriculture designated by the State administrative officer as a specialist qualified to examine and identify seed varieties of flue-cured tobacco shall enter upon any farm for the purpose or purposes of designating flue-cured tobacco plants on the farm to be allowed to go to flower, examining the growth characteristics of flue-cured tobacco plants on such farm, taking photographs of flue-cured tobacco plants on the farm and taking and removing from the farm samples of flue-cured tobacco growing or harvested on the farm in 1960.

(3) To assist the county committee in making the determination with respect to seed varieties of flue-cured tobacco planted on a farm as heretofore provided in this paragraph, and at the request of any of the persons authorized as heretofore provided in this paragraph to enter upon the farm, the operator of the farm shall allow flue-cured tobacco plants designated by any of such persons to go to flower, not to exceed 50 representative plants per acre, and shall permit any of such persons to examine the growth characteristics of flue-cured tobacco plants on the farm, to take and remove from the farm samples of any flue-cured tobacco for chemical analyses, and to take photographs of tobacco plants growing on the farm. In the event the farm operator refuses such a request, a second request by the use of Form MQ–34–1, Notice Regarding Determination of Seed Varieties of Flue-Cured Tobacco, will be sent the farm operator by certified mail by the county office manager, and if the farm operator then refuses or wilfully fails to permit, for variety identification purposes, a designated number of flue-cured tobacco plants in each field or area to go to flower, not to exceed 50 representative plants per acre, or refuses to permit, for variety identification purposes, the examination of the growth characteristics of tobacco plants or the taking of samples of flue-cured tobacco for chemical analyses, or the taking of photographs of flue-cured tobacco plants all the flue-cured tobacco produced on such farm as well as on any other farm operated by the same operator in 1960 which cannot otherwise be identified with respect to seed varieties shall be deemed to be discount variety flue-cured tobacco for the purpose of issuing a marketing card for the farm.

(4) The county committee shall send to the farm operator by certified mail a written notice on Form MQ–34–2, Notice of Determination of Discount Variety of Flue-Cured Tobacco, in any case where the county committee determines that tobacco plants of the tobacco crop being grown in 1960 on the farm have growth characteristics of discount varieties of flue-cured tobacco. The notice to the operator of the farm shall constitute notice to all persons who as owner, operator, landlord, tenant, or sharecropper are interested in the tobacco being grown on the farm.

(5) Any producer on a farm who is dissatisfied with the determination made by the county committee that the tobacco being produced on such farm is of

discount variety may request that such determination be reconsidered by the county committee and that the 1960 crop of tobacco be reexamined by other variety identification specialists than those who previously examined the flue-cured tobacco being grown on the farm. Such request shall be in writing and be filed with the local ASC county office within seven days after the date notice (Form MQ-34-2) is mailed to him of the determination by the county committee.

FARM MARKETING QUOTAS AND MARKETING CARDS

§ 725.1136 Amount of farm marketing quota.

(a) *Actual production.* The marketing quota for a farm shall be the actual production of tobacco on the farm acreage allotment, as established for the farm in accordance with Burley, Flue-Cured, Fire-Cured, Dark Air-Cured, and Virginia Sun-Cured Tobacco Marketing Quota Regulations, 1960-61 Marketing Year (24 F.R. 6895, 7243). The actual production of the farm acreage allotment shall be the average yield per acre of the entire acreage of tobacco harvested on the farm in 1960 times the farm acreage allotment.

(b) *Excess production.* The excess tobacco on any farm shall be (1) that quantity of tobacco which is equal to the average yield per acre of the entire acreage of tobacco harvested on the farm in 1960 times the number of acres harvested in excess of the farm acreage allotment plus (2) any excess carryover of tobacco.

§ 725.1137 Transfer of farm marketing quota.

There shall be no transfer of farm marketing quotas except as provided in § 719.12 of this chapter.

§ 725.1138 Issuance of marketing cards.

A marketing card shall be issued for each farm having tobacco available for marketing. The kind of card to be issued for each farm shall be determined pursuant to paragraphs (a) to (g) of this section. Cards shall be issued in the name of the operator except that cards issued for tobacco grown for experimental purposes only, shall be issued in the name of the Experiment Station and cards issued under § 725.1141 shall be issued in the name of the successor in interest.

(a) *Excess marketing cards (MQ-77—Tobacco).* The provisions of this paragraph govern the issuance of excess marketing cards except with respect to the issuance of marketing cards for the identification of tobacco grown for experimental purposes only, as provided in paragraph (d)(2) of this section.

(1) *Excess marketing card showing full rate of penalty.* An excess marketing card (ineligible for price support loans) showing the full rate of penalty to be set forth in § 725.1147(b) shall be issued for a farm in any case:

(i) Where tobacco is harvested in 1960 from a farm for which no 1960 acreage allotment was established, or

(ii) Where tobacco is harvested in 1960 from a farm and the farm operator or any producer on the farm, as provided in § 725.1135(e), prevents the county committee or its representative from obtaining information necessary to determine the correct acreage of tobacco on the farm.

(iii) Where tobacco is harvested in 1960 from a farm for which, under § 725.1152(g), the 1960 allotment is cancelled.

(2) *Excess marketing card showing converted rate of penalty or zero penalty.* An excess marketing card (ineligible for price support loans) showing the extent to which marketings of tobacco from a farm are subject to penalty, determined as provided in § 725.1144 (including zero penalty except where the provisions of subdivision (ii) of this subparagraph apply) shall be issued in any case:

(i) Where tobacco is harvested in 1960 from a farm in excess of the farm acreage allotment therefor, or

(ii) Where tobacco is to be marketed from a farm in 1960 having carryover tobacco available for marketing and the percent excess determined pursuant to § 725.1144(b) exceeds zero percent, or

(iii) Where tobacco is produced on land owned by the Federal Government in violation of the provisions of a lease restricting the production of tobacco.

(3) *Excess marketing cards showing zero penalty only.* An excess marketing card (ineligible for price support loans) showing zero penalty only shall be issued under the following conditions:

(i) If more than one kind of tobacco is produced on a farm in 1960, a zero penalty excess marketing card shall be issued for each kind of tobacco produced thereon for which the harvested acreage is not in excess of the farm acreage allotment therefor if at the time of issuing marketing cards for the farm the harvested acreage of any kind of tobacco is in excess of the farm acreage allotment for such kind of tobacco; or

(ii) For any kind of tobacco produced on a farm in 1960 the acreage of which is in excess of the farm acreage allotment therefor and the operator or any other producer on the farm fails to notify the county ASC office (with deposit to cover the cost as determined by the county committee and approved by the State committee) of his intention to dispose of any excess tobacco acreage or to request remeasurement of the tobacco acreage within ten (10) days (seven days in the case of flue-cured tobacco grown in the State of North Carolina) from the date of notice to the farm operator on Form CSS-590, Notice of Excess Acreage, and the tobacco produced on the excess acreage is disposed of other than by marketing, in accordance with § 725.1145, unless the county committee, or the county office manager on behalf of the county committee, determines that failure to file such written request was due to circumstances beyond the control of the farm operator or producer, or

(iii) For any kind of tobacco physically harvested from a farm in 1960 from an acreage in excess of the acreage allotment for the farm and disposed of in accordance with § 725.1145(a) unless the county committee, or the county office manager on behalf of the county committee, determines that the acreage of tobacco was not measured or remeasured, as the case may be, in sufficient time to afford the farm operator an opportunity to dispose of the excess acreage prior to harvest.

(b) *Excess marketing cards for flue-cured tobacco stamped or marked "acceptable varieties" or "discount varieties".* (1) If an excess marketing card is issued for a farm on which flue-cured tobacco is harvested in 1960 and the operator of such farm establishes to the satisfaction of the county committee that no discount variety tobacco was or will be harvested from such farm or any other farm operated by the farm operator, the excess marketing card and each memorandum of sale (both purchaser's copy and county office copy) therein shall be stamped or marked "acceptable varieties".

(2) If an excess marketing card is issued for a farm on which flue-cured tobacco is harvested in 1960 and the operator of such farm fails to establish to the satisfaction of the county committee that no tobacco having growth characteristics of discount variety tobacco was or will be harvested from such farm or any other farm operated by the farm operator, the excess marketing card and each memorandum of sale (both purchaser's copy and county office copy) therein shall be stamped or marked "discount varieties".

(c) *Within Quota Limited Support Flue-Cured Marketing Card (MQ-76-D—Tobacco).* In any case where an excess marketing card is not required to be issued for a farm under paragraph (a) of this section and where flue-cured tobacco is harvested in 1960 from such farm, a Within Quota Limited Support Flue-Cured Marketing Card (eligible for limited price support loan and marketing without penalty) shall be issued for such farm under the following conditions unless a zero penalty excess marketing card is required to be issued as provided in paragraph (d)(2) of this section to identify tobacco grown for experimental purposes only:

(1) If the operator of such farm or a producer thereon fails to file a report on Form MQ-32—Flue-Cured, Certification of Flue-Cured Tobacco Varieties Planted as provided in § 725.1152(b), or

(2) If the operator of such farm, after the request of the county committee, State committee, or their representative, refuses or wilfully fails to permit, for identification purposes, the examination of growth characteristics of flue-cured tobacco or photographs of flue-cured tobacco from or on such farm as provided in § 725.1135(g)(3), or

(3) If the operator of such farm fails to establish to the satisfaction of the county committee that no tobacco having growth characteristics of discount variety tobacco was or will be harvested on such farm in 1960, or

(4) If the operator of such farm establishes to the satisfaction of the county committee that no tobacco having the growth characteristics of discount variety tobacco was or will be harvested in 1960 from such farm, but he fails to establish to the satisfaction of the county committee that no discount variety to-

bacco was or will be harvested in 1960 from another farm which he also operates in 1960.

(d) *Within Quota Marketing Card (MQ–76—Tobacco).* In any case where an excess marketing card or a within quota Limited Support Flue-Cured Marketing Card is not required to be issued for a farm under paragraph (a) or (c) of this section, a Within Quota Marketing Card shall be issued for such farm under the following conditions:

(1) If the harvested acreage of tobacco for the farm in 1960 is not in excess of the farm acreage allotment therefor and any excess carryover tobacco can be marketed without penalty under the provisions of § 725.1144(b).

(2) If the Director of a publicly-owned Agricultural Experiment Station furnishes to the ASC State office a list by counties showing the following information with respect to each kind of tobacco and farm on which tobacco is grown for experimental purposes only:

(i) Name and address of the publicly-owned experiment station,

(ii) Name of the owner, and name of the operator if different from the owner of each farm on which tobacco is grown for experimental purposes only.

(iii) The amount of acreage of tobacco grown on each farm for experimental purposes only, and

(iv) A certification signed by the Director of the publicly-owned agricultural experiment station to the effect that such acreage of tobacco was grown on each farm for experimental purposes only; the tobacco was grown under his direction; and the acreage on each plot was considered necessary for carrying out the experiment: *Provided, however,* That if the Director of a publicly-owned agricultural experiment station does not furnish the information and certification as required above in this subparagraph, an excess marketing card showing zero penalty shall be issued for the purpose of identifying tobacco produced for experimental purposes only under the direction of such Director. The list required in this subparagraph shall be posted and kept available for public inspection in the ASC office of the county in which the farms included in the list are located.

(e) *Stamping Within Quota Marketing Cards (MQ–76–D or MQ–76) to show producer indebtedness.* (1) If any producer on a farm is indebted to the United States and such indebtedness is listed on the county debt register, any within quota marketing card (MQ–76), or any within quota limited support flue-cured marketing card (MQ–76–D) issued for such farm in accordance with paragraph (c) or (d) of this section shall bear the notation "Indebted to U.S." on the front cover thereof and on the county office copy of each memorandum of sale, and the name of the debtor and the amount of the indebtedness shall be shown on the inside back cover of the marketing card: *Provided,* That if the producer named as debtor on the card objects to the issuance of or after issuance to the use of a within quota marketing card (MQ–76), or a within quota limited support flue-cured marketing card (MQ–76–D), bearing the notation and information of indebtedness to the United States thereon as provided in this subparagraph, an excess marketing card (ineligible for price support loans) showing "zero penalty" shall be issued for such farm. If an excess flue-cured marketing card is issued under this subparagraph as provided in paragraph (b) of this section, the excess marketing card and each memorandum of sale (both purchaser's copy and county copy) therein shall be stamped or marked "acceptable varieties" or "discount varieties", as the case may be. The acceptance and use of a within quota marketing card or a within quota limited support flue-cured marketing card bearing a notation and information of indebtedness to the United States by the producer named as debtor on such card, shall constitute an authorization by such producer to any tobacco warehouseman to pay to the United States the price support advance due the producer to the extent of his indebtedness set forth on such card but not to exceed that portion of the price support advance remaining after deduction of usual warehouse and authorized price support charges and amounts due prior lien holders. The acceptance and use of a within quota marketing card or a within quota limited support flue-cured marketing card bearing a notation and information of indebtedness to the United States shall not constitute a waiver of any right by the producer to contest the validity of such indebtedness by appropriate administrative appeal or legal action.

(2) Any marketing card may be stamped for the purpose of notifying warehouseman that the tobacco being marketed pursuant to such card is subject to a lien held by the United States.

(f) *Replacing or issuing additional marketing cards.* (1) Subject to the approval of the county office manager, two or more marketing cards may be issued for any farm. Upon the return to the ASC issuing office of the marketing card after all of the memoranda of sale have been issued therefrom and before the marketing of tobacco from the farm has been completed, a new marketing card of the same kind, bearing the same name, information, and identification as the used card shall be issued for the farm. A new marketing card of the same kind shall be issued to replace a card which has been determined by the county office manager who issued the card to have been lost, destroyed or stolen.

(2) If any excess flue-cured marketing card (MQ–77) which has been stamped or marked "discount varieties" is issued under the provisions of paragraph (b)(2) of this section for any farm, it may, upon advance notice by the farm operator to the county committee and with prior approval of the county committee, be exchanged at the county office by the operator for an excess flue-cured marketing card (MQ–77) which has been stamped or marked "acceptable varieties" for flue-cured tobacco when the operator establishes to the satisfaction of the county committee that there has been no commingling or substitution of discount varieties of flue-cured tobacco with any other flue-cured tobacco produced on the farm or any other farm operated by him, and that all discount variety flue-cured tobacco has been marketed or satisfactorily disposed of or accounted for, including any carry-over discount variety flue-cured tobacco.

(3) If a Within Quota Limited Support Flue-Cured Marketing Card (MQ–76–D) is issued under the provisions of paragraph (c) of this section for any farm it may, upon advance notice by the farm operator to the county committee and with prior approval of the county committee be exchanged at the county office by the operator for a Within Quota Marketing Card (MQ–76) for flue-cured tobacco when the operator establishes to the satisfaction of the county committee that there has been no commingling or substitution of discount variety flue-cured tobacco with any other flue-cured tobacco produced on the farm or any other farm operated by him, and that all discount variety flue-cured tobacco has been marketed or satisfactorily disposed of or accounted for, including any carry-over discount variety of flue-cured tobacco.

(g) *Issuance of marketing cards (MQ–76–D or MQ–76) to identify flue-cured tobacco produced by a publicly owned agricultural experiment station.* If under the provisions of paragraph (c) or (d) of this section a farm on which tobacco is grown for experimental purposes only is eligible for the issuance of both a Within Quota Limited Support Flue-Cured Marketing Card (MQ–76–D) and a Within Quota Flue-Cured Marketing Card (MQ–76), notwithstanding the provisions of paragraph (f)(3) of this section, an MQ–76–D marketing card may be issued prior to or simultaneous with the issuance of an MQ–76 marketing card for flue-cured tobacco if the Director of a publicly owned agricultural experiment station furnishes, in addition to the information and certification required under paragraph (d)(2) of this section, the following:

(1) A list by counties, showing for each farm on which tobacco is grown for experimental purposes only the acreage of discount varieties grown;

(2) A certification that all discount varieties of tobacco grown have been kept separate by varieties from tobacco of any other varieties during harvest and preparation for market and that each discount variety of tobacco will be marketed separately by use of a Within Quota Limited Support Flue-Cured Marketing Card (MQ–76–D); and

(3) An agreement to notify the ASC State administrative officer as to the place and date of sale of discount varieties of flue-cured tobacco.

§ 725.1139 Person authorized to issue marketing cards.

(a) The county office manager shall be responsible for the issuance of tobacco marketing cards for farms in the county, including farms on which tobacco is grown for experimental purposes by a publicly owned agricultural experiment station.

(b) Each marketing card shall bear the actual or facsimile signature of the county office manager who issues the

card. The facsimile signature may be affixed by an employee of the ASC county office.

§ 725.1140 Rights of producers in marketing cards.

Each producer having a share in the tobacco available for marketing from a farm shall be entitled to the use of the marketing card issued for the farm for marketing his proportionate share.

§ 725.1141 Successors in interest.

Any person who succeeds, other than as a dealer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm shall, to the extent of such succession, have the same rights as the producer to the use of the marketing card for the farm.

§ 725.1142 Invalid cards.

(a) A marketing card shall be invalid if:

(1) It is not issued or delivered in the form and manner prescribed;

(2) Entries are omitted or incorrect;

(3) It is lost, destroyed, stolen or becomes illegible;

(4) Any erasure or alteration has been made, and not properly initialed; or

(5) It is either a MQ–76—Within Quota Marketing Card or a MQ–77—Excess Marketing Card marked "acceptable varieties" issued and delivered with respect to flue-cured tobacco, and the county committee determines, on the basis of information subsequent to issuance but prior to completion of marketings from the farm, that in lieu of such card either a MQ–76–D—Within Quota limited support marketing card or a MQ–77—Excess marketing card marked "discount varieties" should have been issued and delivered.

(b) In the event any marketing card becomes invalid (other than by loss, destruction, or theft, or by omission, alteration or incorrect entry which cannot be corrected by a field assistant), the farm operator, or the person having the card in his possession, shall return it to the ASC office at which it was issued.

(c) If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by a field assistant, then such card shall become valid.

§ 725.1143 Report of misuse of marketing card.

Any information which causes a field assistant, a member of a State, county, or community committee, or an employee of an ASC State or county office to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm shall be reported immediately by such person to the ASC county or State office.

MARKETING OR OTHER DISPOSITION OF TOBACCO AND PENALTIES

§ 725.1144 Extent to which marketings from a farm are subject to penalty.

(a) Marketings of tobacco from a farm having no carryover tobacco available for marketing shall be subject to penalty by the percent excess determined as follows: Divide the acreage of tobacco harvested in excess of the farm acreage allotment and not disposed of under § 725.1145 by the total acreage of tobacco harvested from the farm.

(b) Marketings of tobacco from a farm having carryover tobacco available for marketing shall be subject to penalty by the percent excess determined as follows:

(1) Determine the number of "carryover" acres by dividing the number of pounds of carryover tobacco from the prior years by the normal yield for the farm for that year.

(2) Determine the number of "within quota carryover acres" by multiplying the "carryover acres" (subparagraph (1) of this paragraph) by the "percent within quota" (i.e., 100 percent minus the percent excess) for the year in which the carryover tobacco was produced, except that if the excess portion of the carryover tobacco is disposed of under § 725.1145, the "percent within quota" shall be 100.

(3) Determine the "total acres" of tobacco by adding the "carryover acres" (subparagraph (1) of this paragraph) and the acreage of tobacco harvested in the current year.

(4) Determine the "excess acres" by subtracting from the "total acres" (subparagraph (3) of this paragraph) the sum of the 1960 allotment and the "within quota carryover acres" (subparagraph (2) of this paragraph).

(5) Determine the percent excess by dividing the "total acres" into the "excess acres" (subparagraph (4) of this paragraph).

(c) For the purpose of determining the penalty due on each marketing by a producer of tobacco subject to penalty, the converted rate of penalty per pound shall be determined by multiplying the applicable rate of penalty by the percent excess obtained under paragraph (a) or (b) of this section. The memorandum of sale issued to identify each such marketing shall show the amount of penalty due.

§ 725.1145 Disposition of excess tobacco.

(a) The farm operator may elect to give satisfactory proof of disposition of excess tobacco prior to the marketing of any tobacco from the farm by furnishing to the county committee satisfactory proof that excess tobacco representative of the entire crop will not be marketed.

(b) If the 1960 harvested acreage is less than the 1960 allotment, an amount of any tobacco from the farm which was placed under storage for a prior marketing year equal to the normal production of the acreage by which the 1960 harvested acreage plus any acreage added with respect to any excess carryover tobacco for the farm pursuant to § 725.1144(b) is less than the 1960 allotment may be marketed penalty free.

§ 725.1146 Identification of marketings.

Subject to paragraph (a) of this section, each marketing of tobacco from a farm shall be identified by an executed memorandum of sale from the 1960 marketing card (MQ–76—Tobacco, MQ–76–D—Tobacco, or MQ–77—Tobacco) issued for the farm on which the tobacco was produced. In addition, as provided in paragraph (b) of this section, in the case of nonwarehouse sales each marketing shall also be identified by an executed bill of nonwarehouse sale (reverse side of memorandum of sale).

(a) *Memorandum of sale and sale without marketing card.* (1) The word "scrap" shall be plainly written on any memorandum of sale or MQ–82, Tobacco, Sale Without Marketing Card executed to cover scrap tobacco. If a memorandum of sale is not executed to identify a warehouse sale of producer's tobacco by the end of the sale day on which the tobacco was marketed, the marketing shall be a suspended sale, and, unless a memorandum identifying the tobacco so marketed is executed on or before the last warehouse sale day of the marketing season, or within four weeks after the date of marketing, whichever comes first, the marketing shall be identified by MQ–82—Tobacco, as a marketing of excess tobacco. The memorandum of sale or MQ–82—Tobacco shall be executed only by a field assistant or other representative of the State administrative officer with the following exceptions:

(i) A warehouseman, or his representative, who has been authorized during the 1960–61 marketing year on MQ–78—Tobacco, may issue a memorandum of sale to identify a warehouse sale if a field assistant is not available at the warehouse when the marketing card is presented. Each memorandum of sale issued by a warehouseman to cover a warehouse sale shall be presented promptly by him to the field assistant for verification with the warehouse records.

(ii) In the case of flue-cured tobacco only a dealer, or his authorized representative, operating a regular receiving point for scrap tobacco at a redrying plant, at an auction warehouse, or elsewhere, who keeps records showing the information specified in § 725.1154, and who has been authorized on MQ–78—Tobacco, may issue a memorandum of sale covering a purchase of scrap tobacco only if the bill of nonwarehouse sale has been executed.

(iii) A dealer, or his authorized representative, operating a regular receiving point for tobacco who keeps records showing the information specified in § 725.1154 and who has been authorized on MQ–78—Tobacco, may issue memoranda of sale covering tobacco delivered directly to such receiving point and marketed to such dealer.

(2) The authorization on MQ–78—Tobacco to issue memoranda of sale may be withdrawn by the State administrative office from any or all persons so authorized if such action is determined to be necessary in order to properly enforce the provisions of §§ 725.1130 to 725.1161. The authorization shall terminate upon receipt of written notice setting forth the reason therefor.

(3) Each excess memorandum of sale issued by a field assistant shall be verified by a warehouseman or dealer (or his representative) to determine whether the amount of penalty shown to be due has been correctly computed and such warehouseman or dealer shall not be re-

lieved of any liability with respect to the amount of penalty due because of any error which may occur in executing the memorandum of sale.

(b) *Bill of nonwarehouse sale.* (1) Each nonwarehouse sale shall be identified by a bill of nonwarehouse sale completely executed by the buyer and the farm operator.

(2) The word "scrap" shall be plainly written on any bill of nonwarehouse sale and memorandum of sale executed to cover scrap tobacco, and all such bills of nonwarehouse sale shall be delivered to a person who is authorized to issue memoranda of sale.

(3) Each bill of nonwarehouse sale covering any marketing including scrap tobacco shall be presented to a person who is authorized to issue a memorandum of sale and for recording in MQ–79—Tobacco.

(c) *Separate display on warehouse floor.* Any warehouseman upon whose floor more than one kind of tobacco is offered for sale at public auction shall for each different kind of tobacco:

(1) Display it in separate areas on the warehouse floor.

(2) Identify each basket by a distinguishably different basket ticket clearly showing the kind of tobacco.

(3) Make and keep records that will insure a separate accounting and reporting of each of such kinds of tobacco sold at auction over the warehouse floor.

§ 725.1147 Rate of penalty.

Marketings of each kind of excess tobacco from a farm shall be subject to a penalty per pound equal to seventy-five (75) percent of the average market price for the kind of tobacco for the 1959–60 marketing year as determined by the Crop Reporting Board, Agricultural Marketing Service, United States Department of Agriculture. The rate of penalty per pound shall be calculated to the nearest whole cent. In rounding, digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by "1."

(a) *Average market price.* The average market price as determined by the Crop Reporting Board, Agricultural Marketing Service, United States Department of Agriculture, for the 1959–60 marketing year for the kinds of tobacco covered by these regulations will be issued by an amendment.

(b) *Rate of penalty per pound.* The penalty per pound upon marketings of excess tobacco during the 1960–61 marketing year for the kinds of tobacco covered by these regulations will be issued by an amendment.

(c) *Proportional rate of penalty.* With respect to tobacco marketed from farms having tobacco available for marketing in excess of the farm marketing quota the penalty shall be paid upon that percentage of each lot of tobacco marketed which the tobacco available for marketing in excess of the farm marketing quota is of the total amount of tobacco available for marketing from the farm, as determined under § 725.1144.

§ 725.1148 Persons to pay penalty.

The persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Warehouse sale.* The penalty due on marketings by a producer through a warehouse shall be paid by the warehouseman who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) *Nonwarehouse sale.* The penalty due on tobacco purchased directly from a producer, other than at public auction through a warehouse, shall be paid by the purchaser of the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer.

(c) *Marketings through an agent.* The penalty due on marketings by a producer through an agent who is not a warehouseman shall be paid by the agent who may deduct an amount equivalent to the penalty from the price paid to the producer.

(d) *Marketings outside the United States.* The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 725.1149 Penalties considered to be due from warehousemen, dealers, and other persons excluding the producer.

Any marketing of tobacco under any one of the following conditions shall be considered to be a marketing of excess tobacco:

(a) *Warehouse sale without memorandum of sale.* Any warehouse sale of tobacco by a producer which is not identified by a valid memorandum of sale on or before the last warehouse sale day of the marketing season or within four weeks following the date of marketing, whichever comes first, shall be identified by an MQ–82—Tobacco, and shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the warehouseman.

(b) *Nonwarehouse sale.* Any nonwarehouse sale which:

(1) Is not identified by a valid bill of nonwarehouse sale (reverse side of memorandum of sale), and

(2) Is not also identified by a valid memorandum of sale and recorded in MQ–79—Tobacco not later than the end of the calendar week in which the tobacco was purchased, or

(3) If purchased prior to the opening of the local auction market, is not identified by a valid memorandum of sale and recorded in MQ–79—Tobacco, not later than the end of the calendar week which includes the first sale day of the local auction markets, shall be presumed, subject to rebuttal, to be a marketing of excess tobacco. The penalty thereon shall be paid by the purchaser of such tobacco.

(c) *Leaf account tobacco.* The part or all of any marketing by a warehouseman which such warehouseman represents to be a leaf account resale but which when added to prior leaf account resales is in excess of prior leaf account purchases, recognizing and including appropriate adjustments for short baskets and short weights and long baskets and long weights from the Buyers Corrections Account, shall be considered to be a marketing of excess tobacco unless and until such warehouseman furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. The penalty thereon shall be paid by the warehouseman.

(d) *Dealer's tobacco.* The part or all or any marketing of tobacco by a dealer which such dealer represents to be a resale but which when added to prior resales by such dealer is in excess of the total of his prior purchases shall be considered to be a marketing of excess tobacco unless and until such dealer furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. The penalty thereon shall be paid by the dealer.

(e) *Resales not reported.* Any resale of tobacco which under §§ 725.1130 to 725.1161 is required to be reported by a warehouseman or dealer but which is not so reported within the time and in the manner required by §§ 725.1130 to 725.1161 shall be considered to be a marketing of excess tobacco unless and until such warehouseman or dealer furnishes a report of such resale which is acceptable to the State Administrative Officer. The penalty thereon shall be paid by the warehouseman or dealer who fails to make the report as required.

(f) *Marketings falsely identified by a person other than the producer.* If any marketing of tobacco by a person other than the producer thereof is identified by a marketing card other than the marketing card issued for the farm on which such tobacco was produced, such marketing shall be presumed, subject to rebuttal, to be a marketing of excess tobacco and the penalty thereon shall be paid by such person.

§ 725.1149a Producers penalties; false identification, failure to account, incorrectly determined acreages.

(a) *Penalties for false identification or failure to account.* If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, an amount of tobacco equal to the normal yield of the number of acres harvested in 1960 in excess of the farm acreage allotment shall be deemed to have been marketed as excess tobacco from such farm. The penalty thereon for false identification or failure to account shall be paid by the producer and shall be due on the date of the false identification or failure to account. The filing of a report by a producer under § 725.1152(e) which the State committee finds to be incomplete or incorrect or the failure to file such a report as required by said regulations, shall constitute a failure to account for the disposition of tobacco produced on the farm.

(b) *Redetermined excess harvested acreage.* If, after part or all of the tobacco produced on a farm has been marketed, the State or county committee redetermines that the harvested acreage for the farm was more than that shown by the prior determination, and if the harvested acreage may not be deemed to be within the farm acreage allotment pursuant to paragraph (d) of this section, any penalty due on the

basis of the harvested acreage as redetermined pursuant to § 725.1135 shall be paid by the producer.

(c) *Cancelled allotment.* If, after part or all of the tobacco produced on a farm has been marketed and the allotment therefor has been cancelled, under § 725.1152(g), any penalty due thereon shall be paid by such producer.

(d) *Erroneous notice of measured acreage.* If it is determined that the tobacco acreage on a farm is larger than the tobacco farm acreage allotment approved under § 725.1126, such farm shall be deemed to have not exceeded its allotment if the county committee, with the approval of the State administrative officer, determines from the facts and circumstances that:

(1) The excess acreage was caused by reliance in good faith by the farm operator on an erroneous notice of measured acreage;

(2) Neither the farm operator nor any producer on the farm had actual knowledge of the error in time to adjust the excess acreage prior to completion of marketing of tobacco from the farm;

(3) The incorrect notice was the result of an error made by the performance reporter or by another employee of the county or State office in reporting, computing, or recording the tobacco acreage for the farm;

(4) Neither the farm operator nor any producer on the farm was in any way responsible for the error; and

(5) The extent of the error in the notice was such that the farm operator would not reasonably be expected to question the acreage of which he was erroneously notified.

§ 725.1150 Payment of penalty.

(a) *Date due.* Penalties shall become due at the time the tobacco is marketed, except that (1) in the case of tobacco removed from storage under bond, penalty shall be due on the date of such removal from storage, or (2) in the case of false identification or failure to account for disposition of tobacco, penalty shall be due on the date of such false identification or failure to account for disposition. Penalty shall be paid by remitting the amount thereof to the ASC State office not later than the end of the calendar week in which the tobacco became subject to penalty. A draft, money order, or check drawn payable to the Commodity Stabilization Service may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Warehouse sale—net proceeds.* If the penalty due on any warehouse sale of tobacco by a producer as determined under §§ 725.1130 through 725.1161 is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the warehouse bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include (1) advances to producers, (2) charges for hauling, or (3) any other charges not usually incurred by producers in marketing tobacco through an auction warehouse.

(c) *Nonwarehouse sale — converted penalty rate.* Nonwarehouse sales, including sales of scrap tobacco, shall be subject to the converted rate of penalty for the farm on which the tobacco was produced without regard to the net proceeds of the sale.

§ 725.1151 Request for return of penalty.

Any producer of tobacco after the marketing of all tobacco available for marketing from the farm and any other person who bore the burden of the payment of any penalty may request the return of the amount of such penalty which is in excess of the amount required under §§ 725.1130 through 725.1161 to be paid. Such request shall be filed on MQ–85—Tobacco with the ASC county office within two (2) years after the payment of the penalty. Approval of return of penalty to producers shall be by the county committee.

RECORDS AND REPORTS

§ 725.1152 Producer's records and reports.

(a) *Report of tobacco acreage.* The farm operator or any producer on the farm shall execute and file a report with the ASC county office or a representative of the county committee on Form CSS–578, Report of Acreage, showing all fields of tobacco on the farm in 1960. If any producer on a farm files or aids or acquiesces in the filing of any false report with respect to the acreage of tobacco grown on the farm, even though the farm operator or his representative refuses to sign such report, the allotment next established for such farm and kind of tobacco shall be reduced pursuant to applicable tobacco marketing quota regulations for determining acreage allotments and normal yields, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) the filing of, aiding, or acquiescing in the filing of, such false report was not intentional on the part of any producer on the farm and that no producer on the farm could reasonably have been expected to know that the report was false, provided the filing of the report will be construed as intentional unless the report is corrected and the payment of all additional penalty is made, or (2) no person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in the filing of the false acreage report.

(b) *Report of flue-cured tobacco varieties planted.* To assist the county committee in determining if there has been planted on a farm in 1960 any of the discount varieties of flue-cured tobacco, the operator of each farm, or any producer thereon, on which flue-cured tobacco is planted in 1960 shall execute and file a report with the ASC county office or a representative of the county committee on Form MQ–32—Flue-Cured, Certification of Flue-Cured Tobacco Varieties Planted, which shall clearly state whether a discount variety was planted on the farm in 1960 or on any other farm operated by the operator. If the farm operator or any producer thereon has executed and filed a report with the ASC county office or a representative of the county committee on Form MQ–32 which shows there was not planted on such farm(s) in 1960 any of the discount varieties of flue-cured tobacco and the operator or a producer on the farm wishes to change the Form MQ–32 to show there was planted on such farm(s) a discount variety, he may, at any time prior to the issuance of a marketing card for the farm, be permitted to file a new Form MQ–32 which shall supersede and replace the first Form MQ–32. If the farm operator or any producer on the farm fails to file Form MQ–32 or files a Form MQ–32, or a second Form MQ–32, which is found by the State or county committee to be incomplete or incorrect, all the flue-cured tobacco produced on the farm or farms operated by such operator in 1960 shall be subject to marketing under either a within quota Limited Support Marketing Card or an Excess Marketing Card as determined under § 725.1138 (a) or (c).

(c) *Report on marketing card.* The operator of each farm on which tobacco is produced in 1960 shall return to the ASC county office each marketing card issued for the farm whenever marketings from the farm are completed and in no event later than thirty (30) days after the close of the tobacco auction markets for the locality in which the farm is located. Failure to return the marketing card within fifteen (15) days after written request by certified mail from the county office manager shall constitute failure to account for disposition of tobacco marketed from the farm unless disposition of all tobacco marketed from the farm is accounted for as provided in paragraph (e) of this section.

(d) *False identification.* If tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on the acreage allotment for any farm which in fact was produced on a different farm, the acreage allotments next established for both such farms and kind of tobacco shall be reduced pursuant to applicable tobacco marketing quota regulations for determining acreage allotments and normal yields, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing, provided the marketing shall be construed as intentional unless all tobacco from the farm is accounted for and payment of all additional penalty is made, or (2) no person connected with such farm for the year for which the allotment is being established caused, aided, or acquiesced in such marketing.

(e) *Report of production and disposition.* In addition to any other reports which may be required under §§ 725.1130 through 725.1161, the operator on each farm or any producer on the farm (even though the harvested acreage does not exceed the acreage allotment or even though no allotment was established for

the farm) shall upon written request by certified mail from the State administrative officer within fifteen (15) days after deposit of such request in the United States mails addressed to such person at his last known address, furnish the Secretary on Form MQ–108—Tobacco a written report of the acreage, production, and disposition of all tobacco produced on the farm by sending the same to the ASC State office showing, as to the farm at the time of filing such report, (1) the number of fields (patches or areas) from which tobacco was harvested, the acres of tobacco harvested from each such field, and the total acreage of tobacco harvested from the farm, (2) the total pounds of tobacco produced, (3) the amount of tobacco on hand and its location, (4) as to each lot of tobacco marketed, the name and address of the warehouseman, dealer, or other person to or through whom such tobacco was marketed and the number of pounds marketed, the gross price and the date of the marketing and (5) complete details as to any tobacco disposed of other than by sale. Failure to file the MQ–108 as requested, the filing of a false MQ–108, or the filing of an MQ–108 which is found by the State committee to be incomplete or incorrect shall constitute failure of the producer to account for disposition of tobacco produced on the farm and the allotment next established for such farm and kind of tobacco shall be reduced pursuant to applicable tobacco marketing quota regulations for determining acreage allotments and normal yields, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (i) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition, provided such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the allotment is being established caused, aided or acquiesced in the failure to furnish such proof.

(f) *Harvesting second tobacco crop from same acreage.* If in the calendar year 1960 more than one crop of tobacco was grown from (1) the same tobacco plants, or (2) different tobacco plants, and is harvested for marketing from the same acreage of a farm, the acreage allotment next established for such farm shall be reduced by an amount equivalent to the acreage from which more than one crop of tobacco was so grown and harvested.

(g) *Cancellation of new farm allotment.* Any new farm allotment approved under §§ 725.1111 through 725.1127 which was determined by the county committee on the basis of incorrect information knowingly furnished the county committee by the applicant for the new farm allotment shall be canceled as of the date the allotment was established.

§ 725.1153 Warehouseman's records and reports.

(a) *Record of marketing.* (1) Each warehouseman shall keep such records as will enable him to furnish the ASC State office with respect to each warehouse sale of tobacco made at his warehouse the following information:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the seller in the case of a sale by a producer, and in the case of a resale the name of the seller.

(ii) Date of sale.

(iii) Number of pounds sold.

(iv) Gross sale price.

(v) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer(s); and in addition with respect to each individual basket or lot of tobacco constituting the warehouse sale the following information:

(vi) Name of purchaser.

(vii) Number of pounds sold.

(viii) Gross sale price.

(2) Records of all purchases and resales of tobacco by the warehouseman shall be maintained to show a separate account for:

(i) Nonwarehouse sales by farmers of tobacco purchased by or on behalf of the warehouseman.

(ii) Purchases and resales of leaf account tobacco.

(iii) Resales of floor sweepings.

(3) Each warehouseman shall keep such records as will enable him to furnish the ASC State office the total pounds and amounts of the debits (short baskets and short weights) and the credits (long baskets and long weights) to the Buyers Corrections Account as defined in § 725.1131(b). Where the warehouseman returns to the seller tobacco debited to the Buyers Corrections Account, the warehouseman shall prepare an adjustment invoice to the seller. This invoice shall be the basis for a credit entry for the warehouse in the Buyers Corrections Account and a corresponding purchase (debit entry), in a case of a dealer, on the Dealer's MQ–79 (Dealer's Record). If a warehouse maintains a daily summary of billouts, the balancing figure reflected thereon, if any, shall not be included in the Buyers Corrections Account.

(4) Any warehouseman or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the ASC State office the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

(5) Any warehouseman or any other person who provides tobacco curing space or stripping space for farmers shall maintain records which will enable him to furnish the ASC State office the name of the farm operator and the approximate amount of scrap tobacco obtained from each farm resulting from providing such space.

(6) In the case of resales for dealers, the name of the dealer making each resale shall be shown on the warehouse records so that the individual lots of tobacco sold by the dealer can be identified.

(b) *Identification of sale on check register.* The serial number of the memorandum of sale issued to identify each warehouse sale by a producer or the number of the warehouse bill(s) covering each such sale shall be recorded on the check register or check stub for the check written with respect to such sale of tobacco.

(c) *Memorandum of sale and bill of nonwarehouse sale.* A record in the form of a valid memorandum of sale or a MQ–82—Tobacco, Sale Without Marketing Card, shall be obtained by a warehouseman to cover each marketing of tobacco from a farm through the warehouse and each nonwarehouse sale of tobacco purchased by or for the warehouseman. For a nonwarehouse sale of tobacco purchased by or for a warehouseman, no memorandum of sale shall be issued unless the bill of nonwarehouse sale on the reverse side of the memorandum is executed. Any warehouseman or any other person who obtains possession of any scrap tobacco in the course of grading tobacco from any farm and any warehouseman who obtains possession of any scrap tobacco as a result of providing curing space or stripping space for farmers shall obtain a bill of nonwarehouse sale and a memorandum of sale to cover the amount of such scrap tobacco.

(d) *Suspended sale record.* Any warehouse bills covering farm tobacco for which memoranda of sale have not been issued at the end of the sale day shall be presented to a field assistant who shall stamp such bills "Suspended," write thereon the serial number of the suspended sale, and record the bills on MQ–83—Tobacco, Field Assistant's Report: *Provided,* That if a field assistant is not available, the warehouseman may stamp such bills "Suspended" and deliver them to a field assistant when one is available.

(e) *Warehouse entries on dealer's record.* Each warehouseman shall record on MQ–79—Tobacco the total purchases and resales made by each dealer or other warehouseman during each sale day at the warehouse and enter his initials in the space provided. If any tobacco resold by the dealer is tobacco bought by him from a crop produced prior to 1960 the entry on MQ–79—Tobacco shall clearly show such fact.

(f) *Record and report of purchases and resales.* Each warehouseman shall keep a record and make reports on MQ–79—Tobacco, Dealer's Record, showing:

(1) All purchases of tobacco directly from producers other than at public auction through a warehouse (nonwarehouse sales).

(2) All purchases and resales of tobacco at public auction through warehouses other than his own.

(3) All purchases of tobacco from dealers other than warehousemen and resales of tobacco to dealers other than warehousemen.

(4) Resales of floor sweepings separately from leaf account tobacco, as these terms are defined under § 725.1131.

MQ–79—Tobacco shall be prepared and a copy forwarded to the ASC State office not later than the end of the calendar week in which such tobacco was purchased or resold: *Provided,* That if tobacco is purchased prior to the opening of the local auction market an MQ–

79—Tobacco shall be prepared and a copy forwarded to the ASC State office not later than the end of the calendar week which would include the first sale day of the local auction markets. A remittance for all penalties shown by the entries on MQ–79—Tobacco and on the memoranda of sale to be due shall be forwarded to the ASC State office with the original copy of MQ–79—Tobacco.

(g) *Identification of flue-cured leaf account tobacco as acceptable variety and reports on MQ–79–1 (flue-cured).* (1) Each warehouseman who offers for auction sale any leaf account flue-cured tobacco on a warehouse floor other than his own and who requests the other warehouseman to identify such tobacco as being an "acceptable variety" shall either (i) execute Form MQ–79–1 (Flue-Cured), Dealers Certification—Resale Tobacco or (ii) have the eligibility of such tobacco to be so identified determined by the Director or his representative.

(2) Each warehouseman who is participating in the Commodity Credit Corporation price support program and who identifies resale tobacco with a "certified" basket ticket indicating that such tobacco by virtue of an executed Form MQ–79–1 (Flue-Cured) Dealers Certification—Resale Tobacco is of an acceptable variety, shall at the time the tobacco is weighed in have such tobacco covered by an executed Form MQ–79–1 unless the eligibility of such tobacco to be identified as being of an acceptable variety is determined by the Director or his representative.

(3) Each executed MQ–79–1 (Flue-Cured), Dealers Certification—Resale Tobacco, shall show the following information with respect to each lot of resale tobacco:

(i) Crop year.

(ii) Name and address of warehouse where the tobacco is being offered for sale.

(iii) Floor sheet number and date.

(iv) Date and signature of dealer and current address.

(v) Dealer's Record book number where the resale will be recorded.

(h) *Season report of warehouse business.* Each warehouseman shall furnish the ASC State office not later than thirty (30) days following the last sale day of the marketing season a report on MQ–80—Tobacco, Auction Warehouse Report, showing:

(1) For each dealer or buyer, as originally billed, the total pounds and gross amount of tobacco purchased at auction and resold at auction on the warehouse floor.

(2) The total pounds and gross amount of "loan tobacco" billed to any association.

(3) The total pounds and gross amount of all leaf account purchases at auction on the warehouseman's own floor and the total pounds and gross amount of all leaf account resales at auction on the warehouseman's own floor including resales of tobacco from Buyers Corrections Account.

(4) The total pounds and gross amount of all resales at auction on the warehouseman's own floor of floor sweepings which accumulated on the warehouseman's own floor; and such report of resales of floor sweepings shall not include leaf account tobacco as the terms floor sweepings and leaf account are defined under § 725.1131.

(5) The total pounds and gross amount of all tobacco purchased directly from farmers other than at public auction through a warehouse.

(6) The total pounds and gross amount of all purchases and resales of all leaf account tobacco at other warehouses and purchases from and resales to dealers.

(7) The total pounds and gross amount of resales of floor sweepings which accumulated on the warehouseman's own floor and sold at other warehouses or to dealers, and such report of resales of floor sweepings shall not include leaf account tobacco, as the terms floor sweepings and leaf account are defined under § 725.1131.

(8) The pounds and estimated value of all tobacco on hand at the time of filing the report and whether such tobacco represents leaf account tobacco, or floor sweepings which accumulates on the warehouseman's own floor.

(9) The sum of the debits and the sum of the credits, pounds and amounts, from the Buyers Corrections Account (§ 725.1153(a)(3)).

(i) *Report of penalties.* Each warehouseman shall make reports on MQ–81—Tobacco, Report of Penalties, showing for each sale of tobacco at auction subject to penalty:

(1) The name of the farm operator.

(2) The memorandum of sale number.

(3) The name of the county in which the farm is located.

(4) The farm serial number.

(5) The number of pounds sold.

(6) The applicable converted rate of penalty and

(7) The amount of penalty due on each such sale.

MQ–81—Tobacco shall be prepared for each week and forwarded together with remittance of the penalty due as shown thereon to the ASC State office not later than the end of the calendar week in which the tobacco became subject to penalty.

(j) *Report of resales.* Each warehouseman shall make reports on MQ–86—Tobacco, Report of Resales, showing for each resale of tobacco at auction on the warehouse floor:

(1) The warehouse bill number.

(2) The name on the warehouse bill.

(3) The name of the seller, or in the case of a resale for the warehouse, whether such resale represents leaf account tobacco, or floor sweepings, as these terms are defined under § 725.1131.

(4) The registration number and State of the person making the resale.

(5) The number of pounds sold, and

(6) The gross amount for the sale.

MQ–86—Tobacco shall be prepared for each sale day during which resales occur and such report forwarded to the ASC State office at the end of the sale day.

(k) *Field Assistant Report.* Each warehouseman shall keep such records that will enable him to report for each sale day on Form MQ–83—Tobacco, Field Assistant Report:

(1) The warehouse gross sales for the day, pounds and amount, as billed to buyers and as shown on warehouse check register, if shown thereon, and

(2) The total pounds and amount of leaf account tobacco purchased at auction on his own warehouse floor.

§ 725.1154 Dealer's record and reports.

Each dealer except as provided in § 725.1155 and any dealer or any other person as provided in paragraph (e) of this section shall keep the records and make the reports as provided by this section.

(a) *Report of dealer's name, address and registration number.* Each dealer shall properly execute and the field assistant shall detach and forward to the ASC State office "Receipt for Dealer's Record" contained in MQ–79—Tobacco which is issued to the dealer.

(b) *Record of marketing.* Each dealer shall keep such records as will enable him to furnish the ASC State office with respect to each lot of tobacco purchased by him the following information:

(1) The name of the warehouse through which the tobacco was purchased in the case of a warehouse sale; the name of the operator of the farm on which the tobacco was produced and the name of the seller in the case of a nonwarehouse sale, including the records and reports for farm scrap tobacco set forth in § 725.1153(a) (4), (5) and (c); and the name of the seller in the case of purchases directly from warehousemen or other dealers.

(2) Date of purchase.

(3) Number of pounds purchased.

(4) Gross purchase price.

(5) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer(s); and with respect to each lot of tobacco sold by him the following information:

(6) Name of the warehouse through which the tobacco was sold in the case of a warehouse sale, and the name of the purchaser if other than a warehouse sale.

(7) Date of sale.

(8) Number of pounds sold.

(9) Gross sale price.

(10) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer(s).

(11) In the event of a resale of tobacco bought by him and carried over from a crop produced prior to 1960, the fact that such tobacco was so bought and carried over.

(c) *Memorandum of sale and bill of nonwarehouse sale.* A bill of nonwarehouse sale and a memorandum of sale from the 1960 marketing card issued for the farm on which the tobacco was produced shall be obtained by a dealer to cover each purchase of tobacco directly from a producer other than at auction through a warehouse, including farm scrap tobacco obtained as set forth in § 725.1153 (a) (4), (5) and (c). No memorandum of sale shall be issued identifying such purchase unless the bill of nonwarehouse sale on the reverse

side of the memorandum of sale has been executed.

(d) *Record and report of purchases and resales.* Each dealer shall keep a record and make reports on MQ–79—Tobacco, Dealer's Record, showing all purchases and resales of tobacco made by or for the dealer and, in the event of purchase or resale of tobacco bought from a crop produced prior to 1960, the fact that such tobacco was bought by him and carried over from a crop produced prior to 1960.

MQ–79—Tobacco shall be prepared and a copy forwarded to the ASC State office not later than the end of the calendar week in which such tobacco was purchased or resold, including the original copy of any spoiled reports: *Provided,* That if tobacco is purchased prior to the opening of the local auction market an MQ–79—Tobacco shall be prepared and a copy forwarded to the ASC State office not later than the end of the calendar week which would include the first sale day of the local auction markets. A remittance for all penalties shown by the entries on MQ–79—Tobacco and on the memoranda of sale to be due shall be forwarded to the ASC State office with the original copy of MQ–79—Tobacco.

(e) *Identification of flue-cured resale tobacco as acceptable variety and reports on MQ–79–1 (Flue-Cured).* (1) Each dealer or any other person who offers for auction sale any resale flue-cured tobacco on a warehouse floor which is participating in the Commodity Credit Corporation price support program and on which floor eligible resale flue-cured tobacco is identified with a "certified" basket ticket, and who requests the warehouseman to identify his tobacco as being of an "acceptable variety" shall either (i) execute Form MQ–79–1 (Flue-Cured), Dealers Certification-Resale Tobacco, or (ii) have the eligibility of such tobacco to be so identified determined by the Director or his representative.

(2) Each executed MQ–79–1 (Flue-Cured), Dealers certification—Resale Tobacco, shall show the following information with respect to resale tobacco:

(i) Crop year.

(ii) Name and address of warehouse where the tobacco is being offered for sale.

(iii) Floor sheet number and date.

(iv) Date and signature of dealer and correct address.

(v) Dealer's record book number where the resale will be recorded.

(3) Each dealer or any other person who acquires acceptable variety tobacco in a manner which would make it ineligible for certification on Form MQ–79–1, or who has on hand both discount variety tobacco and acceptable variety tobacco and desires to dispose of acceptable variety tobacco prior to disposing of the discount variety tobacco, may apply in writing to the Director for a special authorization to have the acceptable variety tobacco certified when offered for auction sale.

(4) If any dealer fails to timely file Form MQ–79, Dealer's Record, or if there is substantial indication that a dealer has executed a false certification on Form MQ–79–1, the Director may notify such dealer and all auction warehouses participating in the Commodity Credit Corporation price support program that certification by such dealer on Form MQ–79–1 shall not be accepted for the purpose of identifying tobacco offered for auction sale by such dealer as being of acceptable variety until further notice.

(f) *Report to warehousemen for Buyers Corrections Account of tobacco received.* Notwithstanding the provisions of § 725.1155, any dealer, buyer or any other person who acquires tobacco from or through a warehouseman at an auction sale or otherwise, which is not invoiced to him or which is incorrectly invoiced to him by the warehouseman, shall furnish the warehouseman an invoice or an adjustment invoice correctly setting forth the pounds and dollars for which he has not been invoiced or for which he has been invoiced incorrectly.

§ 725.1155 Dealers exempt from regular records and reports.

Any dealer or buyer who does not purchase or otherwise acquire tobacco except at warehouse sales, or directly from dealers other than warehousemen, and who does not resell in the form in which tobacco ordinarily is sold by farmers more than 10 percent of such tobacco so purchased by him, except for reports under § 725.1154(e), shall not be subject to the other provisions of § 725.1154: *Provided, however,* That any such dealer or buyer who purchases tobacco at nonwarehouse sale, or from a warehouseman other than at warehouse sale shall be subject to the provisions of § 725.1154 with respect to such purchases.

§ 725.1156 Records and reports of truckers and persons redrying, prizing or stemming tobacco.

(a) Each person operating as a common carrier or private carrier who is engaged to any extent in the business of trucking or hauling tobacco for producers to a point where it may be marketed or otherwise disposed of in the form and in the condition in which it is usually marketed by producers shall keep such records as will enable him to furnish the ASC State office a report with respect to each lot of tobacco received by him showing:

(1) The name and address of the producer,

(2) The date of receipt of the tobacco,

(3) The number of pounds received, and

(4) The name and address of the person to whom it was delivered.

(b) Each person engaged to any extent in the business of redrying, prizing or stemming tobacco for producers shall keep such records as will enable him to furnish the Director a report showing:

(1) The information required above for truckers, and in addition,

(2) The purpose for which the tobacco was received,

(3) The amount of advance made by him on the tobacco, and

(4) The disposition of the tobacco.

§ 725.1157 Separate records and reports from persons engaged in more than one business.

Any person who is required to keep any record or make any report as a warehouseman, processor, dealer, trucker, or as a person engaged in the business of redrying, prizing or stemming tobacco for producers, and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 725.1158 Failure to keep records and make reports or making false report or record.

(a) *Misdemeanor provisions.* Except with respect to reports submitted on Form MQ–79–1, any warehouseman, processor, dealer, trucker, or persons engaged in the business of redrying, prizing, or stemming tobacco for producers, who fails to make any report or keep any record as required under §§ 725.1130 to 725.1161, or who makes any false report or record, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500; and any tobacco warehouseman or dealer who fails to remedy such violation by making a complete and accurate report or keeping a complete and accurate record as required under §§ 725.1130 to 725.1161 within fifteen days after notice to him of such violation shall be subject to an additional fine of $100 for each ten thousand pounds of tobacco, or fraction thereof, bought or sold by him after the date of such violation: *Provided,* That such fine shall not exceed $5,000; and notice of such violation shall be served upon the tobacco warehouseman or dealer by mailing the same to him by registered mail or by posting the same at an established place of business operated by him or both. Notice of any violation by a warehouseman, dealer or trucker shall be given by the State administrative officer and notice of violation by a person engaged in the business of redrying, prizing of stemming tobacco for producers shall be given by the Director.

(b) *Criminal law.* The penalties which may be imposed under subparagraph (a) of this paragraph are in addition to and not exclusive of any other remedies or penalties under existing law, including the provisions of U.S. Code, Title 18, sec. 371 relating to acts of conspiracy and U.S. Code, Title 18, sec. 1001 relating to acts of fraud.

§ 725.1159 Examination of records and reports.

For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report but not so furnished, any warehouseman, processor, dealer, trucker, or person engaged in the business of redrying, prizing or stemming tobacco for producers shall make available at one convenient place for examination by employees of the ASC State office, and by employees of the Compliance and Investigation Division, Audit Division, and of the

Tobacco Division of the Commodity Stabilization Service, United States Department of Agriculture, upon written request by the State administrative officer or Director, all such books, papers, records, basket tickets, floor sheets, buyer adjustment invoices, accounts, cancelled checks, check registers, check stubs, correspondence, contracts, documents, and memoranda as the State administrative officer or Director has reason to believe are relevant and are within the control of such person.

§ 725.1160 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under §§ 725.1130 to 725.1161 for the 1960–61 marketing year shall be kept by him until June 30, 1963, in the case of flue-cured tobacco and September 30, 1963, in the case of burley, fire-cured, dark air-cured and Virginia sun-cured tobacco. Records shall be kept for such longer period of time as may be requested in writing by the State administrative officer or the Director.

§ 725.1161 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of §§ 725.1130 to 725.1161 shall be kept confidential by all officers and employees of the United States Department of Agriculture and by all members of county and community committees and all ASC county office employees and only such data so reported or acquired as the Deputy Administrator deems relevant shall be disclosed by them and then only in a suit or administrative hearing under Title III of the act.

NOTE: The record keeping and reporting requirements of these regulations have been approved by and subsequent reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D.C., this 2d day of May 1960.

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

[F.R. Doc. 60-4111; Filed, May 5, 1960; 8:51 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER A—PROCEDURAL REGULATIONS

[Reg. Docket No. 198; Amdt. 406-13]

PART 406—CERTIFICATION PROCEDURES

Class III Medical Examinations and Certificates by Medical Examiners

Notice was given in Draft Release No. 59-2 (24 F.R. 2961) that it was proposed to amend Part 406 of the regulations of the Administrator by requiring all applicants for airman medical certificates to be examined by designated medical examiners. Interested persons were afforded opportunity to submit in writing, within thirty days after publication of the notice in the FEDERAL REGISTER on April 17, 1959, such data, views, or comments as they desired. Furthermore, after issuance of a Notice of Public Hearing (24 F.R. 9847 and 25 F.R. 122) a public hearing was held on February 11, 1960, in accordance with section 4(b) of the Administrative Procedure Act.

As pointed out in the draft release, the purpose of the amendment is to reestablish the previous practice that only designated medical examiners may give required airman medical examinations and issue medical certificates of any class. At present, only designated medical examiners may give the examinations for and issue Class I and Class II medical certificates, but examinations for Class III medical certificates may be given, and the certificates issued, by any "competent licensed physician," whether or not he has been designated by the Administrator as a medical examiner. "Competent licensed physician" by its terms means any person who is licensed to practice any part of the healing art in the state of his residence.

The medical certificates issued to this class of airmen have become progressively less meaningful and effective. Through studies conducted by the former Medical Division of the Civil Aeronautics Administration, it had been demonstrated that many Class III airmen are being examined and medically certificated by members of the healing art who, though licensed, are not generally recognized to be properly equipped and qualified to practice aviation medicine.

There is no effective way of exercising administrative control over non-designated medical examiners and there is no assurance that failures to apply the applicable standards will be discovered and corrected. Inevitably and as a consequence thereof, numerous applicants who, in fact, are unable to meet the prescribed standards have been issued medical certificates and have been permitted to exercise the privileges of airmen. A survey has revealed that of the Class III airmen examined by non-designated physicians, 84 percent of those who did not meet the medical standards of the Federal Aviation Agency nevertheless were given certificates by the examining physicians. In the light of the known consequence of the present policy, it appears that this is not in keeping with the intent of Congress in providing in section 314 of the Federal Aviation Act of 1958 for delegation of authority to qualified private persons to perform examinations and issue certificates.

The written views, opinions and comments from associations and private individuals and the oral presentations made at the hearing on February 11, 1960, have been carefully evaluated. Great weight was given to comments received from physicians and medical associations in deference to their professional qualifications which would permit them to assist in prescribing the most effective means by which adequate medical examinations of airmen could be conducted. The majority of individual doctors commenting approved the proposal, as did practically all the medical associations, including the American Medical Association, Aerospace Medical Association, the Flying Physicians Association, and the Civil Aviation Medical Association.

Opposition to the proposed amendment was received from the Aircraft Owners and Pilots Association, other groups, and private individuals. Their arguments appear to fall into two general categories. They contend that there is a lack of correlation between medical defects and accidents and that the proposal, if adopted, would result in great hardship and inconvenience to Class III airmen. In addition, it was charged that the family physician would, by this proposal, be barred from performing airman medical examinations. This charge is made solely by the Aircraft Owners and Pilots Association. No such concern is expressed by the American Medical Association whose membership includes almost all of the country's family physicians. On the contrary, the AMA has endorsed the plan.

Arguments which discount the significance of medical fitness in relation to flying fail to state the circumstances which make such arguments appear persuasive. No comprehensive study of such relationships in civil aviation has been made. There has been no routine medical investigation of civil aircraft accidents. It must therefore be assumed that such medical cause factors as may have been present went undetected. Support for this assumption is provided by the results of very recent investigations in which careful study has been made of the medical aspects of accidents. Evidence of physical incapacity as the primary accident cause has been uncovered in several of these investigations. The routine application of medical techniques in future investigations should provide data which establish more clearly the extent to which medical factors constitute primary or contributing causes. The lack of statistically significant numbers of accidents known to be due to medical deficiencies is, for the above reasons, not persuasive as an argument in opposition to the practice which this amendment would reestablish. In this connection the Agency has previously announced that it does not intend to be solely responsive to disaster in determining the need for action in regulatory matters.

It is clear that the public safety is directly threatened when the pilot of an aircraft is afflicted by a condition likely to produce sudden incapacity or which interferes with his abilities to perform with safety those duties necessary in the piloting of aircraft. The threat involves occupants on the ground as well as those of the aircraft, as demonstrated by several recent light plane accidents. The unindoctrinated physician cannot be expected to appreciate fully the air safety implications of many of the medical defects ordinarily compatible with the performance of other, non-flying, types of activity. As a consequence, per-

fectly competent physicians have issued certificates to airmen with coronary heart disease, diabetes requiring insulin, potentially recurrent mental illness. These are conditions which medical specialists, who have carefully studied the involved safety implications, consider incompatible with safe flying. In the absence of a procedure which would permit adequate direction and supervision over the performance of examinations and issuance of medical certificates, it can be expected that airmen who do not meet the medical requirements will continue to receive certificates.

The Federal Aviation Act of 1958, enacted by Congress, directs the Administrator to investigate and determine that an airman applicant is physically able to perform the duties pertaining to the position for which an airman certificate is sought. The Administrator remains responsible for this determination even though it is made by someone else in his name. That this responsibility be satisfactorily discharged requires the Agency to be in a position to exercise administrative direction and supervision over those persons who are acting for it. As indicated above, the technical competence of examining physicians (as established by licensure) has not by itself assured the necessary responsiveness to the Agency's statutory responsibilities. The amendment adopted here is intended to assure a procedure by which the Administrator is able to provide for the necessary administrative direction and supervision in order to carry out his statutory function of properly certificating Class III airmen.

Airmen holding Class III medical certificates are required to be reexamined only each 24 calendar months. There are at present some 2,000 physicians who have been designated for the purpose of examining and issuing medical certificates to airmen. Compared to the combined overall population of licensed practitioners of the healing art, including medical doctors, osteopathic doctors, optometrists, chiropractors, naturopaths, etc., who are now authorized to examine Class III airmen, the designated examiner group is quantitatively small. This lends apparent validity to the contention of inconvenience. However, examiners now designated, and to whom all Class I and Class II airmen are required to report for examination, now examine two-thirds of all active civil pilots. In addition to examining all Class I and Class II airmen, existing designated examiners examine more than 25 percent of active Class III airmen who voluntarily select such examiners.

Medical examiners are physicians in private practice. Examination of airmen for certificates constitutes only a small portion of their professional work. As a consequence, an increase of 50 percent in the numbers of airmen who would be required, by this amendment, to be examined by designated examiners would not constitute an unmanageable addition to their workload and would, therefore, not be expected to affect the availability of an examiner's time for this purpose. Inconvenience to airman applicants would not be expected simply as a consequence of the increased number of applicants to be examined.

Concerning the accessibility of examiners by virtue of their geographic distribution, the Agency has made several comprehensive surveys within the past two years to determine the adequacy of distribution of examiners in relation to areas of general aviation activity. It is apparent that, with few exceptions, the location of examiners is such that there will be minimum inconvenience to Class III airmen in reporting to the offices of designated examiners. An accelerated program for the selection of additional examiners continues which will provide even more complete geographic coverage. Particular attention is given to areas where the need is most apparent.

The charge that family physicians would be excluded as a consequence of adoption of this amendment is false. Many family physicians have heretofore been designated as examiners. The Agency will welcome the application of any family physician who wishes to join us in our efforts to promote air safety. Examiners now designated and those who will be designated in the future will be given courses of training to ensure the most effective dissemination of up-to-date knowledge of aviation medicine concepts and procedures.

Aviation medical examiners, as representatives of the Agency, assume certain responsibilities directly related to the Agency's safety programs. They serve in their communities as the federal government's safety representative where medical matters are concerned. They have public responsibility to ensure that only those applicants physically and mentally able to perform safely are permitted to exercise the privileges of airmen.

In order to discharge properly the duties associated with these responsibilities, examiners must maintain a detailed knowledge and understanding of the subject matter of a manual of instructions, published standards, and periodic directives issued by the Agency. They must maintain familiarity with general medical knowledge applicable to aviation. In addition, they must possess the equipment and facilities necessary to carry out the prescribed examinations. This ordinarily requires that the physician acquire a minimum amount of equipment in addition to that which he would need for the ordinary practice of medicine.

Prior to designation, an examiner is required to show the extent of his medical training and experience and that he is in good standing with his local medical society. In the selection and retention of examiners, due consideration is given to the Agency's desire that its representatives be professionally qualified physicians who enjoy the fullest respect of their associates and members of the public whom they serve in the name of the Administrator.

In consideration of the foregoing, Part 406 of the regulations of the Administrator (14 CFR Part 406) is hereby amended as follows:

1. By amending § 406.1 by adding a new paragraph (e) to contain the definition of a medical examiner to read as follows:

(e) "Aviation medical examiner" shall mean a licensed physician designated by the Administrator to perform appropriate medical examinations and to issue medical certificates prescribed by the Civil Air Regulations.

2. By amending § 406.11(b) by striking the first sentence and substituting in lieu thereof the following: "A medical examination where required will be given by an aviation medical examiner as indicated in this subpart."

3. By amending § 406.12(a)(2) to read as follows:

(2) *Examination.* An examination for this certificate will be given by an aviation medical examiner specifically designated for this purpose. A list of these aviation medical examiners in any area may be obtained by addressing a request to the Regional Manager of the region in which the area is located.

4. By amending § 406.12(b)(2) to read as follows:

(2) *Examination.* An examination for this certificate will be given by an aviation medical examiner. A list of the aviation medical examiners in any area may be obtained by addressing a request to the Regional Manager of the region in which the area is located.

5. By amending § 406.12(c)(2) to read as follows:

(2) *Examination.* An examination for this certificate will be given by an aviation medical examiner. A list of the aviation medical examiners in any area may be obtained by addressing a request to the Regional Manager of the region in which the area is located.

(Secs. 313(a), 314(a), 601, 602, 72 Stat. 752, 754, 775, 776, 49 U.S.C. 1354(a), 1355(a), 1421, 1422)

This amendment shall become effective on June 15, 1960.

Issued in Washington, D.C., on May 3, 1960.

JAMES T. PYLE,
Acting Administrator.

[F.R. Doc. 60-4148; Filed, May 5, 1960; 8:52 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 59-KC-47]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

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

Revocation of Federal Airway, Associated Control Areas and Reporting Points

On March 1, 1960, a notice of proposed rule making was published in the FED-

ERAL REGISTER (25 F.R. 1802) stating that the Federal Aviation Agency was proposing to revoke Blue Federal airway No. 6 in its entirety, together with its associated control areas and designated reporting points.

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.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), and for the reasons stated in the notice, Parts 600 (24 F.R. 10487) and 601 (24 F.R. 10530) are amended as follows:

1. Section 600.606 *Blue Federal airway No. 6 (Bangor, Mich., to Muskegon, Mich.)* is revoked.

2. Section 601.606 *Blue Federal airway No. 6 control areas (Bangor, Mich., to Muskegon, Mich.)* is revoked.

3. Section 601.4606 *Blue Federal airway No. 6 (Bangor, Mich., to Muskegon, Mich.)* is revoked.

These amendments shall become effective 0001 e.s.t., June 30, 1960.

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

Issued in Washington, D.C., on April 29, 1960.

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

[F.R. Doc. 60-4066; Filed, May 5, 1960; 8:45 a.m.]

[Airspace Docket No. 59-FW-112]

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

Revocation of Coded Jet Route

On March 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 1805) stating that the Federal Aviation Agency proposed to revoke L/MF jet route No. 41 in its entirety.

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.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, Part 602 (14 CFR, 1958 Supp., Part 602) is amended as follows:

Section 602.141 *L/MF jet route No. 41 (Miami, Fla., to Omaha, Nebr.)* is revoked.

This amendment shall become effective 0001 e.s.t., June 30, 1960.

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

Issued in Washington, D.C., on April 29, 1960.

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

[F.R. Doc. 60-4067; Filed, May 5, 1960; 8:45 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 55118]

PART 14—APPRAISEMENT

PART 16—LIQUIDATION

Miscellaneous Amendments

In order that the regulations under the Antidumping Act of 1921, as amended (19 U.S.C. 160–173), may conform with amendments of the act contained in Public Law 85-630, and to provide certain administrative improvements, §§ 14.6 through 14.13, 16.21, and 16.22 are amended to read as follows:

§ 14.6 Suspected dumping.

(a) If any appraiser or other principal customs officer has knowledge of any grounds for a reason to believe or suspect that any merchandise is being, or is likely to be, imported into the United States at a purchase price or exporter's sales price less than the foreign market value (or, in the absence of such value, than the constructed value), as contemplated by section 201(b), Antidumping Act, 1921, as amended [14] (19 U.S.C. 160(b)), or at less than its "fair value" as that term is defined in § 14.7, he shall communicate his belief or suspicion promptly to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as required in paragraph (b) of this section, if in the possession of the appraiser or other officer or readily available to him.

(b) Any person outside the Customs Service who has reason to believe or suspect that merchandise is being, or is likely to be, imported into the United States under such circumstances as to bring it within the purview of the Antidumping Act, 1921, as amended,[14a] may communicate his belief or suspicion and the reasons therefor in writing to any appraiser of merchandise or the Commissioner of Customs. Every such communication shall contain or be accompanied by the following:

(1) A detailed description or sample of the merchandise; the name of the country from which it is being, or is likely to be, imported; and the ports or probable ports of importation into the United States. If no sample is furnished, the appraiser concerned in appropriate cases may call upon the person who furnished the information to furnish samples of the imported and competitive domestic articles, or either.

(2) Such detailed data as to values and prices as is reasonably available to the person furnishing the information and is relied upon by him to support his belief or suspicion, including information as to any differences between the foreign market value or constructed value and the import purchase price or exporter's sales price which may be accounted for by any difference in taxes, discounts, incidental costs such as those for packing or freight, or other items.

(3) Such information as is reasonably available to the person furnishing the information as to the total value and volume of domestic production of the merchandise in question.

(c) If any information filed with an appraiser or the Commissioner pursuant to paragraph (b) of this section does not conform with the requirements of that paragraph, the communication shall be returned promptly to the person who submitted it with detailed written advice as to the respects in which it does not conform. If such information filed with an appraiser is found to comply with the requirements, it shall be transmitted by the appraiser within 10 days to the Commissioner of Customs, together with all pertinent additional information obtainable by the appraiser. Before making such transmittal, or as soon thereafter as possible, the appraiser shall make such inquiry regarding the matter among importers, domestic producers and distributors, or others as he may deem appropriate and report the results to the Commissioner together with his comments thereon.

(d)(1) Upon receipt pursuant to paragraph (a), (b), or (c) of this section of information in proper form, the Commissioner will proceed promptly to decide whether or not reasonable grounds exist to believe or suspect that the merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value). To assist him in making such decision the Commissioner, in his discretion, may conduct a brief preliminary investigation into such matters, in addition to the invoice or other papers or information presented to him, as he may deem necessary.

(2) If the Commissioner decides, after such preliminary investigation, if any, that reasonable grounds do exist to believe or suspect that the merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value) he will thereafter proceed, by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by § 14.8(a).

(3) If the Commissioner decides, after such preliminary investigation, if any, that reasonable grounds do not exist to believe or suspect that the merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value), he will thereafter

(i) Proceed, by a full-scale investigation, or otherwise to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by § 14.8(a), or

(ii) Recommend to the Secretary that a full-scale investigation is not warranted by the facts of the case and that the case be closed by a finding of no sales at less than fair value.

(e) If the Commissioner determines pursuant to paragraph (d)(1) of this section, or in the course of an investigation under paragraph (d)(3)(i) of this section, that there are reasonable grounds to believe or suspect that any merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value) under the Antidumping Act, he shall publish notice of that fact in the FEDERAL REGISTER, furnishing an adequate description of the merchandise and the name of each country of exportation, and shall advise all appraisers of his action and of the date when the question of dumping was raised by or presented to the Secretary or his delegate. Upon receipt of such advice, the appraisers shall proceed in accordance with the pertinent provisions of § 14.9.

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173)

§ 14.7 Fair value.

(a) *Definition.*[15] For the purposes of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the fair value of imported merchandise shall be determined as follows:

(1) *Fair value based on price in country of exportation—the usual test.* Merchandise imported into the United States will ordinarily be considered to have been sold, or to be likely to be sold, at less than fair value if the purchase price or exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3)) is sold for consumption in the country of exportation on or about the date of purchase or agreement to purchase, of the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(2) *Fair value based on sales for exportation to countries other than the United States.* If, however, it is demonstrated that during a representative period the quantity of such or similar merchandise sold for consumption in the country of exportation is so small, in relation to the quantity sold for exportation to countries other than the United States, as to be an inadequate basis for comparison, then merchandise imported into the United States will ordinarily be deemed to have been sold, and to be likely to be sold, at less than fair value if the purchase price or the exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3))) is sold for exportation to countries other than the United States on or about the date of purchase or agreement to purchase of the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(3) *Fair value based on constructed value.* If the information available is deemed by the Secretary insufficient or inadequate for a determination under subparagraph (1) or (2) of this paragraph, he will determine fair value on the basis of the constructed value as defined in section 206 of the Antidumping Act, 1921, as amended (19 U.S.C. 165).

(b) *Calculation of fair value.* In calculating fair value under section 201(a), Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the following criteria shall be applicable:

(1) *Quantities.* In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for differences in quantities if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. In determining the question of allowances for differences in quantity, consideration will be given, among other things, to the practice of the industry in the country of exportation with respect to affording in the home market (or third country markets, where sales to third countries are the basis for comparison) discounts for quantity sales which are freely available to those who purchase in the ordinary course of trade. Where sales are not made in the home market (or third country markets, where applicable) in quantities comparable to the quantities sold in the United States, consideration may also be given to the practice of the industry in other countries (including the United States) with respect to affording discounts for quantity sales which are freely available to those who purchase in the ordinary course of trade.

(2) *Circumstances of sale.* (i) In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences.

(ii) Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a reasonably direct relationship to the sales which are under consideration. Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances will also generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a reasonably direct relationship to the sales which are under consideration, allowances generally will not be made for differences in research and development costs, production costs, and advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser; provided that reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, whichever is less.

(iii) In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, where appropriate, may also consider the cost of such differences to the seller, as contributing to an estimate of market value.

(3) *Similar merchandise.* In comparing the purchase price or exporter's sales price, as the case may be, with the selling price in the home market, or for exportation to countries other than the United States, in the case of similar merchandise described in subdivisions (C), (D), (E), or (F) of section 212(3), Antidumping Act, 1921, as amended (19 U.S.C. 170a(3)), due allowance shall be made for differences in cost of manufacture, if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences.

(4) *Offering price.* In the determination of fair value, offers will be considered in the absence of sales.

(5) *Sales agency.* If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207 of the Antidumping Act, 1921, as amended (19 U.S.C. 166), the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in the determination of fair value.

(6) *Fictitious sales.* In the determination of fair value, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

(7) *Sales at varying prices.* Where the prices in the sales which are being examined for a determination of fair value vary (after allowances provided for in subparagraphs (1), (2), and (3)

of this paragraph), determination of fair value will take into account the prices of a preponderance of the merchandise thus sold or weighted averages of the prices of the merchandise thus sold.

(8) *Quantities involved and differences in price.* Merchandise will not be deemed to have been sold at less than fair value unless the quantity involved in the sale or sales to the United States, or the difference between the purchase price or exporter's sales price, as the case may be, and the fair value, is more than insignificant.

(Sec. 407, 42 Stat. 18; 19 U.S.C. 173)

§ 14.8 Determination of fact or likelihood of sales at less than fair value; determination of injury; finding of dumping.

(a) Upon receipt from the Commissioner of Customs of the information referred to in § 14.6(d), the Secretary of the Treasury will proceed as promptly as possible to determine whether the merchandise in question is in fact being, or is likely to be, sold in the United States or elsewhere at less than its fair value. If the determination is affirmative, the Secretary will advise the United States Tariff Commission accordingly.

(b) If the Tariff Commission determines that there is, or is likely to be, the injury contemplated by the statute, the Secretary of the Treasury will make the finding contemplated by section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), with respect to the involved merchandise.

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173)

§ 14.9 Action by the appraiser.

(a) Upon receipt of advice from the Commissioner of Customs pursuant to § 14.6(e), the appraiser shall withhold appraisement as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than 120 days before the question of dumping was raised by or presented to the Secretary of the Treasury or his delegate and shall notify the collector and importer immediately of each lot of merchandise with respect to which appraisement is so withheld. Upon advice of a finding made in accordance with § 14.8(b), the appraiser shall give immediate notice thereof to the collector and the importer when any shipment subject thereto is imported after the date of the finding and information is not on hand for completion of appraisement of such shipment. Customs Form 6459 shall be used to notify the collector and importer whenever appraisement is withheld under this paragraph.

(b) If, before a finding of dumping has been made, or before a case has been closed without a finding of dumping, the appraiser is satisfied by information furnished by the importer or otherwise that the purchase price or exporter's sales price, in respect of any shipment, is not less than foreign market value (or, in the absence of such value, than the constructed value), he shall so advise the Commissioner and request authorization to proceed with his appraisement of that shipment in the usual manner.

(c) If a finding of dumping has been made, the appraiser shall require the importer or his agent to file a certificate of the importer on the appropriate one of the following forms. A separate certificate shall be required for each shipment.

Form 1.

NONEXPORTER'S CERTIFICATE

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__
Re: Entry No. _____, dated _____, 19__.
Import carrier: _____. Arrived _____, 19__.

I certify that I am not the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry. I further certify that the merchandise was purchased for importation by _____ on _____, 19__, and that the purchase price is _____.

(Signed) _____

Form 2.

EXPORTER'S CERTIFICATE WHEN SALES PRICE IS KNOWN

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__
Re: Entry No. _____, dated _____, 19__.
Import carrier: _____. Arrived _____, 19__.

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry; that the merchandise is sold or agreed to be sold at the price stated in the attached statement; and that, if any of such merchandise is actually sold at any price different from the price stated therefor in the attached statement, I will immediately notify the appraiser of all the circumstances.

The merchandise was acquired by me in the following manner:

_____

and has been sold or agreed to be sold to _____

(Name and address)

at _____.

(Price)

(Signed) _____

Form 3

EXPORTER'S CERTIFICATE WHEN SALES PRICE IS NOT KNOWN

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__
Re: Entry No. _____, dated _____, 19__.
Import carrier: _____. Arrived _____, 19__.

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry, and that I have no knowledge as to any price at which such merchandise will be sold in the United States. I hereby agree that I will keep a record of the sales and will furnish the appraiser within 30 days after the sale of any of such merchandise a statement of each selling price. I further agree that, if any of the merchandise has not been sold before the expiration of 6 months from the date of entry, I will so report to the appraiser upon such expiration date.

The merchandise was acquired by me in the following manner:

_____

(Signed) _____

Form 4

EXPORTER'S CERTIFICATE WHEN MERCHANDISE IS NOT, AND WILL NOT BE, SOLD

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__
Re: Entry No. _____, dated _____, 19__.
Import carrier: _____. Arrived _____, 19__.

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry, and that such merchandise has not been, and will not be, sold in the United States for the following reason: _____

(Signed) _____

(d) If an unqualified certificate on Form 4 is filed and the appraiser is satisfied that no evidence can be obtained to contradict it, he shall notify the collector promptly that the shipment will be appraised without regard to the Antidumping Act and proceed to appraise the merchandise in the usual manner.

(e) If the importer fails to file an appropriate certificate within 30 days following notification by the appraiser that a certificate is required under paragraph (c) of this section, the appraiser shall proceed upon the basis of the best information available.

(Secs. 201, 202, 208, 407, 42 Stat. 11, as amended, 14, 18; sec. 486, 46 Stat. 725, as amended; 19 U.S.C. 160, 161, 167, 173, 1486)

§ 14.10 Release of merchandise; bond.

(a) When the collector has received a notice of withheld appraisement provided for in § 14.9(a), or when he has been advised of a finding provided for in § 14.8(b), and so long as such notice or finding is in effect, he shall withhold release of any merchandise of a class or kind covered by such notice or finding which is then in his custody or is thereafter imported, unless an appropriate bond is filed or is on file, as specified hereafter in this section, or unless he is advised by the appraiser that the merchandise covered by a specified entry will be appraised without regard to the Antidumping Act.

(b) If the merchandise is of a class or kind covered by a notice of withheld appraisement provided for in § 14.9(a) or by a finding provided for in § 14.8(b), a single consumption entry bond covering the shipment, in addition to any other required bond, shall be furnished by the person making the entry or withdrawal, unless

(1) A bond is required under paragraph (c) of this section, or

(2) In cases in which there is no such requirement the collector is satisfied that the bond under which the entry was filed is sufficient. The penalty of any additional bond required under this paragraph shall be in such amount as will assure payment of any special duty that may accrue by reason of the Antidumping Act, but in no case less than $100.

(c) If the merchandise is of a class or kind covered by a finding provided for in § 14.8(b) and the importer or his agent has filed a certificate on Form 3 (§ 14.9(c)), the bond required by section 208 of the Antidumping Act, 1921, as

amended (19 U.S.C. 167), shall be on customs Form 7591. In such case, a separate bond shall be required for each entry or withdrawal, and such bond shall be in addition to any other bond required by law or regulation. The record of sales required under the conditions of the bond on customs Form 7591 shall identify the entry covering the merchandise and show the name and address of each purchaser, each selling price, and the date of each sale. The penalty of such bond shall be in an amount equal to the estimated value of the merchandise covered by the finding.

(Secs. 208, 407, 42 Stat. 14, 18; 19 U.S.C. 167, 173)

§ 14.11 Conversion of currencies.

In determining the existence and amount of any difference between the purchase price or exporter's sales price and the foreign market value (or, in the absence of such value, the constructed value) for the purposes of § 14.7, or of 201(b) or 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b), 161(a)), any necessary conversion of a foreign currency into its equivalent in United States currency shall be made in accordance with the provisions of section 522, Tariff Act of 1930, as amended (31 U.S.C. 372) and § 16.4 of this chapter, (a) as of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison, or (b) as of the date of exportation, if the exporter's sales price is an element of the comparison.

(Secs. 201, 202, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 161, 173)

§ 14.12 Modification or revocation of finding.

An application for the modification or revocation of any finding made as provided for in § 14.8(b) will receive due consideration if submitted in writing to the Commissioner of Customs together with detailed information concerning any change in circumstances or practice which has obtained for a substantial period of time, or other reasons, which the applicant believes will establish that the basis for the finding no longer exists with respect to all or any part of the merchandise covered thereby. Notice of intent to modify or revoke a finding will be published by the Secretary in the FEDERAL REGISTER. Comments received from interested parties within 30 days following date of publication will be given consideration.

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173)

§ 14.13 Publication of findings.

(a) Each determination made in accordance with § 14.8(a), whether such determination is in the affirmative or in the negative, and each finding made in accordance with § 14.8(b), will be published in the FEDERAL REGISTER, together with a statement of the reasons therefor. Findings made in accordance with § 14.8 (b) will be published also in a weekly issue of the Treasury Decisions.

(b) The following findings of dumping are currently in effect:

Merchandise	Country	T.D.	Modified by—
Hardboard	Sweden	53567	54168 54199 55006 55019 55115
Cast iron soil pipe, other than "American Pattern".	United Kingdom.	53934	----

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173)

Footnotes 14, 14a, and 15 are amended to read as follows:

[14] See footnote 14a.

[14a] SEC. 201. (a) Whenever the Secretary of the Treasury (hereinafter called the "Secretary") determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the United States Tariff Commission, and the said Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. The said Commission, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in this Act called a "finding") of his determination and the determination of the said Commission. For the purposes of this subsection, the said Commission shall be deemed to have made an affirmative determination if the Commissioners of the said Commission voting are evenly divided as to whether its determination should be in the affirmative or in the negative. The Secretary's finding shall include a description of the class or kind of merchandise to which it applies in such detail as he shall deem necessary for the guidance of customs officers.

(b) Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, the Secretary has reason to believe or suspect, from the invoice or other papers or from information presented to him or to any person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, than the constructed value), he shall forthwith publish notice of that fact in the FEDERAL REGISTER and shall authorize, under such regulations as he may prescribe, the withholding of appraisement reports as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping has been raised by or presented to him or any person to whom authority under this section has been delegated, until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subdivision (a) in regard to such merchandise.

(c) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the United States Tariff Commission, upon making its determination under subsection (a) of this section, shall each publish such determination in the FEDERAL REGISTER, with a statement of the reasons therefor, whether such determination is in the affirmative or in the negative.

SEC. 202. (a) In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided for in section 201, entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping was raised by or presented to the Secretary or any person to whom authority under section 201 has been delegated, and as to which no appraisement report has been made before such finding has been so made public, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, than the constructed value) there shall be levied, collected, and paid, in addition to any other duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

(b) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the purchase price and the foreign market value (or that the fact that the purchase price is the same as the foreign market value) is wholly or partly due to—

(1) The fact that the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale for exportation to the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) Other differences in circumstances of sale, or

(3) The fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212(3) is used in determining foreign market value,

then due allowance shall be made therefor.

(c) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the exporter's sales price and the foreign market value (or that the fact that the exporter's sales price is the same as the foreign market value) is wholly or partly due to—

(1) The fact that the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) Other differences in circumstances of sale, or

(3) The fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212(3) is used in determining foreign market value,

then due allowance shall be made therefor.

SEC. 203. That for the purposes of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any additional costs, charges, and expenses,

and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and plus the amount, if not included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller, in respect to the manufacture, production or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

SEC. 204. That for the purpose of this title the exporter's sales price of imported merchandise shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less (1) the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commissions, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

SEC. 205. For the purposes of this title, the foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

SEC. 206. (a) For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

(1) The cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) An amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that (A) the amount for general expenses shall not be less than 10 per centum of the cost as defined in paragraph (1), and (B) the amount for profit shall not be less than 8 per centum of the sum of such general expenses and cost; and

(3) The cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

(b) For the purposes of this section, a transaction directly or indirectly between persons specified in any one of the paragraphs in subsection (c) of this section may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the paragraphs in subsection (c).

(c) The persons referred to in subsection (b) are:

(1) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(2) Any officer or director of an organization and such organization;

(3) Partners;

(4) Employer and employee;

(5) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

(6) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

SEC. 207. That for the purposes of this title the exporter of imported merchandise shall be the person by whom or for whose account the merchandise is imported into the United States:

(1) If such person is the agent or principal of the exporter, manufacturer, or producer; or

(2) If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer; or

(3) If the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such persons; or

(4) If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per centum or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 per centum or more of such power or control in the business of the exporter, manufacturer, or producer.

SEC. 208. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and delivery of which has not been made by the collector before such finding has been so made public, unless the person by whom or for whose account such merchandise is imported makes oath before the collector, under regulations prescribed by the Secretary, that he is not an exporter, or unless such person declares under oath at the time of entry, under regulations prescribed by the Secretary, the exporter's sales prices of such merchandise, it shall be unlawful for the collector to deliver the merchandise until such person has made oath before the collector, under regulations prescribed by the said Secretary, that the merchandise has not been sold or agreed to be sold by such person, and has given bond to the collector, under regulations prescribed by the Secretary, with sureties approved by the collector, in an amount equal to the estimated value of the merchandise, conditioned: (1) that he will report to the collector the exporter's sales price of the merchandise within 30 days after such merchandise has been sold or agreed to be sold in the United States; (2) that he will pay on demand from the collector the amount of special dumping duty, if any, imposed by this title upon such merchandise; and (3) that he will furnish to the collector such information as may be in his possession and as may be necessary for the ascertainment of such duty, and will keep such records as to the sale of such merchandise as the Secretary may by regulation prescribe.

SEC. 209. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and as to which the appraiser or person acting as appraiser has made no appraisement report to the collector before such finding has been so made public, it shall be the duty of each appraiser or person acting as appraiser, by all reasonable ways and means to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of constructed value to the contrary notwithstanding) and report to the collector the foreign market value or the constructed value, as the case may be, the purchase price, and the exporter's sales price, and any other facts which the Secretary may deem necessary for the purposes of this title.

SEC. 210. That for the purposes of this title the determination of the appraiser or person acting as appraiser as to the foreign market value or the constructed value, as the case may be, the purchase price, and the exporter's sales price, and the action of the collector in assessing special dumping duty,

shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; and the general appraisers, the United States Customs Court, and the Court of Customs and Patent Appeals shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of appeals and protests relating to customs duties under existing law.

SEC. 211. That the special dumping duty imposed by this title shall be treated in all respects as regular customs duties within the meaning of all laws relating to the drawback of customs duties.

SEC. 212. For the purposes of this title—

(1) The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(2) The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise under consideration, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise under consideration.

(3) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of this title can be satisfactorily made:

(A) The merchandise under consideration and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise under consideration.

(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise under consideration.

(C) Merchandise (i) produced in the same country and by the same person as the merchandise under consideration, (ii) like the merchandise under consideration in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise under consideration.

(D) Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.

(E) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his delegate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.

(F) Merchandise which satisfies all the requirements of subdivision (E) except that it was produced by another person.

(4) The term "usual wholesale quantities", in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

SEC. 213. That this title may be cited as the "Antidumping Act, 1921."

SEC. 406. That when used in Title II * * *—

The term "person" includes individuals, partnerships, corporations, and associations; and

The term "United States" includes all Territories and possessions subject to the jurisdiction of the United States, except the Virgin Islands, the islands of Guam and Tutuila, and the Canal Zone.

SEC. 407. That the Secretary shall make rules and regulations necessary for the enforcement of this Act. (Antidumping Act, 1921, as amended; 19 U.S.C. 160–173.)

[15] The definition of fair value does not in any way modify or affect definitions of foreign market value given in section 205 of the Antidumping Act, 1921, as amended (19 U.S.C. 164), or of constructed value given in section 206 (19 U.S.C. 165) or the application of a foreign market value (or, in the absence of such value, constructed value) as defined in the Antidumping Act, 1921, as amended, as a basis for determining whether or not to withhold appraisement under section 201(b) (19 U.S.C. 160(b)) or for imposition of duty under section 202 (19 U.S.C. 161).

An industry in the United States which considers that it is being injured by sales of merchandise at less than fair value will ordinarily have insufficient information on which to submit proof either of fair value as herein defined, or foreign market value or constructed value as defined in said sections 205 and 206 (19 U.S.C. 164 and 165). The industry may, however, submit, and appraisers will consider, such material as is available to it, including information indicating the market price for similar merchandise in the country of exportation and in any third countries in which merchandise of the producer complained of is known to be sold. Information submitted by an industry and information submitted by the foreign producer and others will be of value in assisting the Treasury to establish the basis for fair value, foreign market value, or constructed value.

Fair value is computed on the basis of sales for consumption in the country of exportation or for exportation otherwise than to the United States at or about the date of the purchase or agreement to purchase of the merchandise to be imported into the United States, or the date of exportation. However, in cases where it may be important to determine either the stability of the market or its trend, as well as to determine whether there has been a fictitious sale as described in § 14.7(b)(6) of these regulations, it will be helpful to the Secretary to have information as to sales made for consumption in the country of exportation or for exportation otherwise than to the United States over a significant period of time immediately preceding the date of purchase or agreement to purchase, or exportation.

EXAMPLES FOR PURPOSES OF ILLUSTRATION

A few examples of what would and what would not be considered sales at less than fair value are given below. Unless otherwise indicated, it is assumed that individual sales are in the same average quantities and that they are also made under the same circumstances of sale.

It must be understood that these examples of necessity oversimplify for purposes of illustration. Each actual case of alleged sales at less than fair value must be considered in the light of all relevant facts, and it may be seldom that cases will be presented for consideration which are as free of complications as are the cases cited in these examples. The tentative conclusions set forth below cannot, therefore, be considered as decisions which are binding upon the Secretary of the Treasury. They are in particular subject to the qualification that there may be other factors present, not here stated, or not sufficiently emphasized for the purposes of an actual case, which would lead to different or opposite results.

As is the case in respect of other laws administered in whole or in part by him, the Commissioner of Customs stands ready to answer specific inquiries arising under the Antidumping Act, 1921, as amended, which relate to contemplated transactions, to the best of his ability, notably those involving questions as to whether § 14.7(a) (1) or (2) of those regulations applies, and questions as to the method of computation which may be used in connection with § 14.7(b)(7) hereof.

Example 1. A foreign producer has made the following sales of a particular product over a representative period:

Sales for consumption in country of exportation	*Sales for exportation to countries other than the United States*	*Sales to the United States*
75,000 units @ $1.00	25,000 units @ $0.85	15,000 units @ $0.90

The quantity of sales of this product in the country of exportation, amounting to 75,000 units, is sufficiently large in relation to the total of 25,000 units sold for exportation to countries other than the United States to constitute an adequate basis for comparison with sales to the United States. (See § 14.7(a) (1) and (2) of these regulations.) The price for sale to the United States is less than the price in the country of exportation. The foreign producer is therefore selling in the United States at less than fair value.

Home market sales will form the basis of comparison whether or not they are restricted. This example concerns home market prices which are either free of restrictions or accompanied by restrictions that do not affect the value of the merchandise. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the home market price will be made. Third country prices, even though unrestricted, will not be resorted to in this set of circumstances.

Example 2. A foreign producer has made the following sales of a particular product:

Sales for consumption in country of exportation	*Sales for exportation to countries other than the United States*	*Sales to the United States*
25,000 units @ $0.95	75,000 units @ $0.90	15,000 units @ $0.90

The foreign producer can show that the quantity of sales of this product in the country of exportation, amounting to 25,000 units, is so small in relation to the total of 75,000 units sold for exportation to countries other than the United States, as to be an inadequate basis for comparison with sales to the United States. Determination of fair value will therefore be based on the selling price for exportation to countries other than the United States, pursuant to § 14.7(a)(2) of these regulations. In the absence of special circumstances, it would appear that the sales for exportation to the United States were not below fair value.

Third country sales will form the basis of comparison whether or not they are restricted. This example concerns third country sales which are either free of restrictions or accompanied by restrictions which do not affect the value of the merchandise. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the third country price will be made. Home market prices, even though unrestricted, will not be resorted to in this set of circumstances.

Example 3. A foreign producer has sold his merchandise for consumption in the country of exportation at or about the date of the sale or exportation to the United States at the following prices:

2,000 tons @ $32.80 ton.
1,000 tons @ $32.85 ton.
2,000 tons @ $33.00 ton.
1,000 tons @ $33.10 ton.

It is conceded that the price depends upon the bargaining of the parties rather than upon quantity purchased. Sales to the United States have been made by this supplier in the same average quantities at a uniform price of $32.90 per ton during the period. The difference in price between the producer's home market sales or any average thereof and his sales to the United States is so slight that it will not be regarded as more than insignificant unless unusual market conditions in the United States or the quantities involved as compared to United States production justify a contrary conclusion.

Example 4. A foreign producer makes all of his sales, other than those to the United States, for consumption in the country of exportation. The majority of the merchandise thus sold by him is sold at list prices, net. However, a discount of 5 percent is granted on sales of more than 500 tons. Sales to the United States are at list prices less 10 percent and have been in quantities of 10,000 tons or more. There have been no other sales by this producer in such quantities. However, if the 10 percent discount is determined to be reasonable in the particular trade under consideration for the quantities involved, and to be due to the differences in such quantities, it will be allowed in calculating home market price. Accordingly, the sales will not be considered to have been made at less than fair value.

The same result could obtain if the pricing pattern showed a differential because of quantity even though there were no list prices, or the list prices did not specify quantity discounts. This is shown in Example 5.

Example 5. A foreign producer has the following record of sales at or about the date of sale or exportation to the United States:

Sales for consumption in country of exportation	*Quantity for each sale*	*Sales to United States*	*Quantity for each sale*
200,000 lbs. @ $0.85	Units of 100 lbs.	100,000 lbs. @ $0.80	Units of 1,000 lbs.
100,000 lbs. @ $0.80	Units of 1,000 lbs.		

Although the preponderance of sales during the period (200,000 lbs.) was at a price of $0.85 as opposed to the United States price of $0.80, the lower United States price is justified on the ground that the home price pattern shows that to be the prevailing price for units of 1,000 pounds, which were the units involved in the United States sales. On the other hand, if the record of sales were to show 100,000 pounds sold for consumption in the country of exportation in units of 1,000 pounds at $0.85 instead of $0.80, the sales to the United States would be deemed to have been made at less than fair value.

Example 6. A foreign producer sells for consumption in the country of exportation at $12 a unit, regardless of quantities and regardless of whether the sales are to wholesalers or retailers. He sells to retail purchasers in the United States at $12 a unit and wholesale purchasers in the United States at $10 a unit, in each case regardless of quantities.

The circumstances in this case indicate that the foreign producer will be deemed to have been selling to wholesalers in the United States at less than fair value. Should, however, his record of sales for consumption in the country of exportation show that he sells, regardless of quantities, at $10 a unit to wholesalers and at $12 a unit to retailers, then, making allowances for the circumstances of sale, the sales in the United States will not be deemed to be sales at less than fair value.

Example 7. A foreign producer sells for consumption in the country of exportation at $105 a unit, delivered anywhere within the country of exportation. He has no f.o.b. factory price for home consumption. He sells to the United States f.o.b. factory for $100 a unit. Evidence indicates that it costs the producer on the average $0.50 a unit to deliver on home consumption sales.

Giving due consideration to the circumstances of sale, the sales to United States purchasers at $100 a unit will be deemed to be sales at less than fair value. Should the delivery cost on home consumption sales average $5 a unit instead of $0.50, the sales to United States purchasers at $100 a unit will not be deemed to be sales at less than fair value.

§ 16.21 Dumping duty; notice to importer.

(a) Special dumping duty shall be assessed on all importations of merchandise, whether dutiable or free, as to which the Secretary of the Treasury has made public a finding of dumping, entered or withdrawn from warehouse, for consumption, not more than 120 days before the question of dumping was raised by or presented to the Secretary or his delegate, provided the particular importation has not been appraised prior to the publication of such finding, and the appraiser reports that the purchase price or exporter's sales price is less than the foreign market value or constructed value, as the case may be.[10]

(b) Before dumping duty is assessed the collector shall notify the importer of the appraiser's report, as in the case of an advance in value. If the importer files an appeal for reappraisement, liquidation shall be suspended until the appeal for reappraisement is finally decided.

(c) If the necessary conditions are present, special dumping duty shall be assessed on samples imported for the purpose of taking orders and making sales in this country.

(Secs. 202, 209, 407, 42 Stat. 11, as amended, 15, 18; 19 U.S.C. 161, 168, 173)

§ 16.22 Method of computing dumping duty.

If it appears that the merchandise has been purchased by a person not the exporter within the meaning of section 207, Antidumping Act, 1921, as amended (19 U.S.C. 166), the special dumping duty shall equal the difference between the purchase price and the foreign market value on the date of purchase, or, if there is no foreign market value, between the purchase price and the constructed value, any foreign currency involved being converted into United States money as of the date of purchase or agreement to purchase. If it appears that the merchandise is imported by a person who is the exporter within the meaning of such section 207, the special dumping duty shall equal the difference between the exporter's sales price and the foreign market value on the date of exportation, or, if there is no foreign market value, between the exporter's sales price and the constructed value, any foreign currency involved being converted into United States money as of the date of exportation.

(Secs. 202, 207, 42 Stat. 11, as amended, 14, as amended; 19 U.S.C. 161, 166)

Footnote 16 is amended by substituting "14.6–14.13" for "14.7–14.17" at the end of the second paragraph, and by substituting the words "constructed value" for the words "cost of production" wherever these words appear in Footnote 16, which will thereby read as follows:

[10] See § 14.13 of this chapter.

For regulations regarding finding of dumping by the Secretary and procedure under the Antidumping Act, 1921, see §§ 14.6–14.13.

The fact that the importer has added on entry the difference between the purchase price or the exporter's sales price and the foreign market value or constructed value and the appraiser has approved the resulting entered value shall not prevent the assessment of the special dumping duty. However, a mere difference between the purchase price or exporter's sales price and the foreign market value or constructed value, without a finding by the Secretary of the Treasury, as above referred to, is not sufficient for the assessment of the special dumping duty.

A notice of proposed rule making setting forth certain proposed amendments to the Customs Regulations relating to procedures under the Antidumping Act, 1921, as amended, was published in the FEDERAL REGISTER on October 22, 1958 (23 F.R. 8127), and comments were invited to be submitted. Upon consideration of the data, views, and comments received, certain changes were made in the proposed amendments and notice thereof was published in the FEDERAL REGISTER on October 10, 1959 (24 F.R. 8265).

Due consideration now having been given to all comments, views, and other data received, the amendments as set forth above are hereby adopted, effective 60 days after the date of publication in the FEDERAL REGISTER.

[SEAL] D. B. STRUBINGER,
Acting Commissioner of Customs.

Approved: April 29, 1960.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60-4093; Filed, May 5, 1960; 8:49 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

PART 149—REGULATIONS ON MONTHLY RETURNS AND PAYMENT OF EXCISE TAXES

PART 160—TAXES ON CIRCULATION OF BANKS AND BANKERS AND ON NOTES PAID OUT

PART 306—PROCESSING TAX ON CERTAIN OILS

PART 312—TAX ON THE MANUFACTURE OF MANUFACTURED SUGAR

Supersedure of Parts

CROSS REFERENCE: For supersedure of these parts, see Title 26 (1954), Chapter I, Part 46, § 46.0-4, *infra.*

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6462]

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

Miscellaneous Amendments

In order to make certain clarifying changes in the Income Tax Regulations (26 CFR Part 1) and to delegate therein the functions provided by sections 144(b)(2) and 902(c) of the Internal Revenue Code of 1954, such regulations are amended as follows:

PARAGRAPH 1. Paragraph (b) of § 1.144–2 is amended to read as follows:

§ 1.144–2 Change of election to take, or not to take, the standard deduction.

* * * * *

(b) If the spouse of the taxpayer filed a separate return for any taxable year that corresponds, for the purpose of section 142(a), to the taxable year of the taxpayer, a change of election may not be made by the taxpayer unless: (1) The spouse makes a change of election in such separate return with respect to the standard deduction consistent with the change of election sought by the taxpayer, and (2) the taxpayer and his spouse file with the district director for the district in which the taxpayer applies for the change of election a consent in writing to the assessment, within such period of time as may be agreed upon with such district director, of any deficiency of either the taxpayer or his spouse to the extent attributable to such change of election, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

PAR. 2. Paragraph (b) of § 1.318–3 is amended by adding at the end thereof the following new sentences:

§ 1.318–3 Estates, trusts, and options.

* * * * *

(b) * * * The factors and methods prescribed in § 20.2031–7 of this chapter for use in ascertaining the value of an interest in property for estate tax purposes shall be used in determining a beneficiary's actuarial interest in a trust for purposes of this section. See § 20.2031–7 of this chapter for examples illustrating the use of these factors and methods.

§ 1.641(b)–3 [Amendment]

PAR. 3. The last sentence in paragraph (c)(2)(ii) of § 1.641(b)–3, as amended by Treasury Decision 6353, approved January 8, 1959, is further amended by striking "sections 661 and 622" and inserting in lieu thereof "sections 661 and 662".

PAR. 4. Paragraph (b) of § 1.874–1 is amended by adding at the end thereof the following new sentences:

§ 1.874–1 Allowances of deductions and credits to nonresident alien individuals.

* * * * *

(b) *Tax on gross income.* * * * Notwithstanding the requirement that a nonresident alien must file a return in order to receive the benefit of the deductions and credits allowed to him with respect to the income tax, he may, for purposes of determining the amount of tax to be withheld under section 1441 from remuneration paid for labor or personal services performed by him within the United States, receive the benefit of the deduction of one personal exemption provided in section 151 by filing a claim therefor with the withholding agent. See section 873(d), relating to the number of personal exemptions allowed nonresident aliens. The amount of the deduction for such personal exemption and the amount of the tax to be withheld under such circumstances shall be determined in accordance with paragraph (e)(2) of § 1.1441–3.

§ 1.902–1 [Amendment]

PAR. 5. Paragraph (a) of § 1.902–1 is amended by designating the present text as subparagraph (1) and adding the following new subparagraph (2):

(2) For purposes of section 902 and this section the accumulated profits of a foreign corporation consist of its gains, profits, or income in excess of the income, war profits, or excess profits taxes imposed on or with respect to such gains, profits, or income. The district director in whose district is filed the income tax return of the taxpayer claiming a credit by virtue of the provisions of section 902 shall have the power to determine from the accumulated profits of what year or years the dividends received were paid. In making such determination, any dividends which are paid in the first sixty days of any year shall be treated as having been paid from the accumulated profits of the preceding year or years (unless to the district director's satisfaction shown otherwise), and in other respects such dividends shall be treated as having been paid from the most recently accumulated profits.

PAR. 6. Paragraph (a)(1) of § 1.932–1 is amended by striking the first sentence and inserting in lieu thereof the following two sentences:

§ 1.932–1 Status of citizens of United States possessions.

(a) *General rule*—(1) *Definition and treatment.* A citizen of a possession of the United States (except Puerto Rico), who is not otherwise a citizen or resident of the United States, including only the States and the District of Columbia, is treated for the purpose of the tax as if he were a nonresident alien individual. For purposes of the tax imposed by chapter 2 of the Code, the preceding sentence shall have no application to citizens of the Virgin Islands.

Because this Treasury decision merely makes clarifying changes in the present regulations and delegates certain functions which are authorized by the Internal Revenue Code of 1954, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of such Act.

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

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: May 3, 1960.

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

[F.R. Doc. 60–4094; Filed, May 5, 1960; 8:49 a.m.]

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 6461]

PART 46—REGULATIONS RELATING TO MISCELLANEOUS EXCISE TAXES PAYABLE BY RETURN

Excise Taxes on Sugar, Coconut and Palm Oil, and Regulatory Tax on Circulation Other Than of National Banks

On February 4, 1960, notice of proposed rule making with respect to regulations under chapter 37 (excise taxes on sugar and coconut and palm oil) and subchapter E (regulatory tax on circulation other than of national banks) of chapter 39 of the Internal Revenue Code of 1954, was published in the FEDERAL REGISTER (25 F.R. 964). No objections to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as so published are hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 46.6065–1 is revised.

PAR. 2. Section 46.6091–1 is revised by making changes in paragraphs (b) and (c), redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: May 2, 1960.

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

The regulations adopted under chapter 37 and subchapter E of chapter 39 of the Internal Revenue Code of 1954 read as follows:

Subpart A—Introduction

Sec.
46.0–1 Introduction.
46.0–2 General definitions and use of terms.
46.0–3 Scope of regulations.
46.0–4 Extent to which regulations in this part supersede prior regulations.

Subpart B—Tax on Manufactured Sugar

46.4501 Statutory provisions; imposition of tax.
46.4501–1 Imposition of tax on manufactured sugar.
46.4501–2 Cross reference.
46.4502 Statutory provisions; definitions.
46.4503 Statutory provisions; exemptions for sugar manufactured for home consumption.

Sec.
46.4503–1 Exemption for sugar manufactured for home consumption.
46.4504 Statutory provisions; import tax imposed as tariff duty.
46.4504–1 Administration of import tax.

Subpart C—Processing Tax on Coconut and Palm Oil

46.4511 Statutory provisions; imposition of tax.
46.4511–1 Imposition of tax on coconut and palm oil.
46.4512 Statutory provisions; definition of first domestic processing.
46.4512–1 Definition of first domestic processing.
46.4513 Statutory provisions; exemptions.
46.4513–1 Exemptions for acids and salts previously taxed.
46.4513–2 Exemption from additional tax on coconut oil.
46.4513–3 Exemptions; processed for exportation.
46.4514 Statutory provisions; cross reference to general administrative provisions.

Subpart D—Tax on Circulation Other Than of National Banks

46.4881 Statutory provisions; imposition of tax.
46.4881–1 Imposition of tax on average circulation outstanding.
46.4881–2 Tax on circulation paid out.
46.4882 Statutory provisions; definition of bank or banker.
46.4883 Statutory provisions; exemptions.
46.4883–1 Exemptions on average circulation outstanding.
46.4884 Statutory provisions; returns and payment of tax.
46.4884–1 Returns and payments of tax; instructions for making returns.
46.4885 Statutory provisions; estimation of outstanding circulation in default of return.
46.4886 Statutory provisions; cross references.

Subpart E—Administrative Provisions

46.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.
46.6001–1 Records in general.
46.6001–2 Records relating to sugar tax.
46.6001–3 Records relating to coconut and palm oil.
46.6011(a) Statutory provisions; general requirement of return, statement, or list.
46.6011(a)–1 Returns.
46.6011(a)–2 Final returns.
46.6011(a)–3 Return provisions relating to the taxes on circulation other than of national banks.
46.6061 Statutory provisions; signing of returns and other documents.
46.6061–1 Signing of returns and other documents.
46.6065 Statutory provisions; verification of returns.
46.6065–1 Verification of returns.
46.6071(a) Statutory provisions; time for filing returns and other documents.
46.6071(a)–1 Time for filing returns.
46.6071(a)–2 Cross references.
46.6081(a) Statutory provisions; extension of time for filing returns.
46.6081(a)–1 Extension of time for filing returns.
46.6091 Statutory provisions; place for filing returns or other documents.
46.6091–1 Place for filing returns relating to sugar and coconut and palm oil.
46.6101 Statutory provisions; period covered by returns or other documents.
46.6101–1 Period covered by returns or other documents.
46.6151 Statutory provisions; time and place for paying tax shown on returns.
46.6151–1 Time and place for paying tax shown on return.
Sec.
46.6161(a)(1) Statutory provisions; extension of time for paying tax.
46.6161(a)(1)–1 Extension of time for paying tax shown on return.
46.6302(b) Statutory provisions; mode or time of collection.
46.6302(b)–1 Method of collection.
46.6302(c) Statutory provisions; mode or time of collection.
46.6302(c)–1 Use of Government depositaries.
46.6302(c)–2 Cross references.
46.6402(a) Statutory provisions; authority to make credits or refunds.
46.6402(a)–1 Authority to make credits or refunds.
46.6404(a) Statutory provisions; abatements.
46.6404(a)–1 Abatements.
46.6412(d) Statutory provisions; floor stocks refunds.
46.6417 Statutory provisions; credits and refunds of taxes on coconut and palm oil.
46.6417–1 Credit or refund of tax on coconut and palm oil sold to a State or political subdivision thereof.
46.6417–2 Refund of tax on coconut and palm oil exported.
46.6418 Statutory provisions; credits and refunds of the tax on sugar.
46.6418–1 Sugar used as livestock feed or for distillation of alcohol.
46.6418–2 Sugar exported.
46.6511(e) Statutory provisions; limitations on credit or refund.
46.6511(e)–1 Special rules applicable to manufactured sugar.
46.7240 Statutory provisions; officials investing or speculating in sugar.
46.7654 Statutory provisions; payment to Guam and American Samoa of proceeds of tax on coconut and palm oil.
46.7701 Statutory provisions; definitions.
46.7805 Statutory provisions; rules and regulations.
46.7805–1 Promulgation of regulations.

AUTHORITY: §§ 46.0–1 to 46.7805–1 issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

Subpart A—Introduction

§ 46.0–1 Introduction.

(a) *In general.* The regulations in this part (Part 46, Subchapter D, Chapter I, Title 26 (1954), Code of Federal Regulations) relate to (1) taxes on the manufacture of manufactured sugar and the first domestic processing of coconut and palm oil imposed by chapter 37 of the Internal Revenue Code of 1954, (2) the tax on circulation other than of national banks imposed by subchapter E of chapter 39 of the Internal Revenue Code of 1954, and (3) certain related administrative provisions of subtitle F of the Internal Revenue Code of 1954. References in these regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. References to a section or other provision of law are references to a section or other provision of the Internal Revenue Code, as amended, unless otherwise indicated.

(b) *Division of regulations.* The regulations in this part are divided into five subparts. Subpart A contains provisions relating to the arrangement and numbering of the sections of the regulations in this part, general definitions and use of terms, scope of the regulations, and the extent to which the regulations in this part supersede prior regulations. Subpart B relates to the excise tax on manufactured sugar. Subpart C relates to the excise tax on coconut and palm oil. Subpart D relates to the regulatory taxes on circulation other than of national banks. Subpart E relates to selected provisions of subtitle F (Procedure and Administration) of the Code which have special application to the taxes imposed by chapter 37 and subchapter E of chapter 39 of the Code.

(c) *Arrangement and numbering.* Each section of the regulations in subparts B through E is preceded by the section, subsection, or paragraph of the Internal Revenue Code which it interprets. The sections of the regulations can readily be distinguished from sections of the Code since—

(1) The sections of the regulations are printed in larger type;

(2) The sections of the regulations are preceded by a section symbol and the part number, arabic numeral 46 followed by a decimal point (§ 46.); and

(3) The sections of the Code are preceded by "Sec.". Each section of the regulations setting forth law or regulations is designated by a number composed of the part number followed by a decimal point (46.) and the number of the corresponding provision of the Internal Revenue Code. In the case of a section setting forth regulations, this designation is followed by a hyphen (-) and a number identifying such section.

§ 46.0–2 General definitions and use of terms.

As used in the regulations in this part, unless otherwise expressly indicated—

(a) The terms defined in the provisions of law contained in the regulations in this part shall have the meanings so assigned to them.

(b) The Internal Revenue Code of 1954 means the Act approved August 16, 1954 (68A Stat.), entitled "An Act to revise the internal revenue laws of the United States", as amended.

(c) District director means the district director of internal revenue. The term also includes the Director of International Operations in all cases where the authority to perform the functions which may be performed by a district director has been delegated to the Director of International Operations.

(d) Calendar quarter means a period of 3 calendar months ending on March 31, June 30, September 30, or December 31.

§ 46.0–3 Scope of regulations.

The regulations in this part relate to the taxes imposed on the manufacture of manufactured sugar, the first domestic processing of coconut and palm oil, and circulation other than of national banks and, except where otherwise specifically provided, have application to transactions occurring after December 31, 1954.

§ 46.0–4 Extent to which the regulations in this part supersede prior regulations.

The regulations in this part, with respect to the subject matter within the scope thereof, supersede the following regulations and such regulations as pre-

scribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 F.R. 5167, August 17, 1954):

Tax on the manufacture of manufactured sugar.	Regulations 99 (1937 Edition, as amended), 26 CFR (1939) Part 312.
Processing tax on certain oils.	Regulations 48 (1934 Edition, as amended), 26 CFR (1939) Part 306.
Taxes on circulation of banks and bankers and on notes paid out.	Regulations 1 (1917 Edition, as amended), 26 CFR (1939) Part 160, and the Treasury Decisions referred to therein.

The regulations in this part, with respect to the subject matter within the scope thereof, also supersede the Regulations on Monthly Returns and Payment of Excise Taxes (26 CFR Part 149).

Subpart B—Tax on Manufactured Sugar

§ 46.4501 Statutory provisions; imposition of tax.

SEC. 4501. *Imposition of tax*—(a) *General.* There is hereby imposed upon manufactured sugar manufactured in the United States, a tax, to be paid by the manufacturer at the following rates:

(1) On all manufactured sugar testing by the polariscope 92 sugar degrees, 0.465 cent per pound, and, for each additional sugar degree shown by the polariscopic test, 0.00875 cent per pound additional, and fractions of a degree in proportion;

(2) On all manufactured sugar testing by the polariscope less than 92 sugar degrees, 0.5144 cent per pound of the total sugars therein.

The manufacturer shall pay the tax with respect to manufactured sugar (1) which has been sold, or used in the production of other articles, by the manufacturer during the preceding month (if the tax has not already been paid) and (2) which has not been so sold or used within 12 months ending during the preceding calendar month, after it was manufactured (if the tax has not already been paid). For the purpose of determining whether sugar has been sold or used within 12 months after it was manufactured, sugar shall be considered to have been sold or used in the order in which it was manufactured.

(b) *Import tax.* In addition to any other tax or duty imposed by law, there is hereby imposed, under such regulations as the Secretary or his delegate shall prescribe, a tax upon articles imported or brought into the United States as follows:

(1) On all manufactured sugar testing by the polariscope 92 sugar degrees, 0.465 cent per pound, and, for each additional sugar degree shown by the polariscopic test, 0.00875 cent per pound additional, and fractions of a degree in proportion;

(2) On all manufactured sugar testing by the polariscope less than 92 sugar degrees, 0.5144 cent per pound of the total sugars therein;

(3) On all articles composed in chief value of manufactured sugar, 0.5144 cent per pound of the total sugars therein.

(c) *Termination of tax.* No tax shall be imposed under this subchapter on the manufacture, use, or importation of sugar or articles composed in chief value of sugar after June 30, 1961. Notwithstanding the provisions of subsection (a) or (b), no tax shall be imposed under this subchapter with respect to unsold sugar held by a manufacturer on June 30, 1961, or with respect to sugar or articles composed in chief value of sugar held in customs custody or control on such date.

[Sec. 4501 as amended by sec. 19, Act of May 28, 1956 (Pub. Law 545, 84th Cong., 70 Stat. 221); sec. 162(b), Excise Tax Technical Changes Act of 1958 (72 Stat. 1306)]

§ 46.4501–1 Imposition of tax on manufactured sugar.

(a) *Tax imposed.* Section 4501(a) imposes a tax upon manufactured sugar manufactured in the United States.

(b) *Rates of tax.* The rates of tax imposed upon the manufacture of manufactured sugar are:

(1) On all manufactured sugar testing by the polariscope 92 sugar degrees, 0.465 cent per pound, and, for each additional sugar degree shown by the polariscopic test, 0.00875 cent per pound additional, and fractions of a degree in proportion;

(2) On all manufactured sugar testing by the polariscope less than 92 sugar degrees, 0.5144 cent per pound of the total sugars therein.

(c) *Liability for tax.* The tax imposed by section 4501(a) is payable by the manufacturer.

(d) *Measure of tax.* The measure of the tax is the number of pounds of manufactured sugar produced by the manufacturer. In the case of a person considered under section 4502(1) to be a manufacturer, the measure of the tax is the number of pounds of manufactured sugar sold, or used in the production of other articles for sale, by such person.

(e) *When tax attaches.* (1) The tax imposed by section 4501(a) attaches upon the completion of that process of manufacturing the direct result of which is manufactured sugar.

(2) If a person acquires sugar to be manufactured into manufactured sugar, and, without further refining or improving it in quality, sells such sugar as manufactured sugar, or uses it as manufactured sugar in the production of other articles for sale, such person is liable, as a manufacturer, for the tax in respect of such sugar. See section 4502(1). The tax attaches at the time of the sale of such sugar or at the time of its use in the production of other articles for sale.

(f) *Computation of tax.* The amount of tax payable by a manufacturer in respect of a particular calendar month is the sum of the amounts obtained by multiplying—

(1) The number of pounds of manufactured sugar sold by the manufacturer, or used by him in the production of other articles for sale, in such calendar month by the applicable rate or rates of tax, and

(2) The number of pounds of manufactured sugar which has not been sold, or used in the production of other articles for sale, within 12 months from the month in which the sugar was manufactured by the applicable rate or rates of tax.

No liability is incurred with respect to manufactured sugar on which tax has already been paid. See subpart F for provisions relating to the reporting and payment of the tax.

(g) *Date of sale.* Manufactured sugar will be considered to have been sold during the month in which title thereto passes from the manufacturer to a purchaser. When title passes is dependent upon the intention of the parties, which is gathered from the contract of sale and the attendant circumstances. In the absence of expressed intention or other direct evidence, the legal rules of presumption followed in the jurisdiction where the sale is made govern in determining when title passes. Generally, for the purposes of payment of the tax, manufactured sugar will be considered to have been sold during the month in which it was delivered to the purchaser or to a carrier for delivery to the purchaser.

(h) *Twelve-month rule.* (1) If the manufactured sugar has not been sold, or used in the production of other articles for sale, within 12 months after the month in which manufactured, the tax with respect to such sugar must be reported on the return for the return period which includes the month in which such twelve-month period expires. For the purpose of determining whether manufactured sugar has been sold, or used in the production of other articles for sale, within 12 months after manufacture, the sugar shall be considered to have been sold or used in the order in which it was manufactured.

(2) The following examples illustrate the 12-month rule:

Example (1). On September 30, 1956, the manufacturer still had on hand, unsold, a quantity of manufactured sugar, manufactured by him in the month of September 1955. The tax with respect to such manufactured sugar is reportable on the return for the period which includes the month of September 1956.

Example (2). A quantity of manufactured sugar, manufactured in September 1955, was destroyed by fire in December 1955, prior to a sale by the manufacturer. The tax with respect to such sugar is reportable on the return for the period which includes the month of September 1956.

§ 46.4501–2 Cross reference.

For provisions relating to the tax imposed by section 4501(b), see § 46.4504–1.

§ 46.4502 Statutory provisions; definitions.

SEC. 4502. *Definitions.* For the purposes of this subchapter—

(1) *Manufacturer.* Any person who acquires any sugar which is to be manufactured into manufactured sugar but who, without further refining or otherwise improving it in quality, sells such sugar as manufactured sugar or uses such sugar as manufactured sugar in the production of other articles for sale shall be considered, for the purposes of section 4501(a), the manufacturer of manufactured sugar and, as such, liable for the tax under section 4501(a) with respect thereto.

(2) *Person.* The term "person" means an individual, partnership, corporation, or association.

(3) *Manufactured sugar.* The term "manufactured sugar" means any sugar derived from sugar beets or sugarcane, which is not to be, and which shall not be, further refined or otherwise improved in quality; except sugar in liquid form which contains nonsugar solids (excluding any foreign substance that may have been added or developed in the product) equal to more than 6 per centum of the total soluble solids and except also sirup of cane juice produced from sugarcane grown in continental United

States. The grades or types of sugar within the meaning of this definition shall include, but shall not be limited to, granulated sugar, lump sugar, cube sugar, powdered sugar, sugar in the form of blocks, cones, or molded shapes, confectioners' sugar, washed sugar, centrifugal sugar, clarified sugar, turbinado sugar, plantation white sugar, muscovado sugar, refiners' soft sugar, invert sugar mush, raw sugar, sirups, molasses, and sugar mixtures.

(4) *Total sugars.* The term "total sugars" means the total amount of the sucrose and of the reducing or invert sugars.

(5) *United States.* The term "United States" shall be deemed to include the States, the Territory of Hawaii, the District of Columbia, and Puerto Rico.

[Sec. 4502 as amended by sec. 20, Act of May 29, 1956 (Pub. Law 545, 84th Cong., 70 Stat. 221); sec. 22 (c), Alaska Omnibus Act (73 Stat. 146)]

§ 46.4503 Statutory provisions; exemptions for sugar manufactured for home consumption.

SEC. 4503. *Exemptions for sugar manufactured for home consumption.* No tax shall be required to be paid under section 4501(a) upon the manufacture of manufactured sugar by or for the producer of the sugar beets or sugarcane from which such manufactured sugar was derived, for consumption by the producer's own family, employees, or household.

§ 46.4503–1 Exemption for sugar manufactured for home consumption.

(a) *In general.* (1) No tax is required to be paid on the manufacture of manufactured sugar by, or for, the producer of the sugar beets or sugarcane from which such manufactured sugar was derived, for consumption by the producer's own family, employees, or household. The exemption provided by section 4503 is available only to individual producers; it does not apply if the producer of the sugar beets or sugarcane is a corporation. To support the exemption from tax under the provisions of section 4503 with respect to the quantity of manufactured sugar delivered by the manufacturer to the producer, the manufacturer shall obtain from each producer a certificate, in duplicate, on Form 2 (Sugar). The original certificate shall be filed with the return on which the exemption is claimed, and the duplicate copy retained as provided in § 46.6001–1. Such certificate on Form 2 (Sugar) shall be executed by the producer with respect to each lot of manufactured sugar delivered to him by the manufacturer.

(2) It is not necessary that the manufactured sugar received by the producer be manufactured from the identical sugar beets or sugarcane delivered. The manufacturer may deliver to the producer an amount of manufactured sugar not in excess of the amount which would have been manufactured from the particular quantity of sugar beets or sugarcane the producer has delivered to the manufacturer. All the manufactured sugar to be delivered to a producer for consumption by his family, employees, or household need not be delivered to him at one time, but a separate certificate on Form 2 (Sugar) must be obtained for each withdrawal.

(b) *Limitations.* (1) The deduction in the manufacturer's return in connection with this exemption is limited to manufactured sugar actually delivered to the producer during the period for which the return is made and shall not include any quantity of manufactured sugar which has not actually been delivered to the producer.

(2) The exemption under section 4503 applies only to that quantity of manufactured sugar required by the producer for consumption by his family, employees, or household. The manufacturer is required to exercise care in accepting certificates from producers to ascertain that no quantity of manufactured sugar in excess of that required for such use is delivered to the producer under this exemption.

§ 46.4504 Statutory provisions; import tax imposed as tariff duty.

SEC. 4504. *Import tax imposed as tariff duty.* The tax imposed by section 4501(b) shall be levied, assessed, collected, and paid in the same manner as a duty imposed by the Tariff Act of 1930 (46 Stat. 590; 19 U.S.C., chapter 4) and shall be treated for the purposes of all provisions of law relating to the customs revenue as a duty imposed by such act, except that for the purposes of sections 336 and 350 of such act (the so-called flexible tariff and trade agreements provisions; 46 Stat. 701; 48 Stat. 943; 19 U.S.C. 1336, 1351) such tax shall not be considered a duty or import restriction, and except that no preference with respect to such tax shall be accorded any articles imported or brought into the United States, and except that such tax may be subject to refunds as a tax under the provisions of section 6418(a).

[Sec. 4504 as amended by sec. 21(a), Act of May 29, 1956, (Pub. Law 545, 84th Cong., 70 Stat. 221)]

§ 46.4504–1 Administration of import tax.

The import tax imposed under section 4501(b) is administered by the Bureau of Customs under regulations issued by such Bureau.

Subpart C—Processing Tax on Coconut and Palm Oil

§ 46.4511 Statutory provisions; imposition of tax.

SEC. 4511. *Imposition of tax*—(a) *General.* There is hereby imposed upon the first domestic processing of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts, a tax of 3 cents per pound, to be paid by the processor.

(b) *Additional rate on coconut oil.* There is hereby imposed (in addition to the tax imposed by the preceding subsection) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing.

(c) *Termination of additional rate.* The tax imposed by subsection (b) shall not apply to any domestic processing after July 3, 1974.

Section 3 of the Act of August 30, 1957 (Public Law 85–235, 71 Stat. 516)

The tax imposed under section 4511(a) of the Internal Revenue Code of 1954 shall not apply with respect to the first domestic processing of coconut oil, fatty acids derived therefrom, or salts thereof, or of any combination or mixture solely because such combination or mixture contains a substantial quantity of such oil, fatty acids, or salts, during the period beginning with the first day of the first month which begins more than ten days after the date of the enactment of this Act and ending with the close of June 30, 1960.

Act of May 29, 1959 (Public Law 86–37, 73 Stat. 64)

The tax imposed under section 4511 (a) of the Internal Revenue Code of 1954 shall not apply with respect to the first domestic processing of palm oil, palm-kernel oil, fatty acids derived therefrom, or salts thereof, or of any combination or mixture solely because such combination or mixture contains a substantial quantity of one or more of such oils, fatty acids, or salts, during the period beginning with the first day of the first month which begins more than 10 days after the date of the enactment of this Act and ending with the close of June 30, 1960.

§ 46.4511–1 Imposition of tax on coconut and palm oil.

(a) *Nature and rate of the tax*—(1) *In general.* Section 4511(a) imposes an excise tax at the rate of 3 cents per pound upon the "first domestic processing" (as defined in section 4512) of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or sales have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts. In addition to the tax imposed by section 4511(a), section 4511(b) imposes an excise tax at the rate of 2 cents per pound upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which there has been no previous first domestic processing.

(2) *Suspension of tax*—(i) *Coconut oil.* Pursuant to the provisions of section 3 of the Act of August 30, 1957 (Public Law 85–235, 71 Stat. 516), the tax imposed by section 4511(a) with respect to the first domestic processing of coconut oil, fatty acids derived therefrom, or salts thereof, or any combination or mixture solely because such combination or mixture contains a substantial quantity of such oil, fatty acids, or salts does not apply during the period beginning October 1, 1957, and ending with the close of June 30, 1960.

(ii) *Palm oil.* Pursuant to the provisions of the Act of May 29, 1959 (Public Law 86–37, 73 Stat. 64), the tax imposed by section 4511(a) with respect to the first domestic processing of palm oil, palm-kernel oil, fatty acids derived therefrom, or salts thereof, or of any combination or mixture solely because such combination or mixture contains a substantial quantity of one or more of such oils, fatty acids, or salts does not apply during the period beginning July 1, 1959 and ending with the close of June 30, 1960.

(3) *Cross references.* For exemptions from the taxes imposed by section 4511, see section 4513 and §§ 46.4513–1 and 46.4513–2.

(b) *Liability for tax.* The taxes imposed by section 4511 are payable by the processor.

(c) *When the tax attaches.* Tax attaches at the time of the first domestic processing of the oil or oils.

(d) *Measure of the tax.* The measure of the tax is the quantity (in pounds) of "oil or oils" (defined in paragraph (e)) put into process. Accordingly, the amount of tax will be determined by the quantity of the oil or oils which, in any way, enters into the first domestic processing.

(e) *Definitions.* For purposes of the regulations in this part, unless otherwise expressly indicated:

(1) *Oil or oils.* "Oil or oils" means coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture, containing a substantial quantity of any one or more of such oils, fatty acids, or salts.

(2) *Combination or mixture.* "Combination or mixture" means an article in the formation of which any of the oils have been blended, conjoined, united, admixed, combined, amalgamated, embodied, or merged, either by chemical or mechanical means, with or without the presence of any other substance, and which retains a substantial portion (10 percent or more) of substantially all the essential components of any of the oil or oils entering into such combination or mixture. It includes articles in which any of the oil or oils have been subjected to preliminary processing outside the United States and in which substantially all of the components of such oil or oils are present, even though the oils themselves may no longer exist as such.

(3) *Fatty acids.* "Fatty acids" means those organic acids found in the free or combined state in coconut oil, palm oil, or palm-kernel oil.

(4) *Salts.* "Salts" means the compounds formed by the interaction of fatty acid, free or combined, of coconut oil, palm oil, or palm-kernel oil, with a metal or metal-like substance or an organic radical.

(5) *Substantial quantity.* "Substantial quantity" means ten (10) percent or more, by weight, of the combination or mixture.

§ 46.4512 Statutory provisions; definition of first domestic processing.

SEC. 4512. *Definitions of first domestic processing.* For the purposes of this subchapter, the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of iron or steel products, or tin plate or terne plate, or any subsequent use of palm oil residue resulting from the manufacture of iron or steel products, or tin plate or terne plate.

§ 46.4512–1 Definition of first domestic processing.

(a) *Processing.* "Processing" means the use of the oil or oils in the manufacture or production of an article intended for sale. The first domestic processing means the first use of the oil or oils in the United States.

(b) *Use.* "Use" has a very broad meaning. The term includes, among other things, the using or making use of, or employing, any one or more of the oils, or any combination or mixture of the oils, in any process, or stage or step in the manufacture or production of an article intended for sale, and includes the manufacture or production of such article in its entirety, whether such oil is used as a component or constituent or ingredient of the article, or is used merely as a means or aid in the manufacture or production of the article, and not as a component or constituent or ingredient. Examples of the use contemplated which are in no measure all-inclusive are:

(1) Bleaching, neutralizing, refining, deodorizing, hydrogenating, sulphonating, "twitchellizing", polymerizing, saponifying, or any other commercial processing or any combination of these commercial processings, if such processing or combination of processing produces an article intended for sale.

(2) The entire process of manufacture or production of an article intended for sale, where any one or more of the above processes are but incidental steps or stages in a continuous course of manufacture or production of the article.

(3) The manufacture or production of an article intended for sale from an oil or oils upon which any of the processes enumerated in subparagraph (1) of this paragraph have been performed prior to the importation of the particular oil.

(4) The use of the oil or oils in connection with any process or stage of the manufacture or production of an article intended for sale, even though the oil is not consumed therein or does not become a component material of the article so produced.

(c) *Exception in case of palm oil.* The term "first domestic processing" does not include the use of palm oil (1) in the manufacture of iron or steel products, (2) in the manufacture of tin plate, or (3) in the manufacture of terne plate. In addition, the term does not include any use of palm oil residue resulting from the use of such oil in the manufacture of iron or steel products, or tin plate, or terne plate.

§ 46.4513 Statutory provisions; exemptions.

SEC. 4513. *Exemptions*—(a) *Acids and salts previously taxed.* The tax under section 4511 shall not apply—

(1) With respect to any fatty acid or salt resulting from a previous first domestic processing taxed under such section or upon which an import tax has been paid under subchapter E of chapter 38, or

(2) With respect to any combination or mixture by reason of its containing an oil, fatty acid, or salt with respect to which there has been a previous first domestic processing or upon which an import tax has been paid under subchapter E of chapter 38.

(b) *From additional tax on coconut oil.* The additional tax imposed by section 4511 (b) shall not apply when it is established, in accordance with regulations prescribed by the Secretary or his delegate, that the coconut oil (whether or not contained in a combination or mixture)—

(1) Is wholly the production of the Philippine Islands, any possession of the United States, or the Territory of the Pacific Islands (hereinafter in this paragraph referred to as the "Trust Territory"), or

(2) Was produced wholly from materials the growth or production of the Philippine Islands, any possessions of the United States, or the Trust Territory:

Provided, however, That such additional tax shall apply in respect of coconut oil (whether or not contained in a combination or mixture) so derived from the Trust Territory, to such extent, and at such time after the date of the applicable proclamation, as the President, after taking into account the responsibilities of the United States with respect to the economy of the Trust Territory, shall hereafter determine and proclaim to be justified to prevent substantial injury or the threat thereof to the competitive trade of any country of the free world.

(c) *Processed for exportation.* Upon the giving of bond satisfactory to the Secretary or his delegate for the faithful observance of the provisions of this chapter requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for exportation any article wholly or in chief value of an article with respect to which a tax is imposed by section 4511.

§ 46.4513–1 Exemption for acids and salts previously taxed.

The tax imposed by section 4511 shall not apply:

(a) With respect to any fatty acid or salt resulting from a previous first domestic processing taxed under section 4511 or upon which an import tax has been paid under subchapter E of chapter 38 of the Code, or

(b) With respect to any combination or mixture by reason of its containing an oil, fatty acid, or salt with respect to which there has been a previous first domestic processing or upon which an import tax has been paid under subchapter E of chapter 38 of the Code.

§ 46.4513–2 Exemption from additional tax on coconut oil.

(a) *Exemption.* The additional tax of two cents per pound, imposed by section 4511(b), does not apply to the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil wholly produced in, or wholly produced from materials grown or produced in, the Philippine Islands, any possessions of the United States or the Trust Territory of the Pacific Islands, except as specifically provided for in paragraphs (b) and (c) of this section.

(b) *Suspension of exemption.* Notwithstanding the provisions of paragraph (a) of this section, the additional tax of two cents per pound, imposed by section 4511(b), shall apply in respect of coconut oil (whether or not contained in a combination or mixture) so derived from the Trust Territory to such extent and at such time as the President, after taking into account the responsibilities of the United States with respect to the economy of the Trust Territory, shall determine and proclaim to be justified to prevent substantial injury or the threat thereof to the competitive trade of any country of the free world.

(c) *Trust Territory.* The Trust Territory of the Pacific Islands consists of the former Japanese mandated Mariana, Marshall and Caroline Islands (except Guam).

§ 46.4513–3 Exemptions; processed for exportation.

(a) *Exportation bond.* A person may process oil or oils for exportation, without payment of the tax, where (1) the oil or oils are specifically processed for exportation, and the product of such processing is actually exported by such person, and (2) such person has, prior to such processing, filed an acceptable bond with the district director for the district in which he would be required to file a return and pay the tax. The bond shall be in a sum equivalent to the amount of tax which would be incurred during an average three-month period with respect to the processing of articles for exportation, and in no case less than $500. The liability under such bond will be a continuing one, subject to increase as successive processing for exportation takes place and to decrease upon proof of exportation of the product of such processing. When the limit of liability under such bond has been reached, no further processing may be performed thereunder until such liability is decreased by actual exportation, or a new bond is filed under which subsequent processing without the payment of the tax will be permitted. For other provisions relating to bonds, see section 7101 and the regulations thereunder contained in Part 301 of this chapter (Regulations on Procedure and Administration).

(b) *Exportation period.* A period of six months will be allowed from the date the oil or oils are put into process, during which time the payment of the tax will not be required unless the product of the processing has been sold or otherwise disposed of in the United States. If at the end of such period satisfactory proof of exportation of the product of the processing is not received, or if during such period the product of the processing has been sold or otherwise disposed of in the United States, the tax on the processing of the oil or oils shall be immediately assessed as of the month the oil or oils were put into process. If proof of exportation later becomes available, a claim for refund may be filed in accordance with the provisions of § 46.6417–2.

(c) *Supplemental exportation statement.* If oil or oils have been processed under bond, the proof of exportation provided for in § 46.6417–2 of the regulations in this part shall be supplemented by a statement containing the following information: (1) The date or dates when the oil or oils were put into process; (2) the date or dates when the product of the processing was exported; and (3) the date or dates when the proof of exportation, as provided for in § 46.6417–2, was received by the processor. The records containing such information and proof of exportation shall be retained for a period of three years from the last day of the month following the calendar quarter in which the oil or oils were put into process.

(d) *Monthly statement.* A person processing oil or oils for exportation under bond shall submit to the district director on or before the last day of each month a statement made under the penalties of perjury, showing the following:

(1) The name and address of the processor;

(2) The kind of oil or oils processed;

(3) The amount of each kind processed under bond on hand at the beginning of the month;

(4) The amount of each kind put into process under bond during the month;

(5) The amount of each kind mentioned in subparagraphs (3) and (4) of this paragraph exported during the month;

(6) The date or dates the amount of each kind mentioned in subparagraph (5) of this paragraph was exported;

(7) The date or dates the amount of each kind mentioned in subparagraph (5) of this paragraph was put into process;

(8) The amount of each kind mentioned in subparagraphs (3) and (4) of this paragraph with respect to which proof of exportation has been received during the month and the date or dates received;

(9) The name of the foreign purchaser;

(10) The amount of each kind mentioned in subparagraphs (3) and (4) of this paragraph sold (other than for export) or otherwise disposed of in the United States and the date thereof;

(11) The amount of tax liability involved on the oil or oils mentioned in subparagraphs (3) and (4) of this paragraph;

(12) The date, term, and penal sum of the bond; and

(13) The amount of tax debited and credited against the bond.

(e) *Wholly or in chief value.* "An article processed wholly or in chief value from an article with respect to which a tax is imposed" is any article made entirely from oil or oils, or any article made of two or more components, the oil or oils constituting a component having a value greater than that of any other component. An article is made from an oil or oils when the oil or oils, or any of their processed forms, have been used in making the article. In determining the value of the oil or oils as a component, the combined values of the oil or oils, and of every processed form thereof used in making the article, shall be the value of the oil or oils as a component.

(f) *Exportation.* "Exportation" means the severance of an article from the mass of things belonging within the United States with the intention of uniting it with the mass of things belonging within some foreign country or within a possession of the United States.

§ 46.4514 Statutory provisions; cross reference to general administrative provisions.

SEC. 4514. *Cross reference to general administrative provisions.* See subtitle F for administrative provisions of general application to the taxes imposed under this chapter.

Subpart D—Tax on Circulation Other Than of National Banks

§ 46.4881 Statutory provisions; imposition of tax.

SEC. 4881. *Imposition of tax*—(a) *Average circulation outstanding.* There shall be imposed—

(1) *Entire circulation.* A tax of one-twelfth of 1 percent each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or to be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and

(2) *Circulation exceeding 90 percent of capital.* An additional tax of one-sixth of 1 percent each month upon the average amount of such circulation, issued as aforesaid, beyond the amount of 90 percent of the capital of any such bank, association, corporation, company, or person.

In the case of banks with branches, the tax herein provided shall be assessed upon the circulation of each branch severally, and the amount of capital of each branch shall be considered to be the amount allotted to it.

(b) *Circulation paid out*—(1) *Own circulation.* Every person, firm, association other than national bank associations, and every corporation, State bank, or State banking association, shall pay a tax of 10 percent on the amount of their own notes used for circulation and paid out by them.

(2) *Other circulation.* Every such person, firm, association, corporation, State bank, or State banking association, and also every national banking association, shall pay a like tax of 10 percent on the amount of notes of any person, firm, association other than a national banking association, or of any corporation, State bank, or State banking association, or of any town, city, or municipal corporation, used for circulation and paid out by them.

§ 46.4881–1 Imposition of tax on average circulation outstanding.

Section 4881(a)(1) imposes a tax of one-twelfth of 1 percent each month on the average amount of the daily balances of circulation (including certified checks, notes and other obligations calculated or intended to circulate or to be used as money) issued by any bank, association, corporation, company, or person and outstanding. Section 4881(a)(2) imposes an additional tax of one-sixth of 1 percent each month on the average amount of the daily balances of such circulation issued and outstanding beyond the amount of 90 percent of the capital of any such bank, association, corporation, company, or person. The person issuing such circulation is liable for the taxes imposed by section 4881(a). In the case of banks with branches, the tax shall be assessed upon the circulation of each branch severally, and the amount of capital of each branch shall be considered to be the amount allotted to it.

§ 46.4881–2 Tax on circulation paid out.

Section 4881(b)(1) requires every person other than a national banking association to pay a tax of 10 percent of the amount of their own notes used for circulation and paid out by such person. Section 4881(b)(2) requires every person, including national banking associations, to pay a like tax of 10 percent on the amount of notes not its own used for circulation and paid out by such person or association. The tax in respect of notes used for circulation is limited to obligations payable in money and does not affect those payable in anything other than money. A person receiving foreign notes used for circulation in the United States and paying them

out again must pay the tax. Canadian or Mexican bank notes, although once used as circulation in the United States, merely received on deposit are not, however, subject to the tax until paid out in the United States. Banks in the United States receiving on deposit and paying out Canadian or Mexican bank notes which have not been, nor are at any time, used for circulation in the United States, are not required to pay the tax. The tax is not required to be paid on notes of foreign banks and corporations, whether bought in foreign countries or in the United States, which are sold to tourists or others leaving the United States for foreign countries, and have not been used in this country for circulation in lieu of money or currency of the United States. Certified checks of State banks are not notes within the meaning of section 4881(b). Clearinghouse certificates are not subject to the 10 percent tax. However, the 10 percent tax applies in respect of notes used as circulating medium.

§ 46.4882 Statutory provisions; definition of bank or banker.

SEC. 4882. *Definition of bank or banker.* Every incorporated or other bank, and every person, firm, or company having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale, shall be regarded as a bank or as a banker.

§ 46.4883 Statutory provisions; exemptions.

SEC. 4883. *Exemptions*—(a) *Circulation reduced to not over 5 percent of capital.* Whenever the outstanding circulation of any bank, association, corporation, company, or person is reduced to an amount not exceeding 5 percent of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation.

(b) *Circulation under redemption in whole.* Whenever any bank which has ceased to issue notes for circulation deposits in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary or his delegate shall prescribe, it shall be exempt from any tax upon such circulation.

(c) *National banks.* The provisions of this subchapter, relating to the tax on the circulation of banks, and to their returns, except as contained in sections 4881(b)(2), 4883 (a) and (b), 4884(a)(3), and such parts of sections 4884 (a) (1) and (2) and (b), 4885, and 4886, as relate to the tax of 10 percent on certain notes, shall not apply to associations which are taxed as national banks.

(d) *Circulation of insolvent banks.* For exemption in case of insolvent banks, see subtitle F.

§ 46.4883–1 Exemptions on average circulation outstanding.

The exemption under section 4883(a) applies only to the tax imposed by section 4881(a). Under no circumstances does this exemption apply to the tax imposed by section 4881 (b).

§ 46.4884 Statutory provisions; returns and payment of tax.

SEC. 4884. *Returns and payment of tax*—(a) *Circulation outstanding*—(1) *Time for making return.* A true and complete return of the monthly amount of circulation as aforesaid for the previous six months shall be made and rendered in duplicate on the first day of December, and the first day of June, by each of such banks, associations, corporations, companies, or persons.

(2) *Calculation of tax.* The tax imposed by section 4881(a) shall be calculated at the rate per month prescribed by said section, so that the tax for six months shall not be less than the aggregate would be if such taxes were collected monthly.

(3) *Return and payment when State bank converted into national bank.* Whenever any State bank or banking association has been converted into a national banking association, and such national banking association has assumed the liabilities of such State bank or banking association, including the redemption of its bills, by any agreement or understanding whatever with the representatives of such State bank or banking association, such national banking association shall be held to make the required return and payment on the circulation outstanding, so long as such circulation shall exceed 5 per centum of the capital before such conversion of such State bank or banking association.

(b) *Circulation paid out.* The amount of circulating notes referred to in section 4881(b), and of the tax due thereon, shall be returned, and the tax paid at the same time, and in the same manner, and with like penalties for failure to return and pay the same, as provided by law for the return and payment of taxes on circulation imposed by section 4881(a).

§ 46.4884–1 Returns and payment of tax; instruction for making returns.

(a) *In general.* Every person who has incurred liability for the tax imposed by section 4881 shall make a return by filing a statement, in duplicate, made under the penalties of perjury, setting forth the following information:

(1) The name and address of the person by whom the liability was incurred.

(2) The particulars relating to each subject of taxation must be stated for each month opposite the name of that month.

(3) If the person making the return commences business during the period covered by the return, the date of such commencement must be stated on the face of the return.

(4) If the person making the return discontinues business during the period covered by the return, the date of such discontinuance and the words "Final Return" must be stated on the face of the return.

The return shall be signed by the president or cashier, member of the firm or the banker. For definition of bank or banker, see § 46.4882.

(b) *Period covered by return.* Returns are required for the periods of six calendar months which end, respectively, on May 30 and November 30.

(c) *Time and place for filing return statements.* The return statement shall be filed on the first day of June and the first day of December with the district director for the internal revenue district in which is located the taxpayer's principal place of business.

(d) *Time and place for paying tax shown on the return.* The tax shown on the return is to be paid by the taxpayer, without notice or assessment, at the time and place fixed for filing the return.

§ 46.4885 Statutory provisions; estimation of outstanding circulation in default of return.

SEC. 4885. *Estimation of outstanding circulation in default of return.* In default of the returns provided in section 4884, the amount of circulation and notes of persons, town, city, and municipal corporations, State banks, and State banking associations paid out, as aforesaid, shall be estimated by the Secretary or his delegate, upon the best information he can obtain.

§ 46.4886 Statutory provisions; cross references.

SEC. 4886. *Cross references.* For penalties and other general and administrative provisions applicable to this subchapter, see subtitle F.

Subpart E—Administrative Provisions

§ 46.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.

SEC. 6001. *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 46.6001–1 Records in general.

(a) *Form of records.* The records required by the regulations in this part shall be kept accurately, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable the district director to ascertain whether liability for tax is incurred and, if so, the amount thereof.

(b) *Copies of returns, schedules, and statements.* Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed thereunder, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as a part of his records.

(c) *Records of claimants.* Any person who, pursuant to the regulations in this part, claims a refund, credit, or abatement, shall keep a complete and detailed record with respect to the tax, interest, addition to the tax, additional amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and by §§ 46.6001–2 to 46.6001–3, inclusive, which relate to the claim.

(d) *Place and period for keeping records.* (1) All records required by the regulations in this part shall be kept, by the person required to keep them, at one or more convenient and safe locations accessible to internal revenue officers, and shall at all times be available for inspection by such officers.

(2) Except as otherwise provided in the following sentence, every person required by the regulations in this part to keep records in respect of a tax (whether or not such person incurs liability for

such tax) shall maintain such records for at least three years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is the later. The records of claimants required by paragraph (c) of this section shall be maintained for a period of at least three years after the date the claim is filed.

(e) *Microfilm reproductions.* General books of account, such as cash books, journals, voucher registers, ledgers, etc., shall be maintained and preserved in their original form. However, microfilm reproductions of supporting records of details, such as invoices, vouchers, production reports, sales records, certificates, proofs of exportation, etc., may be kept in lieu of the original records provided the person required to keep such records (1) retains such microfilmed copies for the period specified in paragraph (d) of this section, (2) provides adequate facilities for the preservation of such films and for the ready inspection and location thereof, including a projector for viewing such records in the event inspection is necessary for tax purposes, and (3) makes any transcription which may be required of the information contained on the microfilm.

§ 46.6001–2 Records relating to sugar tax.

(a) *Manufacturing records.* Every person who manufactured sugar shall keep an accurate monthly record of the manufacturing done by him.

(b) *Content of records.* Such records shall show:

(1) The quantity of manufactured sugar and other sugar on hand at the beginning of the month;

(2) The quantity received during the month;

(3) The quantity of manufactured sugar produced during the month;

(4) The quantity sold during the month;

(5) The quantity of manufactured sugar used during the month in the production of other articles for sale; and

(6) The quantity of manufactured sugar and other sugar on hand at the end of the month.

The records shall show the polariscopic test or total sugars of each grade and type of sugar and manufactured sugar.

§ 46.6001–3 Records relating to coconut and palm oil.

(a) *Processing records.* Every processor shall maintain records and accounts with respect to the first domestic processing of the oil or oils showing:

(1) The quantity of (i) all raw materials from which oils are produced, (ii) all crude or virgin oils, and (iii) all oils which were imported and upon which preliminary processing had been done prior to importation.

(2) Daily records of the quantity of oils put into process, showing the purpose for which used and the products produced therefrom.

(3) The quantity of oils put into process under bond for export.

(b) *Source records.* Records relative to coconut oil or to any combination or mixture containing a substantial quantity of coconut oil, with respect to which oil no tax has been paid, must be maintained in such a manner as to show:

(1) Separately, the quantity of coconut oil, or combination or mixture containing a substantial quantity of coconut oil, which is wholly the production of

(i) The Philippine Islands,

(ii) Guam,

(iii) American Samoa,

(iv) All possessions of the United States, and

(v) The Trust Territory of the Pacific Islands, and

(2) Separately, the quantity of coconut oil, or combination or mixture containing a substantial quantity of coconut oil, produced wholly from materials which are the growth or production of

(i) The Philippine Islands,

(ii) Guam,

(iii) American Samoa,

(iv) All possessions of the United States, and

(v) The Trust Territory of the Pacific Islands.

The records shall also show the country or possession in which the raw materials or oils were produced, when such articles were brought into the United States, and the name and address of the importer.

§ 46.6011(a) Statutory provisions; general requirement of return, statement, or list.

SEC. 6011. *General requirement of return, statement, or list*—(a) *General rule.* When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

§ 46.6011(a)–1 Returns.

(a) *In general.* Liability for tax imposed under section 4501(a) or 4511 shall be reported on Form 720. Except as provided in paragraph (b) of this section, a return on Form 720 shall be filed for a period of one calendar quarter. Every person required to make a return on Form 720 for a return period ended December 31, 1954, shall make a return for each subsequent calendar quarter or month (whether or not liability was incurred for any tax reportable on such return for such return period) until he has filed a final return in accordance with § 46.6011(a)–2. Every person not required to make a return on Form 720 for a return period ended December 31, 1954, shall make a return for the first calendar quarter thereafter in which he incurs liability for tax imposed under section 4501(a) or 4511, and shall make a return for each subsequent calendar quarter or month until he has filed a final return in accordance with § 46.6011(a)–2.

(b) *Monthly returns*—(1) *Requirement.* If the district director determines that any taxpayer who is required to make deposit of taxes under the provisions of § 46.6302(c)–1 has failed to make deposits of such taxes for the first or second month of any calendar quarter, such taxpayer shall be required, if so notified in writing by the district director, to file a monthly return on Form 720, except that, if some other form is furnished by the district director for use in lieu of Form 720, the return shall be made on such other form. Every person so notified by the district director shall make a return for the calendar month in which the notice is received and for each calendar month thereafter until he has filed a final return or is required to make quarterly returns pursuant to notification as provided in subparagraph (2) of this paragraph. However, if the notice provided for in this subparagraph is received after the close of the first calendar month of a calendar quarter, the first return under this subparagraph shall be made for the period beginning with the first day of the quarter and ending with the last day of the month in which the notice is received.

(2) *Termination of requirement.* The district director, in his discretion, may notify the taxpayer in writing that he shall discontinue the filing of monthly returns under this paragraph. If the taxpayer is so notified, the last month for which a return shall be made under this paragraph is the last month of the calendar quarter in which such notice of discontinuance is received. Thereafter, the taxpayer shall make quarterly returns as provided in paragraph (a) of this section.

(c) *Signing and verification of returns.* For provisions relating to the signing and verification of returns, see §§ 46.6061–1 and 46.6065, respectively.

(d) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 46.6071(a)–1 and 46.6091–1, respectively.

§ 46.6011(a)–2 Final returns.

(a) *In general.* Any person who is required to make a return on Form 720 pursuant to § 46.6011(a)–1, and who in any return period ceases operations in respect of which he is required to make a return on such form, shall make such return for such period as a final return. Each return made as a final return shall be marked "Final Return" by the person filing the return. A person who has only temporarily ceased to incur liability for tax required to be reported on Form 720, because of temporary or seasonal suspension of his business or for other reasons, shall not make a final return but shall continue to file returns.

(b) *Statement to accompany final return.* There shall be executed as a part of each final return a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping such records, and, if the business of a taxpayer has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or transfer took place. If no such sale or transfer occurred or the taxpayer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement.

§ 46.6011(a)–3 Return provisions relating to the taxes on circulation other than of national banks.

For return provisions relating to the tax on circulation other than of national banks, see § 46.4884–1.

§ 46.6061 Statutory provisions; signing of returns and other documents.

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

§ 46.6061–1 Signing of returns and other documents.

Each return required under the regulations in this subpart shall be signed by (a) the individual, if the taxpayer is an individual; (b) the president, vice president or other principal officer, if the taxpayer is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the taxpayer is a partnership or other unincorporated organization; or (d) the fiduciary, if the taxpayer is a trust or estate. The return may be executed by an agent in the name of the taxpayer if an acceptable power of attorney is filed with the district director and the return includes the total liability of the taxpayer for the period covered by the return.

§ 46.6065 Statutory provisions; verification of returns.

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

(b) *Oath.* The Secretary or his delegate may by regulations require that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be verified by an oath. This subsection shall not apply to returns and declarations with respect to income taxes made by individuals.

§ 46.6065–1 Verification of returns.

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

§ 46.6071(a) Statutory provisions; time for filing returns and other documents.

SEC. 6071. *Time for filing returns and other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

§ 46.6071(a)–1 Time for filing returns.

(a) *Quarterly returns.* Each return required to be made under paragraph (a) of § 46.6011(a)–1 for a return period of not less than one calendar quarter shall be filed on or before the last day of the first calendar month following the period for which it is made. However, if, and only if, the return is accompanied by depositary receipts (Form 537, Depositary Receipt for Federal Excise Taxes), showing timely deposits, in full payment of the taxes due for the entire calendar quarter, the return may be filed on or before the 10th day of the second calendar month following the period for which it is made. For the purpose of the preceding sentence, a deposit which is not required to be made within such return period may be made on or before the last day of the first calendar month following the close of such period, and the timeliness of the deposit for any month will be determined by the earliest date stamped on the validated Form 537 by an authorized commercial bank or by a Federal Reserve bank.

(b) *Monthly returns.* Each return required to be made under paragraph (b) of § 46.6011(a)–1 shall be filed not later than the fifteenth day of the month following the period for which it is made.

(c) *Last day for filing.* For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(d) *Late filing.* For additions to the tax in case of failure to file a return within the prescribed time, see § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

§ 46.6071(a)–2 Cross references.

For provisions with respect to the time for filing returns relating to the tax on circulation other than of national banks, see § 46.4884–1.

§ 46.6081(a) Statutory provisions; extension of time for filing returns.

SEC. 6081. *Extension of time for filing returns*—(a) *General rule.* The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

§ 46.6081(a)–1 Extension of time for filing returns.

No extension of time will be granted for filing any return or other document required in respect of the taxes to which the regulations in this part have application.

§ 46.6091 Statutory provisions; place for filing returns or other documents.

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

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

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

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

* * * * *

(4) *Exceptional cases.* Notwithstanding paragraph (1), (2), or (3) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, * * *.

§ 46.6091–1 Place for filing returns relating to sugar and coconut and palm oil.

(a) *Persons other than corporations.* The return of a person other than a corporation shall be filed with the district director for the district in which is located the principal place of business or legal residence of such person. If such person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the District Director at Baltimore, Maryland, except as provided in paragraph (c) of this section.

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

(c) *Returns of taxpayers outside the United States.* The return of a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director, International Operations Division, Internal Revenue Service, Washington 25, D.C., unless the principal place of business or legal residence of such person, or the principal place of business or principal office or agency of such corporation, is located in Puerto Rico, in which case the return shall be filed with the Office of the Director, International Operations Division, United States Internal Revenue Service, Santurce, Puerto Rico. For applicability of the tax in respect of manufactured sugar in Puerto Rico, see section 4502(5).

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

(e) *Cross references.* For provisions relating to the place for filing returns with respect to the taxes on circulation other than of national banks, see § 46.4884–1.

§ 46.6101 Statutory provisions; period covered by returns or other documents.

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

§ 46.6101–1 Period covered by returns or other documents.

The normal period for which returns are ordinarily required is a calendar quarter. Under certain circumstances, the district director may require returns to be filed monthly. For provisions relating to quarterly returns, see paragraph (a) of § 46.6011(a)–1. For provisions relating to monthly returns, see paragraph (b) of § 46.6011(a)–1.

§ 46.6151 Statutory provisions; time and place for paying tax shown on returns.

SEC. 6151. *Time and place for paying tax shown on returns*—(a) *General rule.* Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Exceptions.* * * *

(2) *Use of Government depositaries.* For authority of the Secretary or his delegate to require payments to Government depositaries, see section 6302(c).

(c) *Date fixed for payment of tax.* In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§ 46.6151–1 Time and place for paying tax shown on return.

(a) *In general.* The tax required to be reported on each tax return required under this subpart is due and payable to the district director, without assessment or notice and demand, at the time prescribed in § 46.6071(a)–1 for filing such return. For provisions with respect to the time and place for payment of taxes imposed on circulation other than of national banks, see § 46.4884–1.

(b) *Use of Government depositaries.* For provisions relating to the use of Federal Reserve banks and authorized commercial banks in depositing the taxes, see §§ 46.6302 (c)–1 and 46.6302 (c)–2.

§ 46.6161(a)(1) Statutory provisions; extension of time for paying tax.

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

§ 46.6161(a)(1)–1 Extension of time for paying tax shown on return.

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

§ 46.6302(b) Statutory provisions; mode or time of collection.

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

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

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

§ 46.6302(b)–1 Method of collection.

For provisions relating to collection by means of returns of the taxes imposed by sections 4501(a) and 4511 of chapter 37, see § 46.6011(a)–1.

§ 46.6302(c) Statutory provisions; mode or time of collection.

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

(c) *Use of Government depositaries.* The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, time and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

§ 46.6302(c)–1 Use of Government depositaries.

(a) *Requirement*—(1) *In general.* Except as provided in paragraph (b) of this section, if any person required to file a quarterly return, on Form 720, has a total liability of more than $100 for all excise taxes reportable by him for a calendar month on Form 720, the amount of tax reportable with respect to such calendar month shall be deposited by him with a Federal Reserve bank on or before the last day of the next succeeding calendar month. Each such remittance shall be accompanied by a Depositary Receipt for Federal Excise Taxes (Form 537). Such depositary receipt shall be prepared in accordance with the instructions and regulations applicable thereto. The taxpayer shall forward such remittance, together with such depositary receipt, to a Federal Reserve bank or, at his election, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the taxes for transmission to a Federal Reserve bank. After the Federal Reserve bank has validated the depositary receipt, such depositary receipt will be returned to the taxpayer. Every taxpayer making deposits pursuant to this section shall attach to his return for the calendar quarter with respect to which such deposits are made, in part or in full payment of the taxes shown thereon, depositary receipts so validated, and shall pay to the district director the balance, if any, of the taxes due for such quarter. An amount of tax which is not required to be deposited may nevertheless be deposited if the taxpayer so desires. If a deposit is made for the last month of the quarter, the taxpayer shall make it in ample time to enable the Federal Reserve bank to return the validated receipt to the taxpayer so that it can be attached to and filed with the taxpayer's return.

(2) *Procurement of depositary receipt form.* Initially, Form 537, Depositary Receipt for Federal Excise Taxes, will so far as possible be furnished the taxpayer by the district director. A taxpayer not supplied with the proper form should make application therefor to the district director in ample time to have such form available for use in making his initial deposit within the time prescribed in subparagraph (1) of this paragraph. Thereafter, a blank form will be sent to the taxpayer by the Federal Reserve bank when returning the validated depositary receipt. A taxpayer may secure additional forms from a Federal Reserve bank by applying therefor and advising the bank of his identification number. The taxpayer's identification number and name, as entered on each depositary receipt, shall be the same as they are required to be shown on the return to be filed with the district director. The address of the taxpayer, as shown on each depositary receipt, shall be the address to which the receipt should be returned following validation by the Federal Reserve bank.

(3) *Taxpayer's identification number.* The taxpayer's identification number for the Depositary Receipt for Federal Excise Taxes, Form 537, shall be the same as the identification number, if any, assigned to the taxpayer for use in connection with depositary receipts required for other internal revenue taxes. If a taxpayer does not have an identification number, he should request the assignment of such a number by the district director for his district.

(b) *Monthly returns.* The provisions of this section are not applicable with respect to taxes for the month in which the taxpayer receives notice from the district director that returns are required under paragraph (b) of § 46.6011 (a)–1, or for any subsequent month for which such a return is required.

§ 46.6302(c)–2 Cross references.

(a) *Failure to deposit.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see § 301.6656–1 of this chapter (Regulations on Procedure and Administration).

(b) *Saturday, Sunday, or legal holiday.* For provisions relating to the time for performance of acts when the last day falls on Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

§ 46.6402(a) Statutory provisions; authority to make credits or refunds.

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

§ 46.6402(a)–1 Authority to make credits or refunds.

For regulations under section 6402 of general application in respect of credits or refunds, see §§ 301.6402–1 and 301.6402–2 of this chapter (Regulations on Procedure and Administration).

§ 46.6404(a) Statutory provisions; abatements.

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

(1) Is excessive in amount, or

(2) Is assessed after the expiration of the period of limitation properly applicable thereto, or

(3) Is erroneously or illegally assessed.

§ 46.6404(a)–1 Abatements.

For regulations under section 6404 of general application in respect of abatements of assessments of tax, see § 301.6404–1 of this chapter (Regulations on Procedure and Administration).

§ 46.6412(d) Statutory provisions; floor stocks refunds.

SEC. 6412. *Floor stocks refunds.* * * *

(d) *Sugar.* With respect to any sugar or articles composed in chief value of sugar upon which tax imposed under section 4501 (b) has been paid and which, on June 30, 1961, are held by the importer and intended for sale or other disposition, there shall be refunded (without interest) to such importer, subject to such regulations as may be prescribed by the Secretary or his delegate, an amount equal to the tax paid with respect to such sugar or articles composed in chief value of sugar, if claim for such refund is filed with the Secretary or his delegate on or before September 30, 1961.

[Sec. 6412(d) as amended by sec. 19, Act of May 29, 1956 (Public Law 545, 84th Cong., 70 Stat. 221); sec. 162(a), Excise Tax Technical Changes Act 1958 (72 Stat. 1306)]

§ 46.6417 Statutory provisions; credits and refunds of taxes on coconut and palm oil.

SEC. 6417. *Coconut and palm oil*—(a) *Sales to States or political subdivisions.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any oil, combination, or mixture, upon the processing of which a tax has been paid under section 4511, shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(b) *Exportation.* Upon the exportation to any foreign country or to a possession of the United States of any article, wholly or in chief value of an article, with respect to the processing of which a tax has been paid under subchapter B of chapter 37, the exporter thereof shall be entitled to a refund of the amount of such tax.

§ 46.6417–1 Credit or refund of tax on coconut and palm oil sold to a State or political subdivision thereof.

(a) *In general.* Any person who sells to a State or political subdivision thereof, for use in the exercise of an essential governmental function, any article containing any oil, combination, or mixture, with respect to the processing of which a tax has been paid under section 4511, shall be entitled to a credit or refund of the tax so paid upon compliance with the requirements of this section. Such person may either file a claim for refund of such tax on Form 843, or take a credit for such tax against any tax imposed under section 4511 shown to be due on a subsequent return. The claim for refund, or the statement in support of the credit, must contain the evidence required in paragraph (e) of this section. No interest shall be allowed in respect of such credit or refund.

(b) *Sales not qualifying for credit and refund.* No credit or refund may be allowed when the articles described in paragraph (a) of this section are sold to the United States Government, the Government of the District of Columbia, or a Territory or possession of the United States.

(c) *Statement in support of credit taken on a subsequent return.* In addition to the other requirements imposed by this section, any return on which a credit is taken under the provisions of paragraph (a) of this section must be accompanied by a statement, which shall be a part of the return, setting forth clearly and in detail the grounds and facts relied upon in support of the credit.

(d) *Claims for refund.* In addition to the other requirements imposed by this section, any person seeking a refund under the provisions of paragraph (a) of this section must make a claim therefor on Form 843 in the manner prescribed in § 301.6402–2 of this chapter (Regulations on Procedure and Administration).

(e) *Evidence required for credit or refund.* Each claim for refund, or statement in support of a claim for credit, shall show with respect to each delivery to a State or political subdivision thereof—

(1) The actual net weight of each article delivered, together with such a description of the article as will enable the district director to determine the proper amount of refund;

(2) The quantity of oil or oils contained in each article, with respect to the processing of which claim is made that tax was paid;

(3) The amount of tax due and paid on the processing of the oil or oils contained in the article;

(4) Proof satisfactory to the district director that the tax, refund of which is claimed, was actually due and paid;

(5) The date or dates of payment;

(6) The district in which the tax was paid; and

(7) The certificate from an official of the State or political subdivision thereof, as provided in paragraph (f) of this section, certifying that such article was purchased for use in the exercise of an essential governmental function.

Each article with respect to which credit is taken or refund is claimed must be identified.

(f) *Certificate of official of State.* The certificate required by paragraph (e) of this section must include an agreement that if any of the articles covered thereby are used otherwise than in the exercise of an essential governmental function, or if any articles are resold, the State or political subdivision thereof will report such fact to the vendor. In such cases the person to whom the tax has been refunded or credited shall, in turn, report the fact to the district director and forward therewith the amount of the tax refunded or credited with respect to such articles. For provisions relating to penalties for a fraudulent attempt to evade or defeat tax, see section 7201. A separate certificate must be filed with each order and shall be in substantially the following form:

CERTIFICATE IN SUPPORT OF CLAIM FOR REFUND OR CREDIT

(For Use by States or Political Subdivisions)

----------, 19--
(Date)

The undersigned hereby certifies that he is the----------
(Title of officer)
of ----------
(State, city, etc.)
and that the article or articles specified in the accompanying order are purchased for use by the---------- in the
(Department)
exercise of essential governmental functions namely:

It is understood that the right to refund or credit exists only where the articles are purchased for use in the exercise of essential governmental functions. It is agreed that when articles purchased under this certificate are used for purposes other than in the exercise of essential governmental functions or are resold, the vendee will report such fact to the vendor.

(Signature) ---------- (Seal)

§ 46.6417–2 Refund of tax on coconut and palm oil exported.

(a) *In general.* When an article processed wholly or in chief value from oil or oils, with respect to the processing of which a tax has been paid under subchapter B of chapter 37, is exported to a foreign country or to a possession of the United States, the exporter shall be entitled to a refund of the tax due and paid. The test to be applied in determining the right to refund is (1) was the article processed wholly or in chief value from oil or oils with respect to the processing of which a tax has been paid, and (2) was the article actually delivered in a foreign country or in a possession of the United States for use therein. Refund will not be made unless both conditions are satisfied. No interest shall be paid in respect of any such refund.

(b) *Claims for refund.* When any person exports an article processed wholly or in chief value from oil or oils with respect to the processing of which the tax has been paid, he may file a claim for refund of such tax on Form 843 in the manner prescribed in § 301.6402–2 of this chapter (Regulations

on Procedure and Administration). In addition thereto, each claim for refund shall show with respect to each export shipment—

(1) The actual net weight of each article exported, together with such a description of the article as will enable the district director to determine the proper amount of refund;

(2) The quantity of oil or oils contained in each article with respect to the processing of which claim is made that tax was paid;

(3) The amount of tax due and paid on the processing of the oil or oils contained in the article;

(4) Proof satisfactory to the district director that the tax, refund of which is claimed, was actually due and paid to a district director;

(5) The date or dates of payment;

(6) The district in which the tax was paid; and

(7) Proof of exportation as provided in paragraph (c) of this section.

(c) *Proof of exportation.* Exportation must be evidenced by—

(1) A copy of the export bill of lading issued by the delivering carrier, or

(2) A certificate by an agent or representative of the export carrier showing actual delivery of the article in a foreign country or a possession of the United States; or

(3) A certificate of landing signed by a customs officer of the foreign country to which the article is delivered; or

(4) Where such foreign country has no customs administration, a sworn statement of the foreign consignee showing receipt of the article.

(d) *Submission of proof by affidavit.* If a person is required to submit proof of exportation (see paragraphs (a) and (b) of this section and § 46.4513–3(c)), and such person possesses the evidence enumerated in paragraph (c) of this section, he may submit with such claim, in lieu of the evidence, an affidavit indicating what evidence is available to prove that the article was in fact exported and at what place such evidence is available for inspection by internal revenue officers. The evidence establishing proof of exportation must be preserved by either the processor or any person who has filed a claim for refund (see paragraphs (a) and (b) of this section) for a period of at least 3 years from the last day of the month following the taxable period in which the first domestic processing began, and must be readily accessible for inspection by internal revenue officers.

§ 46.6418 Statutory provisions; credits and refunds of the tax on sugar.

SEC. 6418. *Sugar*—(a) *Use as livestock feed or for distillation of alcohol.* Upon the use of any manufactured sugar, or article manufactured therefrom, as livestock feed, or in the production of livestock feed, or for the distillation of alcohol, there shall be paid by the Secretary or his delegate to the person so using such manufactured sugar, or article manufactured therefrom, the amount of any tax paid under section 4501 with respect thereto.

(b) *Exportation.* Upon the exportation from the United States to a foreign country, or the shipment from the United States to any possession of the United States except Puerto Rico, of any manufactured sugar, or any article manufactured wholly or partly from manufactured sugar, with respect to which tax under the provisions of section 4501(a) has been paid, the amount of such tax shall be paid by the Secretary or his delegate to the consignor named in the bill of lading under which the article was exported or shipped to a possession, or to the shipper, or to the manufacturer of the manufactured sugar or of the articles exported, if the consignor waives any claim thereto in favor of such shipper or manufacturer; except that no such payment shall be allowed with respect to any manufactured sugar, or article, upon which, through substitution or otherwise; a drawback of any tax paid under section 4501(b) has been or is to be claimed under any provisions of law made applicable by section 4504.

[Sec. 6418 as amended by sec. 21(b), Act of May 29, 1956 (Pub. Law 545, 84th Cong., 70 Stat. 221)]

§ 46.6418–1 Sugar used as livestock feed or for distillation of alcohol:

(a) *Claims for payment.* Any person using any manufactured sugar, or an article manufactured therefrom, with respect to which a tax has been paid under section 4501, (1) as livestock feed, (2) in the production of livestock feed, or (3) for the distillation of alcohol, may file a claim for payment of the amount of tax paid thereon. If the claim for payment relates to tax paid pursuant to section 4501(a), the claim shall be executed by the claimant on Form 843, in the manner prescribed in § 301.6402–2 of this chapter (Regulations on Procedure and Administration). No interest shall be paid in respect of any such claim. If the claim for payment relates to tax paid pursuant to section 4501(b), such claim shall be filed with the collector of customs pursuant to Bureau of Customs regulations.

(b) *Proof of claim.* No claim for payment under section 6418(a) of the tax paid under section 4501(a) will be allowed unless the claimant establishes to the satisfaction of the district director—

(1) That the tax with respect to the manufactured sugar upon which the claim is based was actually paid;

(2) That the manufactured sugar, or article manufactured therefrom, was actually used in the production of livestock feed, or as livestock feed, or for the distillation of alcohol;

(3) The quantity and test of the manufactured sugar upon which the claim is based; and

(4) Such other facts as may be required to determine the claimant's right to the payment.

§ 46.6418–2 Sugar exported.

(a) *Who may file the claim.* The person named as consignor in the bill of lading under which manufactured sugar, or an article processed wholly or partly therefrom, is exported or shipped has the primary right to claim payment of the tax paid, under section 4501(a), with respect to such sugar as provided in section 6418(b). Such person may, however, waive any claim thereto in favor of the shipper or manufacturer, in which case the shipper or manufacturer, as the case may be, will be recognized as the proper claimant. If the person having the primary right to claim payment desires to waive such right, a waiver in substantially the following form shall be attached to any claim made by a shipper or manufacturer:

----------, the consignor(s) named in the bill of lading to which this waiver is affixed or attached, do(es) waive in favor of -------

---

(Name of shipper or manufacturer)

any claim for payment allowable under the provisions of section 6418(b) of the Internal Revenue Code of 1954 by reason of the exportation or shipment of the articles described in such bill of lading, and state(s) that such party is the actual shipper or manufacturer of the article or articles exported.

(Consignor named in the bill of lading)

(b) *Claim for payment.* Claim for payment shall be executed by the claimant on Form 843, in the manner prescribed in § 301.6402–2 of this chapter (Regulations on Procedure and Administration). No interest shall be paid in respect of any such claim.

(c) *Proof of claim.* No claim shall be allowed unless the claimant establishes to the satisfaction of the district director:

(1) That the tax with respect to the manufactured sugar upon which the claim is based was actually paid;

(2) That the manufactured sugar, or articles processed wholly or partially therefrom, were actually exported to a foreign country or shipped to a possession of the United States, not including Puerto Rico. Exportation to a foreign country or shipment to a possession may be evidenced by (i) a copy of the bill of lading; (ii) a certificate by an agent or representative of the carrier showing actual delivery of the manufactured sugar or articles in a foreign country or possession of the United States, not including Puerto Rico; (iii) a certificate of landing signed by a customs officer of the foreign country to which the manufactured sugar or articles are delivered; or (iv) if such foreign country has no customs administration, or in the case of shipment to a possession of the United States, not including Puerto Rico, a sworn statement of the consignee showing receipt of the manufactured sugar or articles.

(3) That the tax claimed was not paid with respect to any manufactured sugar, or articles manufactured wholly or partially from manufactured sugar, upon which through substitution or otherwise a drawback of any tax paid under section 4501(b) has been or is to be claimed under any provision of law made applicable by section 4504. A claimant who can meet this requirement shall include in his claim for refund or credit a statement to the effect that no such drawback claim has been or will be filed with the Bureau of Customs.

§ 46.6511(e) Statutory provisions; limitations on credit or refund.

SEC. 6511. *Limitations on credit or refund.* * * *

(e) *Special rules in case of manufactured sugar*—(1) *Use as livestock feed or for distillation of alcohol.* No payment shall be allowed under section 6418(a) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

(2) *Exportation.* No payment shall be allowed under section 6418(b) unless within 2

years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

§ 46.6511(e)–1 Special rules applicable to manufactured sugar.

(a) *Use as livestock feed and for distillation of alcohol.* No payment shall be allowed or made under section 6418(a) unless within 2 years after the date the right to such payment has accrued a claim therefor is filed by the person entitled thereto. Such right accrues as of the date the manufactured sugar, or article manufactured therefrom, is used for a purpose for which payment is allowable under section 6418(a).

(b) *Exportation.* No payment shall be allowed or made under section 6418(b) unless within 2 years after the date the right to such payment has accrued a claim therefor is filed by the person entitled thereto. Such right accrues as of the date the articles are exported.

§ 46.7240 Statutory provisions; officials investing or speculating in sugar.

SEC. 7240. *Officials investing or speculating in sugar.* Any person, while acting in any official capacity in the administration of subchapter A of chapter 37, relating to manufactured sugar, who invests or speculates in sugar or liquid sugar, contracts relating thereto, or the stock or membership interests of any association or corporation engaged in the production or manufacture of sugar or liquid sugar, shall be dismissed from office or discharged from employment and shall be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than 2 years, or both.

§ 46.7654 Statutory provisions; payment to Guam and American Samoa of proceeds of tax on coconut and palm oil.

SEC. 7654. *Payment to Guam and American Samoa of proceeds of tax on coconut and palm oil.* All taxes collected under subchapter B of chapter 37 with respect to coconut oil wholly of the production of Guam or American Samoa, or produced from materials wholly of the growth or production of Guam or American Samoa, shall be held as separate funds and paid to the treasury of Guam or American Samoa, respectively. No part of the money from such funds shall be used, directly or indirectly, to pay a subsidy to the producers or processors of copra, coconut oil, or allied products, except that this sentence shall not be construed as prohibiting the use of such money, in accordance with regulations prescribed by the Secretary or his delegate, for the acquisition or construction of facilities for the better curing of copra or for bona fide loans to copra producers of Guam or America Samoa.

§ 46.7701 Statutory provisions; definitions.

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) *Person.* The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) *Partnership and partner.* The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) *Corporation.* The term "corporation" includes associations, joint-stock companies, and insurance companies.

* * * * *

(9) *United States.* The term "United States" when used in a geographical sense includes only the States, the Territory of Hawaii, and the District of Columbia.

(10) *State.* The term "State" shall be construed to include the Territory of Hawaii and the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) *Secretary.* The term "Secretary" means the Secretary of the Treasury.

(12) *Delegate.* The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

(13) *Commissioner.* The term "Commissioner" means the Commissioner of Internal Revenue.

(14) *Taxpayer.* The term "taxpayer" means any person subject to any internal revenue tax.

* * * * *

(b) *Includes and including.* The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) *Commonwealth of Puerto Rico.* Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(d) *Cross references*—(1) *Other definitions.* For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.
(2) Plural as including singular, section 1.
(3) Masculine as including feminine, section 1.

* * * * *

[Sec. 7701 as amended by secs. 22 (g) and (h), Alaska Omnibus Act (73 Stat. 146 and 147)]

§ 46.7805 Statutory provisions; rules and regulations.

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

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

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

§ 46.7805–1 Promulgation of regulations.

In pursuance of section 7805 of the Internal Revenue Code of 1954, the foregoing regulations are hereby prescribed. (See § 46.0–4 relating to the scope of the regulations.)

[F.R. Doc. 60–4095; Filed, May 5, 1960; 8:49 a.m.]

Title 46—SHIPPING

Chapter I—Coast Guard, Department of the Treasury

[CGFR 60–31]

SUBCHAPTER B—MERCHANT MARINE OFFICERS AND SEAMEN

PART 12—CERTIFICATE OF SEAMEN

SUBCHAPTER H—PASSENGER VESSELS

PART 74—STABILITY

Commitment of Employment and Stability Standards for Passenger Vessels of Unusual Designs

Pursuant to the notice of proposed rule making published in the FEDERAL REGISTER on February 18, 1960 (25 F.R. 1440–1448), and Merchant Marine Council Public Hearing Agenda dated April 4, 1960 (CG–249), the Merchant Marine Council held a Public Hearing on April 4, 1960, for the purpose of receiving comments, views and data. The proposals considered were identified as Items I through XII, inclusive, and Item XII contained proposed requirements regarding commitment of employment as a prerequisite in obtaining a Merchant Mariners' Document and stability requirements for passenger vessels of unusual designs. The proposal with respect to renewal of masters', mates', or pilots' licenses is under consideration and will be the subject of a separate document.

This document is the second of a series, covering the regulations and actions considered at the April 4, 1960 Public Hearing and annual session of the Merchant Marine Council. The first document, CGFR 60–30, contains the requirements based on Item I regarding radar observers required on radar equipped vessels.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), 167–9, dated August 3, 1954 (19 F.R. 5915), 167–14, dated November 26, 1954 (19 F.R. 8026), 167–20, dated June 18, 1956 (21 F.R. 4894), CGFR 56–28, dated July 24, 1956 (21 F.R. 7605), and 167–38, dated October 26, 1959 (24 F.R. 8857), to promulgate regulations in accordance with the statutes cited with the regulations below, the following regulations are prescribed and shall become effective 90 days after the date of publication of this document in the FEDERAL REGISTER:

Subpart 12.25—Certificates of Service for Ratings Other Than Able Seaman or Qualified Member of the Engine Department

1. Section 12.25–5 is amended to read as follows:

§ 12.25–5 Commitment of employment.

(a) An applicant for a certificate of service in an entry rating shall produce

satisfactory proof that he has a commitment of employment as a member of the crew of a United States merchant vessel. This proof, however, shall not be required if the applicant is already in possession of a seaman's document.

(b) A transcript of sea service in the U.S. Navy, U. S. Coast Guard, U.S. Military Sea Transportation Service, or U.S. Army Transportation Corps shall be accepted in lieu of a letter of commitment. In any of these cases, the applicant may be given more than one entry rating if requested by him and if otherwise qualified.

(R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416. Interpret or apply R.S. 4417a, as amended, 4488, as amended, 4551, as amended, sec. 13, 38 Stat. 1169, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended, sec. 7, 49 Stat. 1936, as amended; 46 U.S.C. 391a, 481, 643, 672, 367, 689)

Subpart 74.10—Stability Standards

2. Subpart 74.10 is amended by inserting a new § 74.10–11 to follow § 74.10–10, reading as follows:

§ 74.10–11 Special cases.

(a) The criteria of §§ 74.10–5 and 74.10–10 are generally limited in application to flush deck powered vessels of ordinary proportions and form. In the case of vessels not considered to come within this category, the Commandant may require or accept a modification of these criteria or such additional calculations as may be necessary to demonstrate the limits of safe operation.

(R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416. Interpret or apply R.S. 4417, as amended, 4418, as amended, 4426, as amended, 4490, as amended, sec. 3, 24 Stat. 129, as amended, 41 Stat. 305, as amended, sec. 2, 45 Stat. 1493, as amended, sec. 2, 49 Stat. 888, as amended, sec. 5, 49 Stat. 1384, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended; sec. 3, 54 Stat. 347, as amended, sec. 3, 70 Stat. 152, and sec. 3, 68 Stat. 675; 46 U.S.C. 391, 392, 404, 482, 483, 363, 85a, 88a, 369, 367, 1333, 390b, 50 U.S.C. 198; E.O. 10402, 17 F.R. 9917, 3 CFR 1952 Supp.)

Dated: April 28, 1960.

[SEAL] A. C. RICHMOND,
Vice Admiral, U.S. Coast Guard,
Commandant.

[F.R. Doc. 60–4081; Filed, May 5, 1960; 8:47 a.m.]

[CGFR 60–27]

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 92—CONSTRUCTION AND ARRANGEMENT

SUBCHAPTER K—MARINE INVESTIGATIONS AND SUSPENSION AND REVOCATION PROCEEDINGS

PART 136—MARINE INVESTIGATION REGULATIONS

Guard Rails Required on Cargo Vessels and Marine Casualty Investigations

The amendments in this document are interpretations used in the administration or enforcement of certain vessel inspection laws or are editorial in nature to reflect changes in Coast Guard procedures and bring them up-to-date.

With respect to guard rails required on cargo vessels, the amendments to 46 CFR 92.25–1(a), 92.25–5(a) and 92.25–90 (headnote) clarify requirements for guard rails to agree with administrative practices and to make requirements less stringent for guard rails in those locations where three courses are not considered necessary. This is a clarification and restatement of requirements to show what was meant with no change in requirements for existing vessels.

With respect to marine casualty investigations, the amendments to 46 CFR 136.07–1(c)(2), (3) and (4) are to reflect the function of an investigating officer, which is to determine facts and recommend action, as well as to remove the implied requirement that an investigating officer should adjudicate in a casualty case by determining whether or not a person's negligence, incompetence, misconduct, or violation of law contributed to a casualty. This is a clarification of Coast Guard procedures and practices. The amendment to 46 CFR 136.07–30 regarding testimony of witnesses removes the mandatory requirement that a witness must be placed under oath when appearing before an investigating officer. This is a procedural change to eliminate the necessity for placing a witness under oath when testimony is not to be reduced to writing.

With respect to preferment of charges against any person holding a license, certificate, or document issued by the Coast Guard arising in connection with Marine Board of Investigation conducting a marine casualty investigation, the amendment to 46 CFR 136.09–35 provides for local handling of such matters through the Coast Guard District Commander rather than as a mandatory requirement for the Marine Board to prefer such charges. This is a change relating to the internal administration of these requirements by the Coast Guard and requires the Marine Board to be a fact-finding body while relieving it of responsibility to pursue suspension and revocation proceedings.

Because the amendments in this document are editorial, interpretations, or pertain to procedures, it is hereby found that compliance with the Administrative Procedure Act (respecting notice of proposed rule making, public rule making procedure thereon, and effective date requirements thereof) is deemed to be unnecessary.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), 167–9, dated August 3, 1954 (19 F.R. 5915), 167–14, dated November 26, 1954 (19 F.R. 8026), 167–20, dated June 18, 1956 (21 F.R. 4894), CGFR 56–28, dated July 24, 1956 (21 F.R. 7605), and 167–38, dated October 26, 1959 (24 F.R. 8857), to promulgate regulations in accordance with the statutes cited with the regulations below, the following regulations are prescribed and shall become effective upon the date of publication of this document in the FEDERAL REGISTER:

Subpart 92.25—Rails and Guards

§ 92.25–1 [Amendment]

1. Section 92.25–1 *Application* is amended by changing the date from "November 19, 1952," to "July 1, 1960," in the first and second sentences of paragraph (a).

2. Section 92.25–5(a) is amended to read as follows:

§ 92.25–5 Where rails required.

(a) Rails at least 36 inches high or equivalent protection shall be installed near the periphery of all weather decks accessible to persons on board. Such rails on decks which extend outboard to the side of the vessel shall be in at least three courses approximately evenly spaced. Such rails on decks which do not extend outboard to the side of the vessel, such as tops of deck houses and winch houses, shall be in at least two courses approximately evenly spaced. If it can be shown to the satisfaction of the Officer in Charge, Marine Inspection, that the installation of rails of such height will be unreasonable and impracticable, having regard to the business of the vessel, rails of a lesser height or in some cases grab rails may be accepted and inboard rails may be eliminated if the deck is not generally accessible.

§ 92.25–90 [Amendment]

3. Section 92.25–90 *Vessels contracted for prior to November 19, 1952,* is amended by changing the date from "November 19, 1952" to "July 1, 1960" in the heading.

(R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416. Interpret or apply R.S. 4417, as amended, 4418, as amended, 4426, as amended, 4488, as amended, 4490, as amended, 41 Stat. 305, as amended, secs. 2, 3, 49 Stat. 1544, as amended, sec. 3, 68 Stat. 675; 46 U.S.C. 391, 392, 404, 481, 482, 363, 367, 50 U.S.C. 198; E.O. 10402, 17 F.R. 9917, 3 CFR, 1952 Supp.)

Subpart 136.07—Investigations

3. Section 136.07–1(c) is amended by changing subparagraphs (2), (3) and (4) to read as follows:

§ 136.07–1 Commandant or District Commander to order investigation.

* * * * *

(c) * * *

(2) Whether there is evidence that any failure of material (either physical or design) was involved or contributed to the casualty, so that proper recommendations for the prevention of the recurrence of similar casualties may be made;

(3) Whether there is evidence that any act of misconduct, inattention to duty, negligence or willful violation of the law on the part of any licensed or certificated man contributed to the casualty, so that appropriate proceedings against the license or certificate of such person may be recommended and taken under Title 46, U.S. Code, section 239;

(4) Whether there is evidence that any Coast Guard personnel or any representative or employee of any other government agency or any other person caused or contributed to the cause of the casualty; or,

4. Section 136.07–30 is amended to read as follows:

§ 136.07–30 Testimony of witnesses under oath.

(a) Witnesses to marine casualties or accidents appearing before an investigating officer may be placed under oath and their testimony may be reduced to writing.

(b) Written statements and reports submitted as evidence by witnesses shall be sworn to before an officer authorized to administer oaths and such statements and/or reports shall be signed.

Subpart 136.09—Marine Board of Investigation

5. Section 136.09–35 is amended to read as follows:

§ 136.09–35 Preferment of charges.

(a) If in the course of an investigation by a Marine Board there appears probable cause for the preferment of charges against any licensed or certificated personnel, the Marine Board shall, either during or immediately following the investigation and before the witnesses have dispersed, apprise the District Commander of such evidence for possible action in accordance with Part 137 of this subchapter, without waiting for the approval of the report by the Commandant. Such action or proceedings shall be independent and apart from any other action which may be later ordered by the Commandant or taken by other authorities.

(R.S. 4405, as amended, 4462, as amended. Interpret or apply R.S. 4450, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended, sec. 3, 70 Stat. 152, sec. 3, 68 Stat. 675; 46 U.S.C. 239, 367, 390b, 50 U.S.C. 198)

Dated: April 29, 1960.

[SEAL] A. C. RICHMOND,
Vice Admiral, U.S. Coast Guard, Commandant.

[F.R. Doc. 60–4079; Filed, May 5, 1960; 8:47 a.m.]

SUBCHAPTER P—MANNING OF VESSELS

[CGFR 60–30]

PART 157—MANNING REQUIREMENTS

Radar Observers Required

Pursuant to the notice of proposed rule making published in the FEDERAL REGISTER on February 18, 1960 (25 F.R. 1440–1448), and Merchant Marine Council Public Hearing Agenda dated April 4, 1960 (CG–249), the Merchant Marine Council held a hearing on April 4, 1960, for the purpose of receiving comments, views and data. The proposals considered were identified as Items I through XII, inclusive, and Item I contained proposed requirements regarding the manning of radar equipped vessels.

This document is the first of a series covering the regulations and actions considered at the April 4, 1960 Public Hearing and annual session of the Merchant Marine Council.

This document contains the final actions taken with respect to Item I regarding manning of radar equipped vessels. On the basis of the information received and comments made changes were made in the regulation designated 46 CFR 157.20–32 so that the effective date will be May 1, 1962, rather than January 1, 1961, and to clarify that it applies to the required complement of deck officers specified in the certificate of inspection. The proposal as set forth in Item I, as revised, is adopted and included in this document.

By virtue of the authority vested in me as Commandant, United States Coast Guard by Treasury Department Orders 120 dated July 31, 1950 (15 F.R. 6521), 167–14 dated November 26, 1954 (19 F.R. 8026), 167–20 dated June 18, 1956 (21 F.R. 4894), and CGFR 56–28 dated July 24, 1956 (21 F.R. 5659), to promulgate regulations in accordance with the statutes cited with the regulations below, the following § 157.20–32 is prescribed and shall become effective as provided in the text of the regulations:

Subpart 157.20—Computations

§ 157.20–32 Radar observers.

(a) Every radar equipped vessel of 300 gross tons and over which, on or after May 1, 1962, is issued a Certificate of Inspection for the navigation on ocean, coastwise, or Great Lakes waters shall have in its required complement of deck officers (including the master) only officers who have qualified as "radar observers." (See § 10.05–46 in Subchapter B (Merchant Marine Officers and Seamen) of this chapter for information concerning "radar observers.")

(R. S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416. Interpret or apply R. S. 4417a, as amended, 4453, as amended, 4463, as amended, secs. 1, 2, 49 Stat. 1544, 1545, as amended, sec. 3, 54 Stat. 347, anfi sec. 3, 68 Stat. 675; 46 U.S.C. 391a, 435, 222, 367, 1333, 50 U.S.C. 198)

Dated: April 29, 1960.

[SEAL] A. C. RICHMOND,
Vice Admiral U.S. Coast Guard, Commandant.

[F.R. Doc. 60–4080; Filed, May 5, 1960; 8:47 a.m.]

SUBCHAPTER S—NUMBERING OF UNDOCUMENTED VESSELS, STATISTICS ON NUMBERING, AND "BOATING ACCIDENT REPORTS" AND ACCIDENT STATISTICS

[CGFR 60–38]

PART 171—STANDARDS FOR NUMBERING

Kentucky System of Numbering Approved

Acting under the authority delegated by Treasury Department Order 167–32, dated September 23, 1958 (23 F.R. 7605), the Commandant, United States Coast Guard, on April 22, 1960, approved the Kentucky system for the numbering of motorboats, which was established pursuant to the Federal Boating Act of 1958.

As provided in this approval, the Kentucky system shall be operative on and after July 1, 1960. On that date the authority to number motorboats principally used in the State of Kentucky will pass to that State and simultaneously the Coast Guard will discontinue numbering such motorboats. Those motorboats presently numbered should continue to display the Coast Guard number until renumbered by Kentucky. On and after July 1, 1960, all reports of "boating accidents" which involve motorboats numbered in Kentucky will be required to be reported to the Department of Public Safety, Division of Boating, Frankfort, Kentucky, pursuant to House Bill No. 439, Regular Session, 1960, of the General Assembly of the Commonwealth of Kentucky, and the regulations adopted April 11, 1960, by the Commissioner, Kentucky Department of Public Safety.

Because the amendments to §§ 171.01–6(b), and 171.10–1(b), as set forth in this document, are informative rules about official actions performed by the Commandant, it is hereby found that compliance with the Administrative Procedure Act (respecting notice of proposed rule making, public rule making procedures thereon, and effective date requirements thereof) is unnecessary.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), and 167–17, dated June 29, 1955 (20 F.R. 4976), to promulgate rules in accordance with the statutes cited with the informative rules below, the following amendments are prescribed with an effective date of July 1, 1960:

Subpart 171.01—General

In § 171.01–6 *Temporary exemptions until July 1, 1960*, paragraph (b) is amended by deleting "Kentucky" from the list of States.

(Sec. 3, 60 Stat. 238, and sec. 633, 63 Stat. 545; 5 U.S.C. 1002, 14 U.S.C. 633)

Subpart 171.10—Application for Number

In § 171.10–1 *To whom made*, paragraph (b) is amended by inserting in the list of States having approved numbering systems the State of "Kentucky."

(Sec. 3, 60 Stat. 238, and sec. 633, 63 Stat. 545; 5 U.S.C. 1002, 14 U.S.C. 633)

Dated: April 29, 1960.

[SEAL] A. C. RICHMOND,
Vice Admiral, U.S. Coast Guard, Commandant.

[F.R. Doc. 60–4082; Filed, May 5, 1960; 8:47 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 33—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS C TELEPHONE COMPANIES

Interpretations of Accounting Requirements

The Commission has had under consideration the desirability of making certain editorial changes, in addition to those made by its Order of April 15,

1960, in Part 33 of its rules and regulations.

The purpose of the amendments adopted herein is to delete from Appendix A footnotes to cases 1 and 24 which are cases which have been previously deleted, to correct a section reference in case 20, to incorporate in the text of the cases the references to class C telephone companies uniform system of accounts now appearing in footnotes, and to eliminate references to sections in Part 31 of the Commission's rules insofar as doing so will not result in any change in meaning.

It appearing that the amendments adopted herein are editorial in nature and hence that compliance with the public notice, procedural, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary; and

It further appearing that the amendments adopted herein are issued pursuant to authority contained in sections 4(i), 5(d)(1), and 220 of the Communications Act of 1934, as amended, and section 0.341(a) of the Commission's Statement of Organization, Delegations of Authority and Other Information;

It is ordered, This 2d day of May 1960, that, effective May 9, 1960, Part 33 of the Commission's rules is amended as set forth in the Appendix hereto.

(Sec. 4, 48 Stat. 1066 as amended; 47 U.S.C. 154. Interprets or applies sec. 220, 48 Stat. 1078, 47 U.S.C. 220)

Released: May 3, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

Part 33—Uniform System of Accounts for Class C Telephone Companies, is amended as follows:

Delete Appendix A and substitute the following therefor:

APPENDIX A—INTERPRETATIONS OF THE ACCOUNTING REQUIREMENTS CONTAINED IN THIS SYSTEM OF ACCOUNTS

Case 1

(Applicable only to Class A and class B companies.)

Case 2

OCTOBER 14, 1936.

Question: What is the appropriate accounting with respect to taxes imposed under the Social Security Act and similar State statutes?

Answer: Amounts of such taxes, or accruals prior to payment, may represent taxes for which the company is liable on its own behalf as an employer or amounts for which it is liable on behalf of its employees.

The amounts of accruals for which the company is liable on its own behalf should be charged to account 5400, "Operating taxes," to the telephone plant accounts (§ 33.33(b)(8)), and to account 7000, "Miscellaneous taxes," as appropriate, so as to apportion the total tax equitably among the costs of rendering public utility service, of construction of telephone plant, and of other operations of the company. The amounts charged to the foregoing accounts should be credited to account 2400, "Accrued liabilities." The amounts of payments to the United States Treasury or other governmental agency should be charged to account 2400.

The amounts deducted from the pay of employees for which the company is liable on behalf of its employees should be segregated in appropriate accounts classified under account 2320, "Accounts payable." The amounts of payments to the United States Treasury or other governmental agency should be charged to account 2320.

Nothing contained in this accounting ruling shall be construed as committal of the future action or policy of the Commission with respect to accounting or other treatment of accruals, payments, and funds under voluntary or private plans for provident relief or pensions.

Case 3

MARCH 13, 1939.

Question: "Straight-line method" of accounting for depreciation, as defined in the uniform system of accounts for class C telephone companies (§ 33.65(b)) differs from the definition in the uniform system of accounts for class A and class B telephone companies (§ 31.01-3(ff)) in that the expression "as nearly as may be" is omitted from the former. Shall the instruction for class C companies be more strictly construed because the expression "as nearly as may be" is not included in the instruction?

Answer: No. § 33.65(b) shall be construed as having the same meaning as § 31.01-3(ff).

The use of the expression "as nearly as may be" indicates cognizance of the impossibility of making perfect estimates of service lives and net salvage values. It is not intended that the periodic accounting by telephone companies for depreciation shall vary arbitrarily or by reason of fluctuations in gross or net operating revenues or the economic fortunes of the business.

Case 4

MARCH 13, 1939.

Question: What account shall be credited with amounts of interest which have accrued on advances from affiliated companies when such advances are classified as long-term debt?

Answer: Amounts of such interest are includible in account 2400, "Accrued liabilities," until the interest becomes payable, at which time such amounts are includible in account 2320, "Accounts payable," first subdivision prescribed by paragraph (b), except that the amount of such interest payable as is not subject to current settlement shall be included in account 2250, "Advances from affiliated companies."

Case 5

MARCH 13, 1939.

Question: How shall class C telephone companies account for the cost of installation of the various classes of items of which the "material" cost is includible in account 1031, "Station equipment"?

Answer: The cost of installing items of "station apparatus" shall be included in account 1032, "Station wiring." The installation cost of "private branch exchanges, booths, and special fittings, and other apparatus not includible in account 1021, 'Central office equipment'," shall be included in account 1031.

Case 6-R-1 (Cancels Case 6)

JULY 13, 1939.

Question: What is the correct interpretation of § 31.2-21 and its related regulations in Part 31 (Uniform System of Accounts for Class A and Class B Telephone Companies) of the Commission's Rules and Regulations concerning the acquisition of "a substantially complete telephone system, exchange, or toll line"?

Answer: Paragraphs (a) and (b) as used in § 31.2-21, of the effective system of accounts for telephone companies, the former of which paragraphs includes the expression, "a substantially complete telephone system, exchange, or toll line" shall be interpreted to mean that all telephone plant acquired from predecessors shall be accounted for in accordance with the provisions of those paragraphs of the instruction unless the property acquired (a) comprised only a few poles or relatively unimportant units of property not to be used in the assemblage of which they were formerly a part, (b) was not substantial in quantity, and (c) was acquired at small cost. In the event that the acquisition involved only a few poles or relatively unimportant items of property acquired separately and at a small cost, the accounting therefor shall be as provided in paragraph (c) of that section except that if the property was acquired with the telephone traffic associated therewith, the accounting therefor shall be in accordance with paragraphs (a) and (b) of § 31.2-21.

Such acquisitions as the following (subject to the exceptions noted in the paragraph next above) shall be accounted for as "a substantially complete telephone system, exchange, or toll line":

(a) A line of poles, with or without crossarms or other attachments and without wire, cable, or any other class of associated plant.

(b) A line of conduit, without cable or any other class of associated plant.

(c) A run of cable, without conduits, poles, or any other class of associated plant.

(d) A run of one or more open wires, without poles, crossarms, or any other class of associated plant.

(e) An extensive section of right-of-way, without poles, conduit, wire, cable, or any other class of associated plant.

(f) A general office building, other principal buildings, or group of such buildings, without other classes of associated plant.

(g) Extensive parcels of unimproved land or land upon which buildings such as indicated in paragraph (f) above are situated.

(h) All the central office equipment, station apparatus, station installations, drop and block wires, private branch exchanges, booths and special fittings, furniture and office equipment, or vehicles and other work equipment situated in or utilized in a single exchange area, central office area, or other extensive area, without additional classes of associated plant.

(i) All that portion of any of the foregoing items which constitutes toll facilities as distinguished from exchange facilities, or vice versa, or which constitutes long-lines toll facilities as distinguished from more localized toll facilities or vice versa.

(For class C companies: This answer is deemed pertinent to the expression "a substantially complete operating unit or system," appearing in § 33.32, "Telephone plant acquired.")

NOTE: It is recognized, however, that even under the foregoing rules of guidance it is sometimes difficult to make all the minor segregations contemplated. Accordingly, an acquisition without traffic from a nonaffiliate is not required to be accounted for as an acquisition of a substantially complete telephone system, exchange, or toll line if the cost of acquisition is less than $5,000 in the case of a class A company or less than $1,000 in the case of a class B company. (This note was adopted by the Commission June 20, 1944, to become effective immediately.)

Case 7

JULY 13, 1939.

Question: Shall the acquisition of (a) an undivided or other type of interest in, or (b) an entire interest in a portion of, any part of a telephone plant be accounted for as "a substantially complete telephone system, exchange, or toll line" when such part, if entirley owned or acquired by the accounting company, would be so considered?

Answer: Yes. (For class C companies: This answer is deemed pertinent to the expression "a substantially complete operating unit or system," appearing in § 33.32, "Telephone plant acquired.")

Case 8

JULY 13, 1939.

The Commission on April 24, 1945, deleted case 8, effective January 1, 1946.

Case 9–R–1

FEBRUARY 1, 1940.

Question: The use, especially in rural sections, of two or more conductor rubber insulated wire buried in the ground with or without conduit or other protection instead of overhead wires and also its use for underground dips under railroads, etc., either with or without conduit pipes, raises a question as to the appropriate accounting therefor to conform with provisions of the effective uniform system of accounts for telephone companies. It is necessary when this rubber covered wire is buried in the ground that a separate ground wire be buried with it or that the rubber insulated wire itself be covered with a metallic braid to serve the purpose of the ground wire. To what account should the cost of such plant be charged?

Answer: With respect to both the basic structure and the conductor serving as a ground, the cost shall be included in account 1045, "Poles, conduit, cable, and wire." (The foregoing does not apply to drop wires, even if buried, extending from the point of connection with the general overhead or underground system to the subscribers' premises—see account 1032, "Station wiring.")

Case 10

AUGUST 16, 1939.

STATEMENT OF FACTS

Amounts included in account 1200, "Plant adjustments," subdivided as provided in the text of the account, may include the following:

(a) Debit amounts with respect to one or more transactions which in the opinion of the carrier should be charged to surplus.

(b) Credit amounts with respect to other transactions than those reflected in the debit amounts mentioned in the preceding subparagraph, or of a different character, which have not been submitted to the Commission for its consideration.

Question: May all or any of such credit amounts be netted with all or any of such debit amounts and the resulting debit amount charged to surplus or amortized, without further direction or approval, as provided in account 1200, "Plant adjustments"?

Answer: No. Only amounts mentioned in subparagraph (a), aforementioned, may be treated as provided in subparagraph (1) of § 33.1200(c). Amounts of the character referred to in subparagraph (b) of the "statement of facts" shall be submitted to the Commission as required by subparagraph (2) of § 33.1200(c).

Case 11

AUGUST 16, 1939.

STATEMENT OF FACTS

The A Company has under consideration (in 1939) the taking over of the physical properties of the B Company and the C Company (wholly owned subsidiaries), and operating them directly as a part of its own property. The A Company in 1933 acquired substantially all of the outstanding common capital stock of the B Company, which company then held more than 99 percent of the common stock of the C Company. In 1936 the B Company's holdings of the C Company's common stock were sold to the A Company for the amount this stock cost the B Company. Both subsidiaries for some time have been operated as a part of the A group, having common officers. Their accounts have also been under close supervision of the A Company.

Although the A Company acquired only the B Company's capital stock in 1939, and in 1936 acquired only the C Company's capital stock, the year 1933 is, for accounting purposes, taken as the date when the B Company, as well as the C Company, became part of the A group of properties.

Based upon these facts, and if the accounting company be held responsible for the verity of all amounts used, is the accounting procedure hereinafter outlined satisfactory?

Question (a): May the cost to the merging company (A), at the time of the merger, of the total net assets taken over be determined by adding to the amount which the A Company paid for the B and C Companies' common stocks the amount of the now outstanding investment advances made by it to these subsidiaries, and deducting from this total the decrease in surplus suffered by Companies B and C since 1933?

Answer (a): Yes, for B Company. C Company's surplus should be adjusted to reflect its surplus at date of acquisition of C Company by B Company.

Question (b): Should the decrease in surplus of the two subsidiary companies since the respective dates of acquisition be charged directly against the surplus account of the A Company?

Answer (b): Yes.

Question (c): May the cost of telephone plant acquired from the subsidiaries be determined by deducting from the adjusted cost (computed as indicated in question (a)) of the total net assets of the subsidiaries the amounts representing the cost of net assets acquired other than telephone plant or by adding to such adjusted cost the amount representing the net liabilities assumed, exclusive of telephone plant, as appropriate?

Answer (c): Yes, provided that full explanation is furnished together with complete details concerning any estimates or allocations of amounts representing cost of net assets acquired or amount of net liabilities assumed.

Question (d): May the cost of telephone plant taken over, determined in conformity with the procedure outlined in question (c), be charged to account 1076, "Telephone plant acquired"?

Answer (d): Yes.

Question (e): May the amounts carried in the depreciation reserve accounts of the B and C Companies be considered for the purpose of these mergers as the "reserve requirements" referred to in § 31.2–21(b)(2) of the effective system of accounts (For class C companies: "No section exactly comparable but see § 33.32(b), * * * distributed to the telephone plant and other appropriate accounts * * *"), and charged and credited, respectively, to account 1076 and account 2600, "Depreciation reserve," of A Company?

Answer (e): Yes, subject to the proviso that responsibility for the accuracy of the amounts rests with the accounting company, and that if subsequently by further investigation and analysis, or otherwise, different amounts are determined as the correct "reserve requirement" applicable to the plant acquired, appropriate adjustment shall be made.

Question (f): Should the "original cost" of the telephone plant be credited to account 1076 and charged to the appropriate plant accounts (1000, "Telephone plant," and 1100, "Telephone plant under construction"), and the amount then remaining in account 1076 cleared to account 1200, "Plant adjustments," of the A Company?

Answer (f): Yes.

Case 12

FEBRUARY 10, 1941.

STATEMENT OF FACTS

A company formerly had outstanding 3,700 shares of 7 percent cumulative preferred stock (par value, $50 per share), which was callable at a premium of $2.50 per share. The company issued 3,700 shares of 6 percent cumulative preferred stock (par value, $50 per share), callable at a premium of $2.50 per share.

The greater portion of the new stock was issued in exchange for the old stock on a share-for-share basis. The remainder of the new stock was sold for cash at $52.50 per share, and the cash proceeds were devoted to reacquisition of the remainder of the old stock at $52.50 per share.

Question (a): Should the new stock which was issued in exchange for the old stock on a share-for-share basis be accounted for as though there had been no premium paid on the old stock and no premium received from the sale of the new stock, or should premiums in both instances be accounted for?

Answer (a): To the extent that the new stock was exchanged on a share-for-share basis for the old stock the appropriate amount included in one subaccount of account 2100, "Capital stock" (7 percent preferred), should be transferred to another subaccount of account 2100, "Capital stock" (6 percent preferred), for the reason that no call premium was paid on the shares of 7 percent preferred stock exchanged and no premium was received on the shares of 6 percent preferred stock issued in exchange therefor.

Question (b): Would it be proper, under the existing circumstances, to offset the premium paid on the old stock reacquired for cash against the premium received on the new stock sold for cash?

Answer (b): No. The premium of $2.50 per share received on the new stock sold for cash should be credited to account 2150, "Premium on capital stock." The call premium paid on those shares of 7 percent preferred stock that were redeemed should be accounted for as provided in § 33.21(h).

Case 13

FEBRUARY 10, 1941.

Question: Several companies which have refunded bond issues have had substantial tax savings in the year in which the refunding occurred, because the unamortized debt discount and expense and the call premium associated with the refunded securities are permitted as income tax deductions during the year in which the securities are redeemed. Instead of showing in the tax account only the actual taxes paid or accrued, the companies in question have also included therein the amount of the tax savings due to the refunding operation, with an offsetting credit, usually to account 1880, "Unamortized debt discount and expense." Is this permissible?

Answer: No. Account 5400, "Operating taxes," should include provision for actual taxes only, and the account should not be increased by the amount which would have been paid had the refunding transaction not occurred. In other words, there was an actual saving in taxes, and this saving should be reflected in the income statement because it is a fact.

Case 14

FEBRUARY 10, 1941.

Question: What should be the accounting by a telephone company to record the transactions under an agreement whereby an electric utility conveys to the telephone company title to a pole line, agrees thereafter to pay one-half of the cost of any poles installed therein as replacements, and receives as con-

sideration the right to use the poles in this line?

Answer: The telephone company should debit to account 1045, "Poles, conduit, cable and wire," the original cost (estimated if not known) of the poles acquired from the electric utility, with concurrent credits to account 2600, "Depreciation reserve," for the accrued depreciation, and to account 2590, "Other deferred credits," for the difference. The latter credit should be spread over the estimated remaining service life of the pole line by debits to account 2590 and concurrent credits to account 3060, "Miscellaneous operating revenues."

Subsequent amounts received from the electric utility in part payment for the poles installed in replacement should be credited to account 3060 as received.

Case 15

FEBRUARY 10, 1941.

Question: What is the proper accounting for the pay of employees of telephone companies that is continued while the employees are in the military service or in other governmental service originating through the national emergency?

Answer: The pay of employees of telephone companies that is continued while the employees are in the military service or in other governmental service originating through the national emergency shall be charged to a separate subaccount under account 4190, "Other operation expenses," item 15, appropriately subdivided.

Case 16

JULY 22, 1942.

The Commission on April 24, 1945, deleted Case 16, effective January 1, 1946.

Case 17

JANUARY 2, 1943.

Question: What is the proper accounting under the Uniform System of Accounts for golf club dues, social club dues, service club dues (Rotary, Kiwanis, etc.), "house charges," entertainment of employees and of members of employees' families and others, and items of a similar nature?

Answer: Such expenditures are chargeable to account 7100, "Other miscellaneous deductions from income." They are not to be charged to operating expenses of the company. This interpretation applies whether the expenditures are made directly by the operating company, indirectly through payments to an associated company, or are in the form of reimbursements to officers or other employees, or by any other direct or indirect means.

NOTE A: Membership fees and dues in bona fide trade, technical, and professional associations are chargeable to the account appropriate for expenses incurred for the direct benefit of a particular department, or to account 4190, "Other operation expenses," if the benefit is of a general character.

NOTE B: Only the reasonable expenses of bona fide educational and recreational activities conducted for the benefit of employees of the company are chargeable to the accounts appropriate for expenses incurred for the direct benefit of the several departments of the company, or to account 4190 if of a general character.

Case 18–R–1 (Cancels Case 18)

FEBRUARY 14, 1952.

Question: Under arrangements with another party, sometimes the United States Government, a telephone company agrees, or is obliged, to remove, relocate, rearrange, reroute, or otherwise make changes in telephone property, other than for the purpose of rendering telephone service to the other party, for which the company is reimbursed for all or a portion of the costs incurred. What is the proper accounting for such property changes and the reimbursements received from the other parties?

Answer: The cost of plant retirements should be accounted for in accordance with the rules applicable thereto. The cost of new plant should be included in the appropriate plant accounts at actual cost of construction. The reimbursement received shall be accounted for (a) by crediting operation and maintenance expenses to the extent of actual expenses occasioned by the plant changes and (b) by crediting the remainder to the reserve for depreciation, unless contractual terms definitely characterize residual or specific amounts as applicable to the cost of replacement. In the latter event, appropriate credits should be entered in the plant accounts.

Case 19

JULY 14, 1944.

Question: What accounts should be charged with duplicate interest in refunding transactions?

Answer: Duplicate interest should be charged to the appropriate interest account as a deduction from current income unless permission to defer the amount is obtained from the Commission.

Case 20

AUGUST 16, 1944.

Question: Company A owns a section of outside plant for which it has no further use (e.g., because of rerouting the line or because of substitution of underground construction) and which becomes available for use of Company B. Company B has use for only a portion of the full capacity of the line or in case of jointly owned plant for only a portion of the full capacity of Company A's interest. Company B agrees to purchase the portion of A's interest for which it has use. Any of the remaining portiton of the plant not removed by Company A is abandoned and the title thereto goes to Company B without cost. What should be the accounting by Company B?

Answer: Company B shall record the total units so acquired in its continuing property record and account for the proportionate interest actually purchased on the basis of the original cost of that interest and reserve requirements applicable thereto in accordance with section 33.32 of the system of accounts.

Case 21

JULY 17, 1946.

Question: When capital stock is sold at a premium, is it permissible to credit account 2150, "Premium on capital stock," with the net premium, that is, the premium realized from purchasers of the stock minus expenses otherwise includible in account 1860, "Capital-stock expense"?

Answer: Account 2150, "Premium on capital stock," account 1850, "Discount on capital stock," and the respective capital stock accounts are intended to include the amounts received from purchasers of capital stock, but not expenses of issuing and selling the stock. For each class and series of capital stock there should be recorded separately in the prescribed accounts the par or stated value of the stock, discount or premium, and the expenses incurred in connection with the issuance and sale of the stock. Should a carrier desire to write off or amortize amounts recorded in account 1860, "Capital-stock expense," the charge is required to be made to account 2900, "Surplus."

Case 22

JULY 17, 1946.

Question: What is the proper account to be charged with nonpromotional advertising of the type sometimes referred to as institutional advertising or as goodwill advertising, the purpose of which is to foster and maintain public goodwill rather than for any immediate and direct promotion of sales of service to subscribers?

Answer: Such advertising should be charged to account 4190, "Other operation expenses," however, account 7100, "Other miscellaneous deductions from income," should be charged with the cost of any advertising for the purpose of influencing public opinion as to the election of public officers, referenda, proposed legislation, proposed ordinances, repeal of existing laws or ordinances, approval or revocation of franchises; for the purpose of influencing decisions of public officers; or having any direct or indirect relationship to political matters.

Case 23

JULY 17, 1946.

STATEMENT OF FACTS

In probably all jurisdictions, upon the organization of a corporation, specified fees must be paid. These fees are measured in different ways, the method pertinent to the present inquiry being the amount of authorized stock. In this particular jurisdiction, if several corporations merge or consolidate, then the amount of the fees payable by the resulting corporation is the difference between that calculated on the entire authorized stock of the resulting corporation after the merger and that which was paid previously by the parties to the merger or consolidation. If additional stock is authorized at any subsequent date, a fee must be paid thereon. In the state in question, the minimum authorized capital stock is $5,000.

An additional characteristic of the fees is that they relate to the total stock authorized and not to respective classes of stock. Thus, no additional fee would be payable if one class of preferred stock is retired and replaced by another class, provided there is no increase in the amount authorized to be issued, or if preferred stock is replaced by common stock with no increase in the authorized amount. In the case of no par stock, the aggregate stated value of the shares authorized is the basis for the fees. Where no par stock has no stated value, the basis for the fees is the capital paid in attributable to such shares.

The charter or bonus fees herein considered are not to be confused with fees paid by a carrier to a public service commission or other authority for registration and permission to issue and sell an authorized amount of capital stock. This latter type of fee is chargeable to account 1860, "Capital-stock expense."

Question (a): What is the proper account to be charged with charter or bonus fees similar to those described above?

Answer (a): Such charter or bonus fees should be charged to account 1001, "Organization." Attention is directed, however, to the above comments concerning fees paid by a carrier for registration and permission to issue and sell an authorized amount of capital stock, to which this interpretation does not apply.

Question (b): On the merger or consolidation of two or more companies where charter or bonus fees previously paid by the merged companies are permitted to be offset against the fees otherwise payable on the authorized capital stock of the continuing corporation, is it permissible to carry forward to the organization account of the continuing corporation the charter or bonus fees included in the merged corporations' organization accounts?

Answer (b): Under the circumstances described in the question it is permissible for a continuing corporation of a merger or consolidation to record in account 1001, "Organization," so much of the charter or bonus fees previously paid by the merged corporations as is available for credit against the fees otherwise payable on the authorized

capital stock of the continuing corporation or creditable against fees for future increases in the authorized capital stock.

Case 24–R–1

NOVEMBER 28, 1952.

The Commission on April 15, 1960 deleted Case 24–R–1, effective April 29, 1960.

Case 25

OCTOBER 18, 1955.

STATEMENT OF FACTS

Two telephone companies operate adjoining exchanges. An agreement between the companies is reached whereby the subscribers in an area which includes one or more exchanges of each company are given extended area service whereby all subscribers in the area have a service which permits local calls to any other subscriber of either company in that area. Each company bills its own customers in accordance with its own tariff. In certain situations, the expenses incurred by one of the companies in rendering the extended area service may be disproportionate due to differences in the amount of facilities furnished or operating functions performed in connection with the service. In such cases, payments to the one company by the other may be agreed upon as an adjustment therefor. The amount of such payments may be determined in various ways but is usually based on the relative facilities furnished by each company, the labor and other services performed by each, the number of customers in the exchange of each company, or a combination of those bases. However, in some cases the payments are intended to cover a variety of costs, e.g., operating service, maintenance on plant, supervision, related social security taxes, relief and pensions, depreciation, house service, return on investment, etc.

Question: What is the proper accounting for the amounts billed to its customers by each company and for the payments by one company to another under arrangements for rendering extended area service?

Answer: The amounts billed by each company to its customers shall be credited by it to account 500, "Subscribers' station revenues," (account 3010, "Local service revenues," for Class C companies). The company receiving the payments from another company shall credit the amounts received to account 506, "Other local service revenues," (account 3010, "Local service revenues," for Class C companies). The company making the payment shall charge the amount of the payments to account 675, "Other expenses," (account 4190, "Other operation expenses," for Class C companies). However, where the agreement between the companies specifically provides for a division of revenues, the accounting shall be on that basis.

[F.R. Doc. 60–4105; Filed, May 5, 1960; 8:50 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 250]

LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Notice of Proposed Rule Making

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 approval of the Secretary of the Treasury or his delegate. Prior to the 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 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.

In order to conform this regulation in respect of changes made in certain other regulations of this title effective July 1, 1960, 26 CFR Part 250 is amended as follows:

1. Section 250.1 is amended to read:

§ 250.1 Alcoholic products coming into the United States from Puerto Rico and the Virgin Islands.

This part, "Liquors and Articles from Puerto Rico and the Virgin Islands," relates to the production, bonded warehousing, and withdrawal of distilled spirits, and denatured spirits, and the manufacture of articles in Puerto Rico and the Virgin Islands to be brought into the United States free of tax and to the collection of internal revenue taxes on taxable alcoholic products coming into the United States from Puerto Rico and the Virgin Islands.

2. The following new section is inserted immediately following § 250.15:

§ 250.15a Executed under penalties of perjury.

Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this _____ (insert type of document, such as, statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

§ 250.25 [Amendment]

3. Section 250.25 is amended by striking the number "5008" and inserting in lieu thereof the number "5205".

4. Section 250.28 is amended to read:

§ 250.28 United States.

"United States" shall mean the States and the District of Columbia.

5. Section 250.30 is amended to read:

§ 250.30 United States Internal Revenue Service office.

"United States Internal Revenue Service office," as used in this part, shall mean the United States Internal Revenue Service office in Puerto Rico operating under the direction of the Director of the International Operations Division of the Internal Revenue Service.

§ 250.36b [Amendment]

6. Section 250.36b is amended by striking the phrase "subpart OO of Part 182 of this chapter in respect of alcohol, denatured alcohol, and products containing denatured alcohol, shall respectively apply to:" from the first sentence and inserting in lieu thereof the phrase "subpart Ia shall apply to:".

7. Section 250.44 is amended to read:

§ 250.44 Liquor dealer's special taxes.

Every person bringing liquors into the United States from Puerto Rico, who sells, or offers for sale, such liquors must file Form 11 with the district director of internal revenue and pay special (occupational) tax as a wholesale dealer in liquor or as a retail dealer in liquor in accordance with the law and regulations governing the payment of such special taxes (Part 194 of this chapter).

(72 Stat. 1340, 1343, 1344; 26 U.S.C. 5111, 5112, 5121, 5122)

§ 250.53 [Amendment]

8. The second sentence of § 250.53 is amended to read: "The statement of process must also show whether there are to be blended together in the manufacture of the finished product, liquors of less than 190 degrees of proof (a) distilled (1) from different materials, (2) by different distillers, (3) at different distilleries, or (4) from different combinations of the same materials; or (b) of different ages; or (c) which differ in kind according to the standards of identity prescribed in 27 CFR Part 5."

§§ 250.62 and 250.64 [Amendment]

9. Sections 250.62 and 250.64 are amended by changing the number "1520" to the number "2630" wherever it appears in such sections.

§ 250.65 [Amendment]

10. Section 250.65 is amended as follows:

(A) By changing the number "1520" to the number "2630" wherever it appears in the section and

(B) By striking the last sentence.

§§ 250.66 and 250.67 [Amendment]

11. Sections 250.66 and 250.67 are amended by changing the number "1520" to the number "2630" wherever it appears in such sections.

§ 250.70 [Amendment]

12. Section 250.70 is amended by changing the word "denomination" to the word "size" in the first sentence.

§§ 250.74, 250.75, and 250.90 [Amendment]

13. Sections 250.74, 250.75, and 250.90 are amended by changing the number "1520" to the number "2630" wherever it appears in such sections.

14. Section 250.137 is amended to read:

§ 250.137 Size of red strip stamps.

Red strip stamps shall be issued in a standard size, serially numbered, for bottles or containers of ½ pint capacity or more, and in a small size for bottles or containers of less than ½ pint capacity.

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

15. Section 250.138 is amended to read:

§ 250.138 Affixing strip stamps.

Strip stamps shall be securely affixed to the containers with a strong adhesive, and shall be affixed in such a manner that on opening the container the stamp will be broken and a portion thereof, sufficient to identify the kind of stamp placed thereon, will remain attached to the container or to a cap or seal which is permanently affixed thereto. Strip stamps affixed to containers shall not be concealed or obscured in any manner except that any such stamp may be covered by a cup, cap, seal, carton, wrapping, or other device which can be readily removed without injury to the stamp or which is sufficiently transparent to permit all data on the stamp to be read. If a cup, cap, or seal is placed over a stamp, a portion of the stamp must remain plainly visible. If containers are enclosed in sealed opaque cartons, such cartons and wrappings on such cartons must bear the words, "This package may be opened for examination by Internal Revenue Officers." Internal revenue and customs officers have the right to open such cartons or wrappings and examine

the container. Where there is doubt as to the propriety of the use of any cup, cap, or seal, the closure and container should be submitted to the Director for approval.

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

§§ 250.139 and 250.140 [Deletion]

16. Sections 250.139 and 250.140 are deleted.

§ 250.141 [Amendment]

17. Section 250.141 is amended as follows:

(A) By deleting the phrase ", Hawaii, or Alaska," and

(B) By changing the citation at the end of the section to read "(72 Stat. 1358; 26 U.S.C. 5205)".

§ 250.142 [Amendment]

18. Section 250.142 is amended as follows:

(A) By deleting the phrase ", Hawaii, or Alaska" and

(B) By changing the citation at the end of the section to read "(72 Stat. 1358; 26 U.S.C. 5205)".

19. Section 250.145 is amended to read:

§ 250.145 Marking of cases.

The distiller, rectifier, or bottler shall plainly and legibly mark upon each case containing bottles of distilled spirits to which red strip stamps are attached, the following legend:

The red strip stamps required by section 5205, Internal Revenue Code, are affixed to the _____, _____, containers of distilled spirits in this case.
(Number) (Size)

_____
(Name of distiller, rectifier, or bottler)

This legend when stamped on the case may be accepted by customs officers as evidence that the containers bear the stamps as indicated by the certification.

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

20. Section 250.146 is amended to read:

§ 250.146 Record and report of red strip stamps.

Insular internal revenue agents having custody of red strip stamps shall maintain for each day a transaction in red strip stamps occurs a daily record of such stamps by size (small or standard), showing the number received, used, lost, mutilated, destroyed or otherwise disposed of, and on hand at the beginning and at the end of the day. The record shall also show the number and size of bottles to which the stamps were affixed, except that bottles of less than ½ pint capacity shall be recorded as one item. No form is prescribed for the daily records but such records shall be retained to support the monthly report. At the close of the month, or within 10 days thereafter, the insular internal revenue agent will prepare a report, in quadruplicate, of the strip stamps received and used during the month on Form 2260, properly modified. The agent will retain one copy and forward three copies to the treasurer; the treasurer will retain one copy, forward one copy to the United States Internal Revenue Service office, and one copy to the assistant regional commissioner.

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

§§ 250.182 and 250.184 [Amendment]

21. Sections 250.182 and 250.184 are amended by changing the number "1520" to the number "2630" wherever it appears in such sections.

22. The following new subpart, Subpart Ia, is inserted immediately following § 250.186:

Subpart Ia—Tax-Free Shipments to the United States From Puerto Rico

Sec.
250.191 Samples and analysis.
250.192 Action by assistant regional commissioner.
250.193 Certificate.
250.194. Marking containers.
250.195 Arrival in the United States.

§ 250.191 Samples and analysis.

Whenever completely denatured spirits, produced and denatured under the provisions of this subchapter, or proprietary or special industrial solvents, proprietary antifreeze solutions, and toilet preparations (bay rum, hair lotions, skin lotions, and similar products) manufactured under the provisions of this subchapter with denatured spirits produced and denatured under the provisions of this subchapter are shipped in containers larger than 5 wine gallons from Puerto Rico to the United States exempt from tax under the provisions of § 250.36, the shipper shall notify the chemist in charge in Puerto Rico, who will have representative samples taken from each shipment for examination. Such samples must definitely represent the products which are to be shipped. It will not be necessary to sample every container, as samples taken at random from large shipments will be considered as representative of the entire lot. The samples will be examined promptly by the chemist who will forward a copy of his chemical report to the assistant regional commissioner of the region where the port of arrival is located. The report will show whether the product conforms to authorized formulas for completely denatured spirits, or to the formulas on approved Form 1479–A for such products, and must contain sufficient data to definitely identify the particular shipment involved.

(72 Stat. 1375, 1430; 26 U.S.C. 5314, 7652)

§ 250.192 Action by assistant regional commissioner.

If the chemical report discloses to the assistant regional commissioner that the product conforms to an approved formula, he will promptly advise the collector of customs at the port of arrival that the shipment may be released free of tax. If the report discloses that the product does not conform to an approved formula, the assistant regional commissioner will request the collector of customs to detain the product and will forward a copy of the report to the Director, Alcohol and Tobacco Tax Division, for advice as to the disposition of the product.

(72 Stat. 1375, 1430; 26 U.S.C. 5314, 7652)

§ 250.193 Certificate.

Every person shipping into the United States from Puerto Rico free of tax, pursuant to §§ 250.36 and 250.36a, (a) distilled spirits produced and withdrawn in Puerto Rico in accordance with the provisions of this subchapter relating to the production, bonded warehousing, and the withdrawal from bond of spirits in the United States, (b) distilled spirits produced, warehoused (if applicable), denatured, and withdrawn in Puerto Rico in accordance with the applicable provisions of this subchapter relating to the production, bonded warehousing, denaturation, and the withdrawal from bond of denatured spirits in the United States, and (c) products containing such denatured spirits and manufactured in accordance with the provisions of this subchapter relating to the use of denatured spirits in the United States, shall certify, in the English language, to such fact on the face of the shipper's waybill. Where the product is made pursuant to approved Form 1479–A, the shipper shall also certify as follows:

Made with _____
(Completely or specially)
denatured spirits, Formula No. _____, pursuant to Form 1479–A, approved _____, 19--.

(72 Stat. 1375, 1430; 26 U.S.C. 5314, 7652)

§ 250.194 Marking containers.

In addition to such other data as may be required by Part 211 of this chapter to be marked on packages of products containing denatured spirits, the name, address, and permit number of the manufacturer shall appear on each shipping container of such products shipped from Puerto Rico to the United States free of tax.

(72 Stat. 1375, 1430; 26 U.S.C. 5314, 7652)

§ 250.195 Arrival in the United States.

When industrial spirits, denatured spirits, and products containing denatured spirits, coming into this country from Puerto Rico, are covered by shipper's documents bearing the manufacturer's certificate prescribed in § 250.193, the collector of customs will inspect and verify the consignment. If no discrepancies are found, the products may be released free of tax: *Provided,* That in the case of products required to be examined by the chemist in charge in Puerto Rico in accordance with § 250.191, release shall be withheld until advice is received from the assistant regional commissioner that the shipment may be released free of tax, as provided in § 250.192.

(72 Stat. 1375, 1430; 26 U.S.C. 5314, 7652)

§ 250.201b [Amendment]

23. Section 250.201b is amended by striking the phrase "Subpart PP of Part 182 of this chapter in respect of alcohol, denatured alcohol, and products containing denatured alcohol, shall respectively apply to:" from the first sentence and inserting in lieu thereof the phrase "Subpart O shall apply to:".

24. Section 250.210 is amended to read:

§ 250.210 Liquor dealer's special taxes.

Every person bringing liquors into the United States from the Virgin Islands, who sells, or offers for sale, such liquors must file Form 11 with the district director of internal revenue and pay special (occupational) tax as a wholesale dealer in liquor or as a retail dealer in liquor, in accordance with the law and regulations governing the payment of such special taxes (Part 194 of this chapter).

(72 Stat. 1340, 1343, 1344; 26 U.S.C. 5111, 5112, 5121, 5122)

§ 250.223 [Amendment]

25. The second sentence of § 250.223 is amended to read: "The statement of process must also show whether there are to be blended together in the manufacture of the finished product, liquors of less than 190 degrees of proof (a) distilled (1) from different materials, (2) by different distillers, (3) at different distilleries, or (4) from different combinations of the same materials; or (b) of different ages; or (c) which differ in kind according to the standards of identity prescribed in 27 CFR Part 5."

26. Subpart L is amended to read:

Subpart L—Red Strip Stamps for Distilled Spirits From the Virgin Islands

GENERAL

§ 250.230 Containers of distilled spirits to bear red strip stamps.

No person shall transport, possess, buy, sell, or transfer any distilled spirits brought into the United States from the Virgin Islands unless the immediate container thereof is stamped with a red strip stamp evidencing the determination or payment of all internal revenue taxes thereon. The provisions of this section shall not apply to:

(a) Distilled spirits in customs custody;

(b) Distilled spirits not intended for sale or for use in the manufacture or production of any article intended for sale;

(c) Distilled spirits on which no internal revenue tax is required to be paid;

(d) Distilled spirits in immediate containers stamped under other provisions of internal revenue or customs law or regulations issued pursuant thereto; or

(e) Any regularly established common carrier, receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

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

§ 250.231 Persons authorized to affix red strip stamps.

Red strip stamps shall be affixed to containers of distilled spirits as follows:

(a) By the bottler or exporter in the Virgin Islands; or

(b) By the importer or owner under customs supervision.

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

§ 250.232 Size of red strip stamps.

Red strip stamps shall be issued in a standard size, serially numbered, for bottles or containers of ½ pint capacity or more, and in a small size for bottles or containers of less than ½ pint capacity.

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

§ 250.233 Affixing strip stamps.

Strip stamps shall be securely affixed to the container with a strong adhesive, and shall be affixed in such manner that on opening the container the stamp will be broken and a portion thereof, sufficient to identify the kind of stamp placed thereon, will remain attached to the container or to a cap or seal which is permanently affixed thereto. Strip stamps affixed to containers shall not be concealed or obscured in any manner except that any such stamp may be covered by a cup, cap, seal, carton, wrapping, or other device which can be readily removed without injury to the stamp or which is sufficiently transparent to permit all data on the stamp to be read. If a cup, cap, or seal is placed over a stamp, a portion of the stamp must remain plainly visible. If containers are enclosed in sealed opaque cartons, such cartons and wrappings on such cartons must bear the words, "This package may be opened for examination by Internal Revenue Officers." Internal revenue and customs officers have the right to open such cartons or wrappings and examine the container. Where there is doubt as to the propriety of the use of any cup, cap, or seal, the closure and container should be submitted to the Director for approval.

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

§ 250.234 Power of attorney.

Where an importer gives power of attorney to another person to sign Form 96, Form 428, Form 1627, or Form 1627A, such power of attorney shall be filed with the collector of customs who approves the issuance of red strip stamps and shall be in such form as is required by Customs Regulations (19 CFR Chapter I). Where any of the above forms are signed by a duly authorized agent, the name of the importer shall be given, followed by the signature of the agent and the words "Attorney in Fact".

§ 250.235 Breach of regulations, or failure to properly account for strip stamps.

Where an importer fails to render an accounting for strip stamps as prescribed in this part, or where the collector of customs is not able to reconcile his records with those of the importer and is not satisfied with the accounting as rendered by the importer, or where there has been any breach of the provisions of this part by the importer, or use of stamps for a purpose other than that for which they were procured, the collector of customs shall refuse to approve any further requisitions, Form 428, submitted by the importer. The collector of customs may also require of the importer an immediate accounting of all strip stamps outstanding in the name of the importer. Such accounting shall be made at a time and place to be specified by the collector of customs, and shall be of such a nature as to satisfy the collector of customs that there has been no unlawful diversion or use of said stamps. If deemed necessary, the collector of customs may require the importer to call in all unused strip stamps, wherever they may be, and deliver them so they may be counted. Where the collector of customs has evidence that any of the provisions of this part have been willfully violated, he shall refer the matter to the Director for appropriate action.

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

RED STRIP STAMPS TO BE AFFIXED IN THE VIRGIN ISLANDS

§ 250.236 Conditions.

Red strip stamps may be procured by an importer, or his duly authorized agent, to be affixed to containers of distilled spirits by the bottler or exporter in the Virgin Islands as provided in this subpart.

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

§ 250.237 Requisition, Form 428.

Requisition for red strip stamps shall be made by the importer, or his duly authorized agent, or by the subsequent purchaser of the distilled spirits, on Form 428, in triplicate. The local address of the importer, or his agent, shall be given on Form 428. At the time the importer presents his first Form 428 for approval, he shall present and file (if he has not already done so) with the collector of customs a certified or photostatic copy of his importer's permit issued pursuant to the Federal Alcohol Administration Act and regulations promulgated thereunder. All Forms 428 shall be submitted to the collector of customs of the district in which the place of business of the importer, or his duly authorized agent, or the subsequent purchaser of the distilled spirits, as the case may be, is located. Collectors of customs shall refuse to approve requisitions, Forms 428, submitted by any person or his agent when the collector has knowledge that such person or his agent has, because of failure to account for stamps, been denied approval of a requisition, Form 428, and has not yet accounted for such stamps. All strip stamps issued on Form 428 shall be accounted for, in the manner prescribed in this part, within 18 months from the date of requisition, or within such additional extension of time as may be granted under § 250.239.

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

§ 250.238 Statement, Form 1627.

The importer, or his duly authorized agent, shall submit, with Form 428 for stamps to be sent to the Virgin Islands, a statement on Form 1627, executed under the penalties of perjury:

(a) That the stamps are requisitioned for sending to the Virgin Islands and are required to supply existing orders and/or represent a reasonable anticipation of current requirements;

(b) That a complete accounting for such stamps will be made within eighteen months from the date of requisition (or within such additional extension of time as may be granted under § 250.239) in accordance with the provisions of this part;

(c) Either that no Form 428 from the importer or his duly authorized agent is and has been open beyond eighteen months, or, if any Forms 428 are open, specifying those that are open beyond eighteen months; and

(d) That the requisitionist understands that failure to account for the strip stamps will be grounds for rejection of subsequent requisitions for red strip stamps.

(68A Stat. 749, 852, 72 Stat. 1358; 26 U.S.C. 6065, 7206, 5205)

§ 250.239 Extension of time for final accounting of strip stamps.

Where an importer is not able, within the eighteen-month period prescribed in § 250.237, or within any extension period which might be granted in this section, to give a complete accounting for all strip stamps issued with respect to any requisition on Form 428 in the manner prescribed in this part, he shall notify the collector of customs, in writing, prior to the expiration of the eighteen-month period or any extension period granted under this section, setting forth all pertinent facts and requesting an extension of time wherein to make his final accounting. If satisfied that the circumstances warrant an extension of time, the collector of customs may grant an extension or extensions, not to exceed a total of twelve months. If any application is made for a further extension of time, the collector of customs shall submit it, with his recommendation, to the Commissioner of Customs who may, when the circumstances warrant, grant an additional extension of time. Where the collector of customs is not satisfied with the reasons given for requesting an extension of time, he shall proceed as prescribed in § 250.235.

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

§ 250.240 Approval of requisition.

The collector of customs will approve Form 428 if he—

(a) Is satisfied:

(1) That the importer is the holder of an importer's permit issued under the Federal Alcohol Administration Act and the regulations in 27 CFR Part 1;

(2) That the quantity requisitioned is reasonable and necessary for distilled spirits to be brought into the United States from the Virgin Islands to supply existing orders and/or anticipated requirements, or to be removed from customs custody, as provided in this part; and

(3) That his records show that all strip stamps which may have been previously issued to the importer have been properly and timely accounted for as provided in this part; and

(b) Has not been informed that the importer or his agent has been denied approval of a requisition and has not accounted for the stamps on account of which such denial was given.

When satisfied that Form 428 may be approved, the collector of customs shall signify his approval on all copies of Form 428, retain Form 1627 (if any) and one copy of Form 428, and return the original and remaining copy of Form 428 to the applicant for submission to the proper district director of internal revenue.

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

§ 250.241 Procurement of red strip stamps.

Red strip stamps shall be procured by the importer, or his duly authorized agent, or the subsequent purchaser of the distilled spirits, as the case may be, from the district director of internal revenue of the district in which the place of business of such applicant is located. The applicant shall forward to the district director of internal revenue the original and copy of the approved Form 428. The district director of internal revenue may issue the exact number of stamps requisitioned thereon even though it is necessary to use portions of sheets. The district director of internal revenue shall enter the serial numbers of the stamps issued and stamp the date of issue on both copies of Form 428, retain the original copy, and send the remaining copy to the collector of customs who approved it.

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

§ 250.242 Overprinting of red strip stamps.

The importer, or his duly authorized agent, or the subsequent purchaser of the distilled spirits, as the case may be, shall have the red strip stamps overprinted with the importer's real name and/or one of his approved trade names, consistent with the name of the importer as shown on the labels of the imported spirits to which the red strip stamps are to be applied. He shall submit the stamps to the collector of customs, who will verify the overprinting and make an endorsement showing the verification on Form 428 or on the retained original of Form 1627 where such form is submitted: *Provided,* That the collector of customs may so endorse the Form 428 or Form 1627 on presentation of other evidence satisfactory to him that the stamps have been properly overprinted when, in his opinion, physical submission of the stamps is impractical. The collector of customs will then authorize the importer or his duly authorized agent to send the stamps to the bottler or exporter in the Virgin Islands.

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

§ 250.243 Marking of cases.

Where red strip stamps are affixed in the Virgin Islands, the bottler or exporter will plainly and legibly mark the following legend on each case of distilled spirits so stamped:

The red strip stamps required by section 5205, I.R.C., are affixed to the _____, (Number) _____, containers of distilled spirits in this (Size) case.

_____
(Name of bottler or exporter)

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

§ 250.244 Endorsement of entries.

Upon arrival of the distilled spirits in this country, entries required to be filed under Customs Regulations (19 CFR Ch. I) shall have endorsed thereon by the importer, or his duly authorized agent, the following legend:

The red strip stamps required by section 5205, I.R.C., were affixed abroad. These stamps were procured by _____
(Name of importer)
on a requisition, Form 428, Importer's No. _____, approved by the collector of customs at _____
(Port where Form 428 was approved)
on _____.
(Date of approval of Form 428)

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

§ 250.245 Request for credit of red strip stamps on distilled spirits deposited in a foreign-trade zone at specified port.

When red strip stamps are affixed in the Virgin Islands to containers of distilled spirits and, on arrival in the United States, the spirits are stored in a foreign-trade zone located at the port specified in the requisition, the importer may obtain credit of the red strip stamps against the appropriate requisition. In such cases, the zone application shall have endorsed thereon, by the importer or his duly authorized agent, the legend required by § 250.244. In addition, and as a condition of obtaining approval from the collector of customs for admission of the spirits to the zone, the importer or his duly authorized agent and the zone grantee shall state on the zone application that if such spirits are subsequently exported from the zone the red strip stamps will be effectively destroyed under customs supervision prior to exportation. The collector of customs will not approve such exportation and will not execute a permit of delivery until the red strip stamps have been effectively destroyed as provided in § 250.252.

(48A Stat. 999, as amended, 72 Stat. 1358; 19 U.S.C. 81c, 26 U.S.C. 5205)

§ 250.246 Credit of red strip stamps against requisition on arrival of distilled spirits at specified port.

Where entries required to be filed under Customs Regulations (19 CFR Chapter I) are filed at the port where the requisition was approved, the collector of customs who approved the requisition will credit the Form 428 described in the endorsement on the entry referred to in § 250.244 with the number and size of red strip stamps shown by the usual customs examination to have been attached to the containers. When distilled spirits are placed in a foreign-trade zone at the port of requisition and where the zone application complies with the provisions of § 250.245, the collector of customs shall credit the appropriate strip stamp record with the number and size of red strip stamps shown by the usual customs examination to have been affixed to the containers.

(48A Stat. 999, as amended, 72 Stat. 1358; 19 U.S.C. 81c, 26 U.S.C. 5205)

§ 250.247 Credit of red strip stamps against requisition on diversion of spirits to other than specified port.

In the event of diversion of all or part of the spirits to a port or ports, or to a foreign-trade zone at a port, other than the port specified in Form 1627

filed with the Form 428, the importer who requisitioned the stamps, or the importer at the port of diversion, or the duly authorized agent of either, shall prepare Form 1627A, in triplicate, for each such diversion. One copy of Form 1627A shall be promptly sent to the collector of customs at the port of requisition, and the original and remaining copy shall be filed with the collector of customs at the port of diversion at the time the required entry, or zone application, is filed. The corresponding entry or zone application at the port of entry shall be marked with the requisition and diversion numbers, and the name of the port of requisition, as shown on the Form 1627A. The provisions of § 250.245 shall, as applicable, cover stamps on spirits diverted to a foreign-trade zone located at a port other than the port specified in Form 1627. Such diverted spirits may not be released from customs custody or admitted into a foreign-trade zone until the required Form 1627A has been filed. The collector of customs at the port of diversion shall certify on both copies of Form 1627A as to the disposition of the spirits and of the stamps shown by the usual customs examination to have been affixed to the containers, and forward the original Form 1627A to the collector of customs at the port of requisition. He shall retain the copy of Form 1627A as a record copy in a separate file. On receipt of Form 1627A from the collector of customs at the port of diversion, the collector of customs at the port of requisition shall enter the appropriate credit on his strip stamp record, stamp "Strip stamps used and credited except as noted" on the Copy of Form 1627A originally received by him for such diversion, and send such copy to the importer, or importer's agent, who requisitioned the stamps. Such importer or agent may then take credit for the stamps on his strip stamp record.

(48A Stat. 999, as amended, 72 Stat. 1358; 19 U.S.C. 81c, 26 U.S.C. 5205)

§ 250.248 Follow-up procedure for Forms 1627A.

When the importer, or importer's agent, who requisitioned the stamps on Form 428 has not, within two months from the date of arrival of the spirits, received from the collector of customs the copy of Form 1627A noted as to credit of strip stamps by the collector, as provided for in § 250.247, he shall inquire of the collector of customs who approved the requisition, Form 428, whether the required report on Form 1627A has been received from the collector of customs at the port of diversion. If the collector of customs reports the nonreceipt of Form 1627A from the collector at the port of diversion, the importer, or the importer's agent, shall make a written inquiry, either directly or through the importer at the port of diversion, of the collector of customs at the port of diversion whether such collector has reported on the diversion. The inquiry shall show the entry number, or identify the zone application, and shall be accompanied by two copies of the original Form 1627A marked "Follow-up: Prepared _____ (Date)." On receipt of the inquiry, the collector of customs of the port of diversion will compare the "Follow-up" copies with his file of record copies of Form 1627A. If he has a record copy showing that he forwarded the original Form 1627A, he shall insert any stamp data on the "Follow-up" copies, return one copy to the party who presented it, and forward the other copy to the collector of customs at the port of requisition. If the collector of customs at the port of diversion finds no corresponding record copy of Form 1627A, he shall use the "Follow-up" copies as original copies. In such case, he shall strike out the words "Follow-up," enter the stamp date thereon, retain one copy as his record copy, and forward the other copy to the collector of customs at the port of requisition. On receipt of the copy by the collector of customs at the port of requisition, the copy will be compared with the records. If the original Form 1627A has been received and the triplicate copy has already been forwarded to the importer, or to the importer's agent, the "Follow-up" copy shall also be sent to him without further action. If the collector of customs at the port of requisition finds that he has not received the original Form 1627A from the port of diversion, he shall use the "Follow-up" copy as the original of Form 1627A, and process it in accordance with § 250.247. On receipt of the copy of Form 1627A, the importer, or the importer's agent, may, unless he has already received his copy of Form 1627A, take credit for the stamps on his strip stamp record.

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

§ 250.249 Irregularities or discrepancies in shipments.

In case any irregularities or discrepancies are found, the collector of customs at the port of entry will make demand for redelivery of unexamined packages, and will not release examined or redelivered packages until satisfactory explanation and/or proper corrections have been made.

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

§ 250.250 Transfer of red strip stamps in the Virgin Islands.

Where an importer has shipped red strip stamps to a Virgin Islands bottler or exporter, to be affixed to containers of distilled spirits to be brought into the United States, and he desires to transfer all or a part of these stamps to a bottler or exporter in the Virgin Islands other than the one named on the initial Form 1627, he shall first submit a written application, in duplicate, to the collector of customs who approved the requisition, Form 428. The application shall show:

(a) The serial number and date of the requisition, Form 428, covering issuance of the stamps;

(b) The name of the Virgin Islands bottler or exporter holding the stamps;

(c) The number and size of the stamps desired to be transferred; and

(d) The name and address of the bottler or exporter to whom the stamps are to be transferred.

If the collector of customs has no reason to believe that the transfer would constitute a jeopardy to the revenue, he shall indicate his approval on the copy of the application, return the copy to the importer, and retain the original for filing with the requisition, Form 428. On receipt of the approved copy, the importer shall effect the requested transfer of strip stamps.

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

§ 250.251 Unused red strip stamps.

Unused red strip stamps returned to the importer by the Virgin Islands bottler or exporter shall be submitted to the collector of customs who approved the original requisition, Form 428, for noting of such fact on the requisition and on the Form 1627 covering such stamps on file with the collector. After such notation has been made, the collector of customs shall return the stamps to the importer. If subsequently the importer desires to send all or part of the returned stamps to a bottler or exporter abroad, he shall submit them with Form 1627, properly modified and in duplicate, to the collector of customs who shall note approval on the copy of the modified Form 1627 and return it with the stamps to the importer. The collector of customs shall retain the original Form 1627. The importer shall make appropriate entries on his strip stamp record and in his report, Form 96, of the receipt and disposition of unused stamps covered by this section.

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

§ 250.252 Destruction of red strip stamps.

When for any reason a Virgin Islands bottler or exporter has on hand a quantity of red strip stamps which are not to be affixed to containers for shipment to the United States, and it is impractical to return such stamps to the importer from whom they were received, the collector of customs who approved the requisition, Form 428, may, on application, in triplicate, by the importer, authorize the destruction of the stamps in the Virgin Islands. The application shall show the denomination, quantity, and serial numbers of the stamps, the name and address of the Virgin Islands bottler or exporter who has possession of the stamps, and the reasons why destruction in the Virgin Islands is requested. If the collector of customs approves the application for destruction he will return the original and one copy of the application to the importer who will forward both to the Virgin Islands bottler or exporter. On receipt of the approved application, the stamps may be destroyed provided such destruction is under the supervision of an authorized representative of the Governor of the Virgin Islands (including an officer of the Board of Control of Alcoholic Beverages) and such representative certifies to the destruction of the stamps on the approved application. After destruction, the original of the application bearing the required certifi-

cate of destruction will be returned, through the Virgin Islands bottler or exporter and the importer, to the collector of customs. The collector of customs will credit the Form 428 accordingly, stamp on the copy of the application "strip stamps credited", and send the copy to the importer who filed the application. Such importer may then take credit for the stamps on his strip stamp record. Red strip stamps affixed to (a) imported distilled spirits prior to arrival in the United States, which spirits are diverted by the importer for exportation purposes, and (b) spirits withdrawn from customs custody free of tax for entry into the United States shall be effectively destroyed under customs supervision, prior to exportation or withdrawal for entry into the United States.

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

§ 250.253 Credit for red strip stamps affixed to containers diverted by the bottler or exporter in the Virgin Islands.

When for any reason containers of distilled spirits bearing red strip stamps are returned from customs custody to the Virgin Islands bottler or exporter, the importer may be given credit for such stamps, provided he obtains an affidavit from an authorized representative of the Governor of the Virgin Islands (including an officer of the Board of Control of Alcoholic Beverages) to the effect that the stamps were removed from the containers and destroyed under his supervision. The importer shall submit such affidavit to the collector of customs who shall credit the original requisition accordingly. The importer shall make appropriate entries on his strip stamp record.

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

§ 250.254 Credit for red strip stamps affixed to containers diverted by the importer for exportation.

The importer may be given credit for red strip stamps which were affixed to distilled spirits, brought into the United States from the Virgin Islands, diverted by the importer for exportation purposes and which were effectively destroyed by the exporter under customs supervision, provided he obtains a certificate from the customs officer to the effect that the stamps were removed from the containers and destroyed under his supervision. The importer shall submit such certificate to the collector of customs who shall credit the original requisition accordingly. The importer shall make appropriate entries on his strip stamp record.

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

RED STRIP STAMPS TO BE AFFIXED AT PORT OF ENTRY UNDER CUSTOMS SUPERVISION

§ 250.255 Conditions.

Distilled spirits in containers coming into the United States from the Virgin Islands without having red strip stamps attached may not be released from customs custody until a stamp has been affixed to each container, under the supervision of a customs officer. Stamps procured for such containers but not affixed within 48 hours after entry shall be placed in the custody of the collector of customs until such time as they are to be affixed to containers prior to removal from customs custody.

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

§ 250.256 Requisition, Form 428.

Requisition for red strip stamps shall be made by the original importer, or his duly authorized agent: *Provided,* That if the importer has gone out of business the requisition shall be made by the person having title to the distilled spirits. The requisition shall be submitted in accordance with § 250.237. Approval of the requisition shall be subject to the provisions of § 250.240.

(72 Stat. 1338; 26 U.S.C. 5205)

§ 250.257 Procurement and overprinting of red strip stamps.

The importer, or his duly authorized agent, shall procure red strip stamps from the district director of internal revenue as provided by § 250.241, have them overprinted and such overprinting verified under the provisions of § 250.242, and such verification endorsed on Form 428. After verification of the overprinting and the prescribed endorsement on Form 428, the collector of customs will deliver the stamps to their procurer for affixing to containers under customs supervision.

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

§ 250.258 Expense of affixing red strip stamps.

Expenses of cartage, storage, repacking, handling, or other labor connected with the opening of cases and affixing of red strip stamps to the containers shall be borne by the importer, or by the person having title to the distilled spirits, as the case may be.

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

§ 250.259 Marking of cases.

There shall be indelibly stamped upon each case by the customs officer supervising the affixing of red strip stamps to containers the following legend:

Port of _____
_____, 19__
(Month) (Day)

This is to certify that on this date the red strip stamps required by section 5205, I.R.C., were affixed, under my supervision, to the _____, _____, containers of distilled spirits in this case.
(Number) (Size)

_____
(Name)

_____
(Official designation)

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

27. Subpart N is amended to read:

Subpart N—Records and Reports of Liquors From the Virgin Islands

RECORD AND REPORT OF RED STRIP STAMPS

§ 250.270 Daily record of strip stamps.

Importers shall maintain a daily record of red strip stamps procured, used, lost, mutilated, destroyed, or otherwise disposed of, and of the balances on hand at the beginning and end of the day. Each credit taken on the record shall identify the customs entry number and the port of entry for the stamped bottles received from the Virgin Islands or the authority given by the collector of customs for such credit. A separate record shall be maintained for each size (small or standard) of stamps. Where an importer has more than one place of business, a separate daily record shall be maintained on the premises of each place of business. Where an agent procures stamps for several importers, the agent shall keep a separate record, for each importer, of all strip stamps sent to the Virgin Islands or retained on his premises for the account of the importer.

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

§ 250.271 Report of strip stamps, Form 96.

Every importer shall prepare on Form 96, in triplicate, an annual report of all strip stamps procured, used, lost, mutilated, destroyed, or otherwise disposed of during each fiscal year (July 1 through June 30, following), a report of the balances on hand at the beginning and end of the fiscal year, and an accounting for any balances outstanding against each requisition at the end of the fiscal year. Where an importer has more than one place of business, a separate report on Form 96 shall be rendered for each place of business. Where an agent procures stamps for several importers, he shall render a separate report on Form 96 in the name of each importer. An original and one copy of Form 96 shall be filed on or before July 10 with the collector of customs who approved the importer's requisitions on Form 428: *Provided,* That where the collector of customs finds it necessary, in order to reconcile his accounts with those of the importer, he may require the importer, in addition to the annual report on Form 96, to file Form 96 at more frequent intervals, but not more often than once a month, completed in whole or in part, as the collector may designate. Such additional reports on Form 96 shall be prepared in duplicate and the original shall be filed with the collector of customs at the time designated by such collector. The importer shall keep one copy of Form 96 for his files. The collector of customs shall, on or before July 20, forward one copy of each annual report on Form 96 to the assistant regional commissioner of the region in which the customs collection district is located.

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

RECORD AND REPORT OF LIQUORS BROUGHT INTO THE UNITED STATES

§ 250.272 General requirements.

Except as provided in § 250.273, every person, other than a tourist, bringing liquors into the United States from the Virgin Islands shall keep such records and render reports of such liquors as are required to be kept by a wholesale or retail dealer, as applicable, under the provisions of Part 194 of this chapter:

Provided, That regardless of who takes actual physical possession of the liquors at the time of their release from customs custody, the records and reports of the person actually responsible for such release shall reflect the transaction. Records and reports will not be required under this part with respect of liquors while in customs custody.

(72 Stat. 1342, 1345; 26 U.S.C. 5114, 5124)

§ 250.273 Proprietors of taxpaid premises.

Transactions involving the bringing of liquors into the United States from the Virgin Islands by proprietors of distilled spirits plants in the United States qualified under the provisions of this chapter shall be recorded and reported in accordance with the regulations governing the operations of such premises in the United States.

(72 Stat. 1375; 26 U.S.C. 5314)

PROCUREMENT OF FORMS

§ 250.274 Forms to be provided by users at own expense.

Forms 52A, 52B, and 338 shall be provided by users at their own expense and must be in the form prescribed: *Provided,* That with the approval of the Director, Alcohol and Tobacco Tax Division, they may be modified to adapt their use to tabulating or other mechanical equipment.

(72 Stat. 1340, 1342, 1391; 26 U.S.C. 5112, 5114, 5505)

FILING AND RETENTION OF RECORDS AND REPORTS

§ 250.275 Filing.

If the importer maintains loose-leaf records of receipt or disposition, one legible copy of each such record shall be marked or stamped "Government File Copy", and shall be filed not later than the close of the business day next succeeding that on which the transaction occurred. All records required by this part, and legible copies of all reports required by this part to be submitted to the assistant regional commissioner or to the collector of customs shall be filed separately, chronologically, and in numerical sequence within each date, at the importer's place of business to which they relate: *Provided,* That on application, the assistant regional commissioner may authorize the files, or any individual file, to be maintained at other premises under control of the importer, if he finds that such maintenance will not delay the timely filing of any document, or cause undue inconvenience to internal revenue or customs officers desiring to examine such files. Supporting documents, such as consignors' invoices, delivery receipts, bills of lading, etc., or exact copies thereof, may be filed in accordance with the importer's customary practice. Documents supporting records of disposition shall have noted thereon the serial numbers of the records of disposition to which they refer.

(72 Stat. 1342, 1391; 26 U.S.C. 5114, 5505)

§ 250.276 Retention.

All records required by this part, documents or copies of documents supporting such records, and file copies of reports required by this part to be submitted to the assistant regional commissioner or to the collector of customs shall be preserved for a period of not less than two years, and during such period shall be available, during business hours, for inspection and the taking of abstracts therefrom by internal revenue or customs officers. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, shall also be made available for such inspection and the taking of abstracts therefrom.

(72 Stat. 1342, 1391; 26 U.S.C. 5114, 5505)

REPORT OF DISPOSITION OF RED STRIP STAMPS ON DISCONTINUANCE OF BUSINESS

§ 250.277 Procedure.

The importer who discontinues or sells his business shall recall from his agents in the Virgin Islands all unused stamps in their custody. He shall submit his entire stock of unused stamps, accompanied by a report, in duplicate, of inventory, by size, serial numbers, and quantity, to the collector of customs for crediting of the respective Forms 428. The collector of customs shall then destroy the stamps and, after such destruction, note the action taken on both copies of the inventory. He shall retain the original and return the copy of the inventory to the importer. Within five days of the receipt of the returned copy of the inventory, the importer shall note the disposition of the stamps on Form 96, mark the report "Final", and submit it, in duplicate, to the collector of customs. The collector of customs shall forward one copy of the final Form 96 to the assistant regional commissioner.

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

28. The following new Subpart O, is added immediately following § 250.277:

Subpart O—Tax-Free Shipments to the United States From the Virgin Islands

Sec.
250.291 Certificate.
250.292 Marking containers.
250.293 Arrival in the United States.

§ 250.291 Certificate.

Every person shipping into the United States from the Virgin Islands free of tax, pursuant to §§ 250.201 and 250.201a, (a) distilled spirits produced and withdrawn in the Virgin Islands in accordance with the provisions of the Virgin Islands regulations relating thereto, (b) distilled spirits produced, warehoused (if applicable), denatured, and withdrawn in the Virgin Islands in accordance with the applicable provisions of the Virgin Islands regulations relating thereto, and (c) products containing such denatured spirits and manufactured in accordance with the provisions of the Virgin Islands regulations relating thereto, shall certify, in the English language, to such fact on the face of the shipper's waybill. Where the product is made pursuant to Form 1479–A, approved as provided in the Virgin Islands regulations, the shipper shall also certify as follows:

Made with _____ denatured
(Completely or specially)
spirits, Formula No. _____, pursuant to Form 1479–A, approved _____, 19__.

(72 Stat. 1375, 1430; 26 U.S.C. 5314, 7652)

§ 250.292 Marking containers.

The name, address, and permit number of the manufacturer shall appear on each shipping container of products containing denatured spirits shipped from the Virgin Islands to the United States free of tax.

(72 Stat. 1375, 1430; 26 U.S.C. 5314, 7652)

§ 250.293 Arrival in the United States.

When industrial spirits, denatured spirits, and products containing denatured spirits, coming into this country from the Virgin Islands, are covered by shipper's documents bearing the manufacturer's certificate prescribed in § 250.291, the collector of customs will inspect and verify the consignment. If no discrepancies are found, the products may be released free of tax.

(72 Stat. 1375, 1430; 26 U.S.C. 5314, 7652)

[F.R. Doc. 60–4083; Filed, May 5, 1960; 8:47 a.m.]

[26 CFR (1954) Part 251]

IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedures 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. Prior to final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the 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 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.

In order to (1) implement changes made in chapter 51, Internal Revenue Code, by the enactment of Public Law 85–859, 85th Congress, (2) conform to the admission into the Union of the State of Alaska pursuant to Public Law 85–508 and of the State of Hawaii pursuant to Public Law 86–3, (3) revise the procedure for accounting for and affixing red strip stamps issued to importers, (4) include in this part, in conformity with administrative decisions, provisions for the transfer of certain distilled spirits from customs custody to internal revenue bond and the withdrawal of distilled spirits from customs custody for use of the United States, and (5) make certain technical changes, the regulations in 26 CFR Part 251, "Importation of Distilled Spirits, Wines, and Beer," are amended as follows:

§ 251.2 [Amendment]

Section 251.2 is amended by striking ", Alcohol and Tobacco Tax Division,".

Section 251.11 is amended to read:

§ 251.11 Director.

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

Section 251.12 is amended to read:

§ 251.12 Distilled spirits or spirits.

"Distilled spirits or spirits" shall mean the substance known as ethyl alcohol, ethanol, or spirits of wine, and all mixtures or dilutions thereof, from whatever source or by whatever process produced, including alcohol, whisky, brandy, gin, rum, and vodka, but shall not include wine as defined in § 251.23.

§ 251.19 [Amendment]

Section 251.19 is amended by striking "5008(b)" and inserting in lieu thereof "5205(a)(2)".

§ 251.21 [Amendment]

Section 251.21 is amended by striking ", the Territories of Alaska and Hawaii,".

Section 251.30 is amended to read:

§ 251.30 Special (occupational) tax.

Importers engaged in the business of selling, or offering for sale, distilled spirits, wines, or beer, are subject to the provisions of Part 194 of this chapter relating to special (occupational) taxes, which part requires that the special tax return, Form 11, with remittance of the tax, shall be filed with the district director of internal revenue on or before July 1 of each year, or before commencing business.

(72 Stat. 1340, 1343, 1346; 26 U.S.C. 5111, 5121, 5142)

§ 251.48 [Amendment]

Section 251.48 is amended by striking the period at the end of the section and adding ": *Provided,* That the taxes on distilled spirits withdrawn from customs custody without payment of tax under the provisions of Subpart L and thereafter withdrawn from bonded premises of a distilled spirits plan subject to tax shall be collected and paid under the provisions of Part 201 of this chapter."

(72 Stat. 1314, 1366; 26 U.S.C. 5001, 5232)

Section 251.61 is amended to read:

§ 251.61 Containers of distilled spirits to bear red strip stamps.

No person shall transport, buy, possess, sell, or transfer any imported distilled spirits, unless the immediate container thereof is stamped with a red strip stamp evidencing the determination or payment of all internal revenue taxes thereon. The provisions of this section shall not apply to—

(a) Distilled spirits in bond or in customs custody;

(b) Distilled spirits lawfully withdrawn from bond and not intended for sale or for use in the manufacture or production of any article intended for sale;

(c) Distilled spirits on which no internal revenue tax is required to be paid;

(d) Distilled spirits, lawfully withdrawn from bond, in immediate containers stamped under other provisions of internal revenue or customs law or regulations issued pursuant thereto; or

(e) Any regularly established common carrier receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

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

Section 251.63 is amended to read:

§ 251.63 Size of red strip stamps.

Red strip stamps shall be issued in a standard size, serially numbered, for bottles or containers of ½ pint capacity or more, and in a small size for bottles or containers of less than ½ pint capacity.

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

Section 251.64 is amended to read:

§ 251.64 Requisition, Form 428.

Requisition for red strip stamps shall be made by the importer, or his duly authorized agent, or by the subsequent purchaser of the distilled spirits, on Form 428, in triplicate. The local address of the importer, or his agent, shall be given on Form 428. At the time the importer presents his first Form 428 for approval, he shall present and file (if he has not already done so) with the collector of customs a certified or photostatic copy of his importer's permit issued pursuant to the Federal Alcohol Administration Act and regulations promulgated thereunder. All Forms 428 shall be submitted to the collector of customs of the district in which the place of business of the importer or his duly authorized agent, or the subsequent purchaser of the distilled spirits, as the case may be, is located. Collectors of customs shall refuse to approve requisitions, Form 428, submitted by any person or his agent when the collector has knowledge that such person or his agent has, because of failure to account for stamps, been denied approval of a requisition, Form 428, and has not yet accounted for such stamps. All strip stamps issued on Form 428 shall be accounted for, in the manner prescribed in this part, within eighteen months from the date of requisition, or within such additional extension of time as may be granted under § 251.65a.

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

A new section, reading as follows, is inserted immediately following § 251.64.

§ 251.64a Power of attorney.

Where an importer gives power of attorney to another person to sign Form 96, Form 428, Form 1627, or Form 1627A, such power of attorney shall be filed with the collector of customs who approves the issuance of the red strip stamps and shall be in such form as is required by Customs Regulations (19 CFR Chapter I). Where any of the above forms are signed by a duly authorized agent, the name of the importer shall be given, followed by the signature of the agent and the words "Attorney in Fact."

Section 251.65 is amended to read:

§ 251.65 Statement, Form 1627.

The importer, or his duly authorized agent, shall submit, with Form 428 for strip stamps to be sent to a foreign country, a statement on Form 1627, executed under the penalties of perjury:

(a) That the stamps are requisitioned for sending abroad and are required to supply existing orders and/or represent a reasonable anticipation of current requirements;

(b) That a complete accounting for such stamps will be made within eighteen months from the date of requisition (or within such additional extension of time as may be granted under § 251.65a) in accordance with the provisions of this part;

(c) Either that no Form 428 from the importer or his duly authorized agent is and has been open beyond eighteen months, or, if any Forms 428 are open, specifying those that are open beyond eighteen months; and

(d) That the requisitionist understands that failure to properly account for the strip stamps will be grounds for rejection of subsequent requisitions for red strip stamps.

(68A Stat. 749, 852, 72 Stat. 1358; 26 U.S.C. 6065, 7206, 5205)

A new section, reading as follows, is inserted immediately following § 251.65.

§ 251.65a Extension of time for final accounting of strip stamps.

Where an importer is not able, within the eighteen-month period prescribed in §§ 251.64 and 251.65, or within any extension period which might be granted in this section, to give a complete accounting for all strip stamps issued with respect to any requisition on Form 428 in the manner prescribed in this part, he shall notify the collector of customs, in writing, prior to the expiration of the eighteen-month period or any extension period granted under this section, setting forth all pertinent facts and requesting an extension of time wherein to make his final accounting. If satisfied

that the circumstances warrant an extension of time, the collector of customs may grant an extension, or extensions, not to exceed a total of twelve months. If any application is made for a further extension of time, the collector of customs shall submit it, with his recommendation, to the Commissioner of Customs, who may, when the circumstances warrant, grant an additional extension of time. Where the collector of customs is not satisfied with the reasons given for requesting an extension of time, he shall proceed as prescribed in § 251.92.

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

Section 251.66 is amended to read:

§ 251.66 Approval of requisition.

The collector of customs will approve Form 428 if he—

(a) Is satisfied:

(1) That the importer is the holder of an importer's permit issued under the Federal Alcohol Administration Act and the regulations in 27 CFR Part 1;

(2) That the quantity requisitioned is reasonable and necessary for distilled spirits to be imported to supply existing orders and/or anticipated requirements, or to be removed from customs custody, as provided in this part; and

(3) That his records show that all strip stamps which may have been previously issued to the importer have been properly and timely accounted for as provided in this part; and

(b) Has not been informed that the importer or his agent has been denied approval of a requisition at any port and has not accounted for the stamps on account of which such denial was given.

When satisfied that Form 428 may be approved, the collector of customs shall signify his approval on all copies of Form 428, retain Form 1627 (if any) and one copy of Form 428, and return the original and remaining copy of Form 428 to the applicant for submission to the proper district director of internal revenue.

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

§ 251.67 [Amendment]

Section 251.67 is amended by striking the fourth and fifth sentences, together with the statutory citation at the end of the section, and by inserting in lieu thereof: "The district director of internal revenue shall enter the serial numbers of the stamps issued and stamp the date of issue on both copies of Form 428, retain the original copy and send the remaining copy to the collector of customs who approved it."

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

§ 251.68 [Amendment]

Section 251.68 is amended by striking the second and third sentences, and the statutory citation at the end of the section, and by inserting in lieu thereof: "An importer holding an importer's permit to do business under one or more trade names shall have the red strip stamps overprinted with his real name and/or one of his approved trade names, consistent with the name of the importer as shown on the labels of the imported spirits to which the red strip stamps are to be applied. He shall submit the stamps to the collector of customs who will verify the overprinting and make an endorsement showing the verification on Form 428, or on the retained original of Form 1627 where such form is submitted: *Provided,* That the collector of customs may so endorse the Form 428 or Form 1627 on presentation of other evidence satisfactory to him that the stamps have been properly overprinted when, in his opinion, physical submission of the stamps is impractical. The collector of customs will then authorize the importer or his duly authorized agent to send the stamps to the bottler or exporter abroad, as provided in Subpart F of this part; or authorize the importer or his duly authorized agent, or the subsequent purchaser of the distilled spirits, as the case may be, to affix the stamps to containers under customs supervision, as prescribed in Subparts G and H of this part.

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

Section 251.69 is amended to read:

§ 251.69 Affixing strip stamps.

Strip stamps shall be securely affixed to the container with a strong adhesive, and shall be affixed in such a manner that on opening the container the stamp will be broken and a portion thereof, sufficient to identify the kind of stamp placed thereon, will remain attached to the container or to a cap or seal which is permanently affixed thereto. Strip stamps affixed to containers shall not be concealed or obscured in any manner except that any such stamp may be covered by a cup, cap, seal, carton, wrapping, or other device which can be readily removed without injury to the stamp or which is sufficiently transparent to permit all data on the stamp to be read. If a cup, cap, or seal is placed over a stamp, a portion of the stamp must remain plainly visible. If containers are enclosed in sealed opaque cartons, such cartons or wrappings on such cartons must bear the words, "This package may be opened for examination by Internal Revenue Officers." Internal revenue and customs officers have the right to open such cartons or wrappings and examine the container. Where there is doubt as to the propriety of the use of any cup, cap, or seal, the closure and container should be submitted to the Director for approval.

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

§§ 251.70 and 251.71 [Revocation]

Sections 251.70 and 251.71 are revoked.

Section 251.82 is amended to read:

§ 251.82 Approval of requisition.

The collector of customs shall approve Form 428 and dispose of Form 428 and Form 1627 in accordance with and subject to the applicable provisions of § 251.66.

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

§ 251.84 [Amendment]

Section 251.84 is amended as follows:

(A) By striking the present legend and inserting in lieu thereof:

The red strip stamps required by section 5205, I.R.C., are affixed to the _____; _____ containers of distilled spirits in this case.
(Number) (Size)

_____
(Name of bottler or exporter)

(B) By striking the statutory citation at the end of the section and inserting in lieu thereof "(72 Stat. 1358; 26 U.S.C. 5205)".

§ 251.85 [Amendment]

Section 251.85 is amended as follows:

(A) By striking "5008" and inserting in lieu thereof "5205".

(B) By striking the statutory citation at the end of the section and inserting in lieu thereof "72 Stat. 1358; 26 U.S.C. 5205)".

A new section, reading as follows, is inserted immediately following § 251.85:

§ 251.85a Request for credit of red strip stamps on distilled spirits deposited in a foreign-trade zone at specified port.

When red strip stamps are affixed abroad to containers of imported distilled spirits and, on arrival in the United States, the spirits are stored in a foreign-trade zone located at the port specified in the requisition, the importer may obtain credit of the red strip stamps against the appropriate requisition. In such cases, the zone application shall have endorsed thereon, by the importer or his duly authorized agent, the legend required by § 251.85. In addition, and as a condition of obtaining approval from the collector of customs for admission of the spirits to the zone, the importer or his duly authorized agent and the zone grantee shall state on the zone application that if such spirits are subsequently exported from the zone the red strip stamps will be effectively destroyed under customs supervision prior to exportation. The collector of customs will not approve such exportation and will not execute a permit of delivery until the red strip stamps have been effectively destroyed as provided in § 251.72.

(48 Stat. 999, as amended, 72 Stat. 1358; 19 U.S.C. 81c, 26 U.S.C. 5205)

§ 251.86 [Amendment]

Section 251.86 is amended as follows:

(A) By striking, in the present section, the word "denomination", and inserting in lieu thereof the word "size".

(B) By adding, at the end of the section, the following sentence: "When distilled spirits are placed in a foreign-trade zone at the port of requisition and where the zone application conforms with the provisions of § 251.85a, the collector of customs shall credit the appropriate strip stamp record with the number and size of red strip stamps shown by the usual customs examination to have been affixed by the containers."

(C) By striking the statutory citation at the end of the section and inserting in lieu thereof: "(48 Stat. 999, as amended, 72 Stat. 1358; 19 U.S.C. 81c, 26 U.S.C. 5205)".

Section 251.87 is amended to read:

§ 251.87 Credit of red strip stamps against requisition on diversion of spirits to other than specified port.

In the event of diversion of all or part of the spirits to a port or ports, or to a foreign-trade zone at a port, other than the port specified in Form 1627 filed with the Form 428, the importer who requisitioned the stamps, or the importer at the port of diversion, or the duly authorized agent of either, shall prepare Form 1627A, in triplicate, for each such diversion. One copy of Form 1627A shall be promptly sent to the collector of customs at the port of requisition, and the original and remaining copy shall be filed with the collector of customs at the port of diversion at the time the warehouse or consumption entry, or zone application, is filed. The corresponding entry or zone application at the port of entry shall be marked with the requisition and diversion numbers, and the name of the port of requisition, as shown on the Form 1627A. The provisions of § 251.85a shall, as applicable, cover stamps on spirits diverted to a foreign-trade zone located at a port other than the port specified in Form 1627. Such diverted spirits may not be released from customs custody or admitted into a foreign-trade zone until the required Form 1627A has been filed. The collector of customs at the port of diversion shall certify on both copies of Form 1627A as to the disposition of the spirits and of the stamps shown by the usual customs examination to have been affixed to the containers, and forward the original Form 1627A to the collector of customs at the port of requisition. He shall retain the copy of Form 1627A as a record copy in a separate file. On receipt of Form 1627A from the collector of customs at the port of diversion, the collector of customs at the port of requisition shall enter the appropriate credit on his strip stamp record, stamp "Strip stamps used and credited except as noted" on the copy of Form 1627A originally received by him for such diversion, and send such copy to the importer, or importer's agent, who requisitioned the stamps. Such importer or agent may then take credit for the stamps on his strip stamp record.

(48 Stat. 999, as amended, 72 Stat. 1358; 19 U.S.C. 81c, 26 U.S.C. 5205)

A new section, reading as follows, is inserted immediately following § 251.87.

§ 251.87a Follow-up procedure for Forms 1627A.

When the importer, or importer's agent, who requisitioned the stamps on Form 428 has not, within two months from the date of arrival of the spirits, received from the collector of customs the copy of Form 1627A noted as to credit of strip stamps by the collector, as provided for in § 251.87, he shall inquire of the collector of customs who approved the requisition Form 428 whether the required report on Form 1627A has been received from the collector of customs at the port of diversion. If the collector of customs reports the non-receipt of Form 1627A from the collector at the port of diversion, the importer, or the importer's agent, shall make a written inquiry, either directly or through the importer at the port of diversion, of the collector of customs at the port of diversion whether such collector has reported on the diversion. The inquiry shall show the entry number, or identify the zone application, and shall be accompanied by two copies of the original Form 1627A marked "Follow-up: Prepared _____." On receipt (Date)

of the inquiry, the collector of customs of the port of diversion will compare the "Follow-up" copies with his file of record copies of Form 1627A. If he has a record copy showing that he forwarded the original Form 1627A, he shall insert any stamp data on the "Follow-up" copies, return one copy to the party who presented it, and forward the other copy to the collector of customs at the port of requisition. If the collector of customs at the port of diversion finds no corresponding record copy of Form 1627A, he shall use the "Follow-up" copies as original copies. In such case, he shall strike out the words "Follow-up", enter the stamp data thereon, retain one copy as his record copy, and forward the other copy to the collector of customs at the port of requisition. On receipt of the copy by the collector of customs at the port of requisition, the copy will be compared with the records. If the original Form 1627A has been received and the triplicate copy has already been forwarded to the importer, or to the importer's agent, the "Follow-up" copy shall also be sent to him without further action. If the collector of customs at the port of requisition finds that he has not received the original Form 1627A from the port of diversion, he shall use the "Follow-up" copy as the original of Form 1627A, and process it in accordance with § 251.87. On receipt of the copy of Form 1627A, the importer, or the importer's agent, may, unless he has already received his copy of Form 1627A, take credit for the stamps on his strip stamp record.

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

A new section, reading as follows, is inserted immediately following § 251.88.

§ 251.88a Transfer of red strip stamps in foreign country.

Where an importer has shipped red strip stamps to a foreign bottler or exporter, to be affixed to containers of distilled spirits to be shipped to the United States, and he desires to transfer all or a part of these stamps to another foreign bottler or exporter, he shall first submit a written application, in duplicate, to the collector of customs who approved the requisition, Form 428. The application shall show: (a) the serial number and date of the requisition, Form 428, covering issuance of the stamps; (b) the name and country of the foreign bottler or exporter holding the stamps; (c) the number and size of the stamps desired to be transferred; and (d) the name and country of the foreign bottler or exporter to whom the stamps are to be transferred. If the collector of customs has no reason to believe that the transfer would constitute a jeopardy to the revenue, he shall indicate his approval on the copy of the application, return the copy to the importer, and retain the original for filing with the requisition, Form 428. On receipt of the approved copy, the importer shall effect the requested transfer of strip stamps.

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

Section 251.89 is amended to read:

§ 251.89 Unused red strip stamps.

Unused red strip stamps returned to the importer by the bottler or exporter abroad, shall be submitted to the collector of customs who approved the original requisition, Form 428, for noting of such fact on the requisition and on the Form 1627 covering such stamps on file with the collector. After such notation has been made, the collector of customs shall return the stamps to the importer. If subsequently the importer desires to send all or part of the returned stamps to a bottler or exporter abroad, he shall submit them with Form 1627, properly modified and in duplicate, to the collector of customs who shall note approval on the copy of the modified Form 1627 and return it with the stamps to the importer. The collector of customs shall retain the original Form 1627. The importer shall make appropriate entries on his strip stamp record and in his report, Form 96, of the receipt and disposition of unused stamps covered by this section.

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

§ 251.89a [Amendment]

Section 251.89a is amended as follows:

(A) By striking, in the second sentence, the word "denomination", and inserting in lieu thereof the word "size".

(B) By striking the statutory citation at the end of the section and inserting in lieu thereof "(72 Stat. 1358; 26 U.S.C. 5205)".

§ 251.90 [Amendment]

Section 251.90 is amended as follows:

(A) By amending the second and third sentences to read: "The importer shall submit such affidavit to the collector of customs who shall credit the original requisition accordingly. The importer shall make appropriate entries on his strip stamp record."

(B) By striking the statutory citation at the end of the section and inserting in lieu thereof "(72 Stat. 1358; 26 U.S.C. 5205)".

§ 251.91 [Amendment]

Section 251.91 is amended as follows:

(A) By striking from the first sentence the words "or affidavit" and inserting in lieu thereof the words "a certificate."

(B) By amending the second and third sentences to read "The importer shall submit such certificate to the collector of customs who shall credit the original application accordingly. The importer shall make appropriate entries on his strip stamp record."

(C) By striking the statutory citation at the end of the section and inserting in lieu thereof "(72 Stat. 1358; 26 U.S.C. 5205)".

Section 251.92 is amended to read:

§ 251.92 Breach of regulations, or failure to properly account for strip stamps.

Where an importer fails to render a proper accounting for strip stamps as prescribed in this part, or where the collector of customs is not able to reconcile his records with those of the importer and is not satisfied with the accounting as rendered by the importer, or where there has been any breach of the provisions of this part by the importer, or use of stamps for a purpose other than that for which they were procured, the collector of customs shall refuse to approve any further requisition, Form 428, submitted by the importer. The collector of customs may also require of the importer an immediate accounting of all strip stamps outstanding in the name of the importer. Such accounting shall be made at a time and place to be specified by the collector of customs, and shall be of such a nature as to satisfy the collector of customs that there has been no unlawful diversion or use of said stamps. If deemed necessary, the collector of customs may require the importer to call in all unused strip stamps, wherever they may be, and deliver them so that they may be counted. Where the collector of customs has evidence that any of the provisions of this part have been wilfully violated, he shall refer the matter to the Director for appropriate action.

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

§ 251.113 [Amendment]

Section 251.113 is amended as follows:

(A) By striking the present legend and inserting in lieu thereof:

Port of _____ _____ 19___.
(Month) (Day)

This is to certify that on this date, the red strip stamps required by section 5205, I.R.C., were affixed, under my supervision, to the _____, _____ containers of distilled
(Number) (Size)
spirits in this case.

_____
(Name)

_____
(Official designation)

(B) By striking the statutory citation at the end of the section and inserting in lieu thereof "(72 Stat. 1358; 26 U.S.C. 5205)".

§ 251.120 [Amendment]

Section 251.120 is amended as follows:

(A) By striking "§ 251.134" from the last sentence and inserting in lieu thereof "§§ 251.133 and 251.134".

(B) By striking the statutory citation at the end of the section and inserting in lieu thereof "(72 Stat. 1342, 1361, 1374, 1395; 26 U.S.C. 5114, 5207, 5301, 5555)".

§ 251.122 [Amendment]

Section 251.122 is amended as follows:

(A) By substituting "Part 201" for "Part 230" where it appears twice in this section.

(B) By striking the statutory citation at the end of the section and inserting in lieu thereof "(72 Stat. 1358; 26 U.S.C. 5205)".

Section 251.130 is amended to read:

§ 251.130 Daily record of strip stamps.

Importers shall maintain for each day a transaction in red strip stamps occurs a daily record of such stamps by size (small or standard), showing the number received, used, lost, mutilated, destroyed, or otherwise disposed of, and on hand at the beginning and end of the day. The record shall also show the number and size of bottles to which the stamps were affixed, except that bottles of less than ½ pint capacity shall be recorded as one item. Each credit taken on the record shall identify the customs entry number and the port of entry for the stamped bottles received from abroad, or the authority given by the collector of customs for such credit. Where an importer has more than one place of business, a separate daily record shall be maintained on the premises of each place of business. Where an agent procures stamps for several importers, the agent shall keep a separate record, for each importer, of all strip stamps sent abroad or retained on his premises for the account of the importer.

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

Section 251.131 is amended to read:

§ 251.131 Report of strip stamps, Form 96.

Every importer shall prepare on Form 96, in triplicate, an annual report of all strip stamps procured, used, lost, mutilated, destroyed, or otherwise disposed of during each fiscal year (July 1 through June 30 following), a report of the balances on hand at the beginning and end of the fiscal year, and an accounting for any balances outstanding against each requisition at the end of the fiscal year. Where an importer has more than one place of business, a separate report on Form 96 shall be rendered for each place of business. Where an agent procures stamps for several importers, he shall render a separate report on Form 96 in the name of each importer. An original and one copy of Form 96 shall be filed on or before July 10 with the collector of customs who approved the importer's requisitions on Form 428: *Provided,* That where the collector of customs finds it necessary, in order to reconcile his accounts with those of the importer, he may require the importer, in addition to the annual report on Form 96, to file Form 96 at more frequent intervals, but not more often than once a month, completed in whole or in part, as the collector may designate. Such additional reports on Form 96 shall be prepared in duplicate and the original shall be filed with the collector of customs at the time designated by such collector. The importer shall keep one copy of Form 96 for his files. The collector of customs shall, on or before July 20, forward one copy of each annual report on Form 96 to the assistant regional commissioner of the region in which the customs collection district is located.

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

§ 251.132 [Revocation]

Section 251.132 is revoked.

§ 251.133 [Amendment]

Section 251.133 is amended as follows:

(A) By striking, in the first sentence, that portion preceding the "Proviso" clause, and inserting in lieu thereof: "Except as provided in § 251.134, every importer who imports distilled spirits, wines, or beer shall keep such records and render such reports of such liquors as are required to be kept by a wholesale or retail dealer, as applicable, under the provisions of Part 194 of this chapter:".

(B) By striking the statutory citation at the end of the section and inserting in lieu thereof "(72 Stat. 1342, 1345, 1395; 26 U.S.C. 5114, 5124, 5555)".

§ 251.134 [Amendment]

The headnote of section 251.134 is amended to read: "§ 251.134 *Proprietors of qualified premises.*"

§ 251.135 [Amendment]

Section 251.135 is amended as follows:

(A) By striking "Alcohol and Tobacco Tax Division,".

(B) By striking the statutory citation at the end of the section and inserting in lieu thereof: "(72 Stat. 1342, 1395; 26 U.S.C. 5114, 5555)".

§ 251.136 [Amendment]

Section 251.136 is amended as follows:

(A) By changing the second sentence to read: "All records required by this part, and legible copies of all reports required by this part to be submitted to the assistant regional commissioner or to the collector of customs, shall be filed separately, chronologically, and in numerical sequence within each date, at the importer's place of business to which they relate: *Provided,* That on application, the assistant regional commissioner may authorize the files, or any individual file, to be maintained at other premises under control of the importer, if he finds that such maintenance will not delay the timely filing of any document, or cause undue inconvenience to internal revenue or customs officers desiring to examine such files."

(B) By striking the statutory citation at the end of the section and inserting in lieu thereof "(72 Stat. 1342, 1345, 1361, 1395; 26 U.S.C. 5114, 5124, 5207, 5555)".

Section 251.137 is amended to read:

§ 251.137 Retention.

All records required by this part, documents or copies of documents supporting such records, and file copies of reports required by this part to be submitted to the assistant regional commissioner or to the collector of customs, shall be preserved for a period of not less than two years, and during such period shall be available, during business hours, for inspection and the taking of abstracts therefrom by internal revenue or customs officers. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, shall also be made available for such inspection and the taking of abstracts therefrom.

(72 Stat. 1342, 1345, 1361, 1395; 26 U.S.C. 5114, 5124, 5207, 5555)

Subpart J is revoked.

Section 251.160 is amended to read:

§ 251.160 Disposition of strip stamps.

The importer who discontinues or sells his business shall recall from his agents abroad all unused stamps in their custody. He shall submit his entire stock of unused stamps, accompanied by a report, in duplicate, of inventory, by size, serial numbers and quantity, to the collector of customs for crediting of the respective Forms 428. The collector of customs shall then destroy the stamps and, after such destruction, note the action taken on both copies of the inventory. He shall retain the original of the inventory and return the copy to the importer. Within five days of the receipt of the returned copy of the inventory, the importer shall note the disposition of the stamps on Form 96, mark the report "Final", and submit it, in duplicate, to the collector of customs. The collector of customs shall forward one copy of the final Form 96 to the assistant regional commissioner.

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

The following new Subpart L and Subpart M, are added, immediately following § 251.160:

Subpart L—Transfer of Distilled Spirits From Customs Custody to Bonded Premises of Distilled Spirits Plant

Sec.

251.171 General provisions.
251.172 Application, Form 2609.
251.173 Customs gauge and release.
251.174 Tank cars and tank trucks to be sealed.
251.175 Transfer by pipeline at dock.

§ 251.171 General provisions.

Imported distilled spirits, other than whisky, brandy, rum, or similar beverage spirits, of 185 degrees or more of proof may, under the provisions of this subpart, be withdrawn by the proprietor of a distilled spirits plant from customs custody and transferred to the bonded premises of his plant for nonbeverage use, without payment of the internal revenue tax imposed on imposed spirits by section 5001, I.R.C. Spirits of any proof, imported for any purpose incident to the requirements of national defense, may also be withdrawn from customs custody and be transferred to the bonded premises of a distilled spirits plant without payment of such tax. Spirits so withdrawn and transferred to a distilled spirits plant may be redistilled or denatured and may, without redistillation or denaturation, be withdrawn from internal revenue bond for any purpose authorized by chapter 51, Internal Revenue Code, in the same manner as domestic distilled spirits. Imported distilled spirits transferred from customs custody to the bonded premises of a distilled spirits plant under the provisions of this subpart shall be received and stored thereat, and withdrawn or transferred therefrom, subject to the applicable provisions of Part 201 of this chapter.

(72 Stat. 1366; 26 U.S.C. 5232)

§ 251.172 Application, Form 2609.

The proprietor of a distilled spirits plant desiring to withdraw distilled spirits as authorized in § 251.171, shall, for each withdrawal, submit an application on Form 2609, in triplicate, to the internal revenue officer in charge. The application shall appropriately identify the distilled spirits to be withdrawn, and shall be modified by the applicant to cover the transfer of distilled spirits from customs custody, naming the port of entry through which the distilled spirits are to be withdrawn. The internal revenue officer shall, if the proprietor's bond on Form 2601 is sufficient, approve all copies of Form 2609, forward one copy to the assistant regional commissioner, and return the original and remaining copy to the proprietor. The proprietor shall forward the original of Form 2609 to the collector of customs at the port of entry named therein from whose custody it is proposed to withdraw the distilled spirits, and retain the remaining copy for his files.

(72 Stat. 1314, 1322, 1366; 26 U.S.C. 5001, 5007, 5232)

§ 251.173 Customs gauge and release.

The collector of customs will not release distilled spirits without payment of internal revenue tax until the approved Form 2609 has been received from the proprietor of the distilled spirits plant. Prior to release from customs custody, the distilled spirits shall be gauged by a customs officer who will enter the details of the gauge on Form 2629, in quadruplicate: *Provided,* That, in the case of barrels, drums, or similar portable containers, the details of gauge shall be shown on Form 2630, a copy of which shall be attached to each copy of Form 2629. When shipments are made in tank cars or tank trucks, the details of the gauge of each tank car or tank truck shall be reported separately. The customs officer shall also show on each copy of the gauge form the country of exportation of the distilled spirits. In addition, he shall ascertain and enter on each copy of Form 2629 the rate of customs duty paid on the distilled spirits and the rate of customs duty which would have been applicable had such spirits been imported for beverage purposes. On compliance with the requirements of customs regulations (including determination of duties due), and on completion of Form 2629 (and Form 2630, where required), the customs officer shall release the spirits for transfer and forward the original and two copies of Form 2629 (and Form 2630, where required) to the internal revenue officer at the distilled spirits plant, and retain one copy of the form or forms for customs purposes.

(72 Stat. 1314, 1322, 1366; 26 U.S.C. 5001, 5007, 5232)

§ 251.174 Tank cars and tank trucks to be sealed.

Where a shipment of distilled spirits from customs custody to the distilled spirits plant is made in a tank car or tank truck, all openings affording access to the spirits shall be sealed by the customs officer with customs seals in such manner as will prevent unauthorized removal of spirits through such openings without detection.

(72 Stat. 1314, 1322, 1366; 26 U.S.C. 5001, 5007, 5232)

§ 251.175 Transfer by pipeline at dock.

Where the distilled spirits plant is equipped with suitable dock facilities, the distilled spirits may, subject to all requirements of the customs laws and regulations, be transferred by pipeline from the importing vessel or barge through weighing tanks or other suitable measuring tanks into locked empty storage tanks on the bonded premises of the distilled spirits plant, or directly into locked storage tanks on such premises provided such storage tanks are equipped with suitable measuring devices for correctly indicating the actual contents and the outlets thereof are locked. In all such cases of pipeline transfers, the distilled spirits shall be transferred under customs supervision, gauged immediately by a customs officer, and thereupon released for deposit in the distilled spirits plant. The details of the gauge shall be reported on Form 2629, and distribution of the form made, as provided in § 251.173.

(72 Stat. 1314, 1322, 1366; 26 U.S.C. 5001, 5007, 5232)

Subpart M—Withdrawal of Imported Distilled Spirits From Customs Custody Free of Tax for Use of the United States

Sec.

251.181 General.
251.182 Application and permit, Form 1444.
251.183 Use of permit, Form 1444.
251.184 Customs gauge and release.
251.185 Tank cars and tank trucks to be sealed.
251.186 Receipt on Form 1473.

§ 251.181 General.

On filing of proper customs entry, imported distilled spirits may, under the provisions of this subpart, be withdrawn free of tax from customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes.

(72 Stat. 1372, 1375; 26 U.S.C. 5272, 5313)

§ 251.182 Application and permit, Form 1444.

Application on Form 1444, in duplicate, appropriately modified to show the customs port of entry, shall be filed with the Director by the United States or governmental agency thereof for a permit to procure and withdraw imported distilled spirits free of tax for nonbeverage purpose. If it is desired to procure distilled spirits from more than one customs port of entry, a separate application for permit must be filed for each port. Each location to which the distilled spirits are to be shipped shall be shown on the application. The application shall be signed by the head of the department or independent bureau or agency to which such spirits are to be shipped, or by some person duly au-

thorized by such head of a department or independent bureau or agency. Evidence of authority to sign for the head of a department, or independent bureau or agency, shall be furnished the Director. Permits on Form 1444 to procure distilled spirits free of tax from customs custody will not limit the quantity of distilled spirits authorized to be procured, and all such permits shall remain in force until surrended or canceled. Every appropriate precaution shall be taken by the agency to insure that the tax-free spirits so procured will be used only for governmental purposes.

(72 Stat. 1375; 26 U.S.C. 5313)

§ 251.183 Use of permit, Form 1444.

On receipt of the permit, Form 1444, from the Director, the department, bureau, or other agency of the United States, in order to procure distilled spirits from customs custody, shall forward the permit to the collector of customs at the port named therein. The collector of customs may retain such permit to cover future withdrawals pursuant to appropriate customs entry in each case.

(72 Stat. 1375; 26 U.S.C. 5313)

§ 251.184 Customs gauge and release.

Where the appropriate permit, Form 1444, is on file, and on receipt of entry for release of distilled spirits, the spirits shall be gauged by a customs officer who shall prepare a report of gauge on Form 2629, in triplicate. The distilled spirits may then be released free of tax for shipment to the United States or governmental agency thereof named in the permit, Form 1444. The customs officer shall make the appropriate withdrawal entry on Form 1444, and shall state on each copy of Form 2629 the permit number of the Form 1444 under which the distilled spirits were withdrawn. The original of Form 2629 shall be retained by the collector of customs, one copy shall be forwarded to the governmental agency to whom the distilled spirits are consigned, and one copy shall be forwarded to the Director.

(72 Stat. 1375; 26 U.S.C. 5313)

§ 251.185 Tank cars and tank trucks to be sealed.

When a shipment of distilled spirits from customs custody is made in a tank car or tank truck, all openings affording access to the spirits shall be sealed by the customs officer with customs seals in such manner as will prevent unauthorized removal of spirits through such openings without detection.

(72 Stat. 1375; 26 U.S.C. 5313)

§ 251.186 Receipt on Form 1473.

At the time of shipping distilled spirits free of tax to the United States or governmental agency thereof, the collector of customs shall prepare Form 1473, appropriately modified, forward the original and one copy to the Government officer to whom the distilled spirits are to be delivered at destination, and retain one copy for his files. The Government officer, on receiving the shipment, shall execute the certificate of receipt, forward the original to the Director and retain the copy for his files.

(72 Stat. 1375; 26 U.S.C. 5313)

[F.R. Doc. 60-4084; Filed, May 5, 1960; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 51]

UNITED STATES STANDARDS FOR GRADES OF APPLES FOR PROCESSING [1]

Notice of Proposed Rule Making

Notice is hereby given that the United States Department of Agriculture is considering the revision of United States Standards for Apples for Processing (7 CFR §§ 51.340 to 51.344) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627).

The proposed revision includes a provision whereby fruit can be designated as "U.S. No. 1 Top Quality" when all requirements of the U.S. No. 1 grade are met and in addition the fruit is free from certain types of defects, the removal of which in the usual commercial preparation for use would cause a loss of more than one-half that allowed for the U.S. No. 1 grade. The waste allowed in the U.S. No. 2 grade has been reduced from 25 percent to 12 percent. A "Cider Grade" has also been provided which is free from decay, worm holes, and internal breakdown, and does not limit the amount of loss from other defects incurred in the usual commercial preparation for use. When a lot of apples is required to meet one of the U.S. grades, more detailed limitations for certain types of defects are included in the tolerances.

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D.C., not later than March 31, 1961.

The proposed standards, as revised, are as follows:

GRADES

Sec.
51.340 U.S. No. 1.
51.341 U.S. No. 2.
51.342 Cider Grade.

CULLS

51.343 Culls.

SIZE

Sec.
51.344 Size.

APPLICATION OF STANDARDS

51.345 Application of standards.

TOLERANCES

51.346 Tolerances

APPLICATION OF TOLERANCES TO INDIVIDUAL PACKAGES

51.347 Application of tolerances to individual packages.

AUTHORITY: §§51.340 to 51.347 issued under secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

GRADES

§ 51.340 U.S. No. 1.

"U.S. No. 1" consists of apples of one variety which are not overripe and which are free from decay, worm holes, freezing injury and internal breakdown. The apples shall also be free from any other defect, or combination of defects, the removal of which in the usual commercial preparation for use would cause a loss of more than 5 percent, by weight, of the apples. Apples which are destined for export shall be free from scald. (See § 51.346.)

(a) Apples for processing may also be designated as "U.S. No. 1 Top Quality": *Provided,* That the apples meet all requirements of the U.S. No. 1 grade and, in addition, are free from any other defect, or combination of defects, the removal of which in the usual commercial preparation for use would cause a loss of more than one-half that allowed for the U.S. No. 1 grade. (See § 51.346.)

§ 51.341 U.S. No. 2.

"U.S. No. 2" consists of apples of one variety which are not overripe and which are free from decay, worm holes, freezing injury and internal breakdown. The apples shall also be free from any other defect, or combination of defects, the removal of which in the usual commercial preparation for use would cause a loss of more than 12 percent, by weight, of the apple. Apples which are destined for export shall be free from scald. (See § 51.346.)

§ 51.342 Cider Grade.

"Cider Grade" consists of apples which are free from decay, worm holes and internal breakdown. The apples shall not be limited in the amount of loss from any other defect, or combination of defects, incurred in the usual commercial preparation for use. Apples which are destined for export shall be free from scald. (See § 51.346.)

CULLS

§ 51.343 Culls.

"Culls" consist of apples which fail to meet the requirements of the Cider Grade.

SIZE

§ 51.344 Size.

(a) Size determination may be made on the basis of minimum and maximum sizes as agreed upon by the buyer and seller.

[1] Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

(b) Diameter shall be measured without regard to the position of the stem end.

APPLICATION OF STANDARDS

§ 51.345 Application of standards.

(a) When a lot of apples is required to meet a specific U.S. grade, the tolerances as set forth in § 51.346 shall apply.

(b) In the application of these standards to determine the percentage of the lot which meets the requirements of each of the grades, tolerances shall not apply.

TOLERANCES

§ 51.346 Tolerances.

When a lot of apples is required to meet one of the U.S. grades the apples shall not be further advanced in maturity than generally firm ripe and the following tolerances, by weight, shall apply:

(a) *For defects.* 10 percent for apples which fail to meet the requirements of the grade: *Provided,* That included in this amount not more than the following percentages shall be allowed for the defects listed:

(1) 1 percent for apples which are affected by decay;

(2) 2 percent for apples which are affected by internal breakdown;

(3) 5 percent for apples which are affected by worm holes or apples which are affected by bitter pit to the extent that a loss of more than 5 percent waste would occur in the usual commercial preparation for use; and,

(4) 2 percent for apples which are affected by scald; and,

(b) *For size.* 5 percent for apples which are smaller than any specified minimum size, and 10 percent for apples larger than any specified maximum size.

APPLICATION OF TOLERANCES TO INDIVIDUAL PACKAGES

§ 51.347 Application of tolerances to individual packages.

Packages are subject to the following limitations provided the averages for the entire lot are within the tolerances specified for the grade:

(a) For a tolerance of 10 percent, individual packages shall have not more than one and one-half times the tolerance specified. For a tolerance of less than 10 percent, individual packages shall have not more than double the tolerance specified, except that at least one apple affected by worm holes, decay or internal breakdown may be permitted in any package.

Dated: May 2, 1960.

ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 60-4085; Filed, May 5, 1960; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 27]

CANNED FRUITS AND CANNED FRUIT JUICES

Canned Pineapple-Grapefruit Juice Drink; Definition and Standard of Identity

Notice is hereby given that a petition proposing the adoption of a definition and standard of identity for canned pineapple-grapefruit juice drink has been filed by the following interested canners:

California Packing Corporation, San Francisco, Calif.

Hawaiian Pineapple Company, San Jose, Calif.

Gerber Products Company, Fremont, Mich.

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended, 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371), and in accordance with the authority delegated to him by the Secretary of Health, Education, and Welfare (22 F.R. 1045, 23 F.R. 9500), the Commissioner of Food and Drugs invites all interested persons to submit their views in writing regarding the proposal of the above-named petitioners as published in this notice. Views and comments should be submitted in quintuplicate, addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, Health, Education, and Welfare Building, 330 Independence Avenue SW., Washington 25, D.C., and should be submitted prior to the thirtieth day following the date of publication of this notice in the FEDERAL REGISTER.

It is proposed that the following definition and standard of identity be adopted:

§ 27.104 Canned pineapple-grapefruit juice drink; identity; label statement of optional ingredients.

(a) Canned pineapple-grapefruit juice drink is the food prepared from the fruit juice ingredients specified in paragraph (b) of this section, water, and one or more of the optional sweetening ingredients specified in paragraph (e) of this section. Such food has a viscosity such that it gives a reading of not more than 29.9 seconds when tested according to the method described in the Journal of the Association of Official Agricultural Chemists, May 1959, pages 411–416, inclusive, under the title "Consistency Measurement of Fruit Nectars and Fruit Juice Products," by Frank C. Lamb and Lawrence D. Lewis. Such food may also contain one or more of the optional ingredients specified in paragraph (d) of this section. The food is sealed in a container and so processed by heat, before or after sealing, as to prevent spoilage.

(b) The fruit juice ingredients referred to in paragraph (a) of this section are pineapple juice, grapefruit juice, concentrated pineapple juice, and concentrated grapefruit juice. Each fruit juice ingredient may contain finely divided insoluble fruit solids but does not contain seeds, pits, or other coarse or hard substances. Each fruit juice ingredient is an optional ingredient of this food. The adjusted weight of the combination of these fruit juice ingredients shall be not less than 50 percent of the weight of the finished food, calculated by the method specified in paragraph (c) of this section. The pineapple juice ingredient is present in an amount greater than the grapefruit juice ingredient.

(c) Determine the percent of soluble solids in such fruit juice ingredients by the method prescribed in section 29.11 of Official Methods of Analysis of the Association of Official Agricultural Chemists, Eighth Edition, page 534, under "Solids." Use this method, notwithstanding the presence of insoluble solids. Multiply the result so found by the weight of such fruit juice ingredient and divide the product by the following standard Brix value for each such fruit ingredient.

Name of fruit:	*Brix value*
Pineapple juice	13.0
Grapefruit juice	9.5

The result is the adjusted weight of the fruit juice ingredient.

(d) The optional ingredients referred to in paragraph (a) of this section are:

(1) Citric acid.

(2) Citrus oil flavoring (orange, lemon, grapefruit).

(3) Sodium citrate.

(4) Ascorbic acid (vitamin C).

(e) The optional sweetening ingredients referred to in paragraph (a) of this section are: Sugar; any combination of sugar and dextrose in which the weight of the solids of the dextrose used is not more than one-half of the weight of the solids of the sugar used; any combination of sugar and corn sirup or glucose sirup in which the weight of the solids of the corn sirup or glucose sirup used is not more than one-third of the weight of the solids of the sugar used; any combination of sugar, dextrose, and corn sirup or glucose sirup in which twice the weight of the solids of the dextrose used added to three times the weight of the solids of the corn sirup or glucose sirup used is not more than the weight of the solids of the sugar used.

(f) For the purposes of this section, the terms "sugar," "dextrose," "corn sirup," and "glucose sirup" means the ingredients defined in § 27.1.

(g) The name of the food is "pineapple-grapefruit juice drink."

(h) (1) When ascorbic acid (vitamin C) is added, the label shall bear the statement "_____ added," or "with added _____," the blank being filled in with the name "ascorbic acid" or "vitamin C." When ascorbic acid is added, the label shall relate the quantity of ascorbic acid present in the product to the human requirements therefor, as prescribed in § 125.3 of this chapter.

(2) All optional ingredients used in the food shall be listed in the order of their predominance.

(3) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements specified in this section, showing the ingredients used, shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

Dated: April 29, 1960.

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

[F.R. Doc. 60-4087; Filed, May 5, 1960; 8:48 a.m.]

[21 CFR Part 120]

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

Parathion; Tolerance on Garlic

Notice is given that the Commissioner of Food and Drugs, on his own initiative, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 348(e)) and in accordance with the authority delegated to him by the Secretary of Health, Education, and Welfare (22 F.R. 1045, 23 F.R. 9500) proposes to amend the regulations for setting tolerances and granting exemptions from tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR, 1958 Supp., 120.121), as follows:

It is proposed to amend § 120.121 *Tolerances for residues of parathion* by adding thereto a tolerance of 1 part per million for residues of this pesticide chemical in or on garlic.

A person who has registered or who has submitted an application for the registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing parathion may request, within 30 days from the publication of this proposal in the FEDERAL REGISTER, that the proposal be referred to an advisory committee, in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Any interested person is invited at any time prior to the thirtieth day from the date of publication of this notice in the FEDERAL REGISTER to file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written comments on the proposal. Comments may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Dated: April 29, 1960.

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

[F.R. Doc. 60-4088; Filed, May 5, 1960; 8:48 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Foreign Assets Control

IMPORTATION OF CERTAIN MERCHANDISE DIRECTLY FROM KOREA

Available Certifications by the Republic of Korea

Notice is hereby given that certificates of origin issued by the Ministry of Commerce and Industry of the Republic of Korea under procedures agreed upon between that government and the Foreign Assets Control are now available with respect to the importation into the United States directly, or on a through bill of lading, from Korea of the following additional commodities:

Menthol and
Peppermint oil, dementholized (cornmint oil)

[SEAL] MARGARET W. SCHWARTZ,
Acting Director,
Foreign Assets Control.

[F.R. Doc. 60-4113; Filed, May 5, 1960; 8:51 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 10162 et al.]

RENEWAL OF ALLEGHENY AIRLINES' TEMPORARY INTERMEDIATE POINTS

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on May 25, 1960, at 10:00 a.m., e.d.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Chief Examiner Francis W. Brown.

Dated at Washington, D.C., May 2, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-4096; Filed, May 5, 1960; 8:49 a.m.]

[Docket 11241]

CAPITAL AIRLINES, INC., MAIL RATES

Notice of Prehearing Conference

Notice is hereby given (see Order E-15166) that a prehearing conference in the above-entitled proceeding is assigned to be held on May 16, 1960, at 10:00 a.m., e.d.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiners Merritt F. Ruhlen and S. Thomas Simon.

Dated at Washington, D.C., May 2, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-4097; Filed, May 5, 1960; 8:49 a.m.]

[Docket 10094]

OZARK AIR LINES, INC., TEMPORARY INTERMEDIATE POINTS

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on June 14, 1960, at 10:00 a.m., e.d.s.t., in Room 725, Universal Building, Florida and Connecticut Avenues NW., Washington, D.C., before Examiner Barron Fredricks.

Dated at Washington, D.C., May 3, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-4098; Filed, May 5, 1960; 8:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 13387, 13388; FCC 60M-754]

ALVARADO TELEVISION CO., INC. (KVOA-TV) AND OLD PUEBLO BROADCASTING CO. (KOLD-TV)

Order Scheduling Hearing

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.

It is ordered, This 29th day of April 1960, that the hearing in the above-entitled matter heretofore continued without date is hereby scheduled to commence at 10:00 a.m., May 18, 1960,[1] in the Commission's offices in Washington, D.C.

Released: May 2, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-4100; Filed, May 5, 1960; 8:49 a.m.]

[1] Counsel are notified that the hearing will be adjourned between May 19, 1960 and May 23, 1960, and will be resumed on May 24, 1960 if that date should be satisfactory to the parties.

[Docket No. 13325; FCC 60-444]

SUNBURY BROADCASTING CORP. (WKOK)

Memorandum Opinion and Order Amending Issues

In re application of Sunbury Broadcasting Corporation (WKOK), Sunbury, Pennsylvania, Docket No. 13325, File No. BP-12008, for construction permit.

1. The Commission has before it for consideration (1) a Petition to Enlarge or Clarify Issues filed by Lycoming Broadcasting Company (WLYC) on January 21, 1960; (2) a Reply filed by Sunbury Broadcasting Corporation (WKOK) on January 25, 1960; and (3) a Reply filed by the Broadcast Bureau on February 3, 1960.

2. Lycoming Broadcasting Company (Lycoming) requests that the issues be clarified so as to make clear that the loss of Northumberland's only primary nighttime service will be considered under Issue 1 in this proceeding[1] or, in the alternative, that the following issue be added:

> To determine whether a grant of the instant application would result in the loss to the City of Northumberland, Pennsylvania, of its only nighttime primary standard broadcast service and, if so, whether a grant of the proposal would serve the public interest, convenience, and necessity.

Lycoming supports this request with an engineering affidavit to the effect that a grant of the above-captioned application would eliminate the only nighttime primary service available to Northumberland, Pennsylvania, a city having a 1950 population of 4,207 persons. Lycoming asserts that this fact raises a public interest question appropriate for consideration by the Commission, citing Vidalia Broadcasting Company, 8 RR 1 (1952). Although Lycoming is of the view that this question may be considered under Issue 1, it feels that recent decisions have cast doubt on this view.[2] It, therefore, requests that the issues be clarified or enlarged so as to permit consideration of the loss of Northumberland's only nighttime primary service.

[1] That issue reads: "To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WKOK and the availability of other primary service to such areas and populations."

[2] In this connection, petitioner cites Gillespie Broadcasting Company, 15 RR 878 (1958) as holding that the standard issue on area and population which may be expected to gain or lose primary service from a proposed operation does not encompass a determination of comparative gains and losses in population which would receive primary service from the applicant's station. On rehearing, however, in Gillespie Broadcasting Company, 15 RR 882a (1958), cited by petitioner, a contrary view was indicated.

3. Sunbury Broadcasting Corporation opposes Lycoming's request on the ground that it is clearly one for clarification of issues, and, in accordance with § 1.111 of the Commission's rules, would be appropriate for consideration at a pre-hearing conference. The Broadcast Bureau supports the petitioner's request, urging that the addition of the requested issue will serve to emphasize that loss of service is a factor to be considered in determining whether a grant of an application would be in the public interest only when it is expressly placed in issue in the hearing order.

4. The Commission is of the view that a sufficient showing has been made to warrant consideration of the loss to Northumberland of its only nighttime primary service. Because Issue 1 is not specifically directed to this problem, an issue such as that requested by Lycoming will be added.

Accordingly, it is ordered, This 27th day of April 1960, That the Petition to Enlarge or Clarify the Issues, filed by Lycoming Broadcasting Company on January 21, 1960, is granted to the extent indicated herein and is in all other respects denied; the designation order (FCC 59–1298) is amended to renumber Issues 2, 3, and 4 as Issues 3, 4, and 5, respectively; and the issues are enlarged by adding the following issue:

2. To determine whether a grant of the instant application would result in the loss to the City of Northumberland, Pennsylvania, of its only nighttime primary standard broadcast service and, if so, whether a grant of the proposal would serve the public interest, convenience and necessity.

Released: May 2, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60–4102; Filed, May 5, 1960; 8:49 a.m.]

[Docket Nos. 12457, 13434; FCC 60M–756]

CLARENCE E. WILSON AND MORTON BROADCASTING CO.

Order Continuing Hearing

In re applications of Clarence E. Wilson, Hobbs, New Mexico, Docket No. 12457, File No. BP–11817; Mike Allen Barrett, tr/as Morton Broadcasting Company, Morton, Texas, Docket No. 13434, File No. BP–13393; for construction permits.

1. At a prehearing conference on April 29, attended by counsel for Wilson, Morton, and the Broadcast Bureau, it was agreed, among other things, that:

(1) The engineers may confer informally with a view to resolving disputes and simplifying presentations;

(2) Presentations under all issues will be in written form. It had originally been understood that evidence under the first four issues would be in writing, and that on Issue 5 it might be partly in writing, but with the agreement of counsel that testimony which might have been offered under Issue 5 by deposition may be presented in chief in affidavit form, the entire direct cases of both applicants will be in writing;

(3) The following schedule will govern:

(a) Exchange of written cases—By May 23, 1960;

(b) Notification of objections and designation of witnesses desired for cross-examination—By June 6, 1960;

(c) Hearing—June 28, 1960, at 10 a.m., in the offices of the Commission, Washington D.C. (Previously scheduled for June 1, the hearing is continued to the new date.)

So ordered, This 2d day of May 1960.

Released: May 2, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60–4104; Filed, May 5, 1960; 8:50 a.m.]

[Docket Nos. 13155–13159; FCC 60M–757]

WACO RADIO CO., ET AL.

Order Continuing Hearing

In re applications of Jacob A. Newborn, Jr., Trustee for Nancy and Nena Newborn, tr/as Waco Radio Company, Waco, Texas, Docket No. 13155, File No. BP–9763; Hugh M. McBeath, Waco, Texas, Docket No. 13156, File No. BP–10001; Floyd Bell, Texarkana, Texas, Docket No. 13157, File No. BP–11870; Radio Broadcasters, Inc., Waco, Texas, Docket No. 13158, File No. BP–12465; Belton Broadcasters, Inc., Belton, Texas, Docket No. 13159, File No. BP–12934; for construction permits.

The Hearing Examiner having under consideration a petition filed April 29, 1960, on behalf of Belton Broadcasters, Inc., requesting that the dates for certain procedural steps be extended [1] as hereinafter ordered; and

It appearing from the pleading that counsel for all parties have consented to the immediate consideration and grant of the petition and that a grant thereof will conduce to the orderly dispatch of the Commission's business; now therefore:

It is ordered, This 2d day of May 1960, that the aforesaid petition is granted, and that the dates for certain procedural steps are extended as follows: (1) Exchange of exhibits on non-engineering issues from May 2 to June 3, 1960; (2) Requests for additional information and notification of witnesses desired for cross-examination from May 10 to June 17, 1960; and (3) Commencement of hearing upon engineering and non-engineering matters from May 17 to July 25, 1960.

Released: May 2, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60–4103; Filed, May 5, 1960; 8:49 a.m.]

[1] The pleading also requests that this order "recognize" that counsel for all applicants have agreed to present all direct case evidence in writing, whereas the procedure agreed upon at an earlier prehearing conference contemplated that such direct case presentations might be made both in writing and by oral testimony.

FEDERAL POWER COMMISSION

[Docket No. RI60–281]

W. H. BLACK

Order Providing for Hearings on and Suspending Proposed Changes in Rates

APRIL 29, 1960.

On March 30, 1960, W. H. Black (Black) tendered for filing a renegotiated contract which is intended to supersede the contracts on file as Black's FPC Gas Rate Schedules Nos. 1, 2, and 3. The latter rate schedules pertain to natural gas produced in the Hugoton Field, Kearny County, Kansas, and sold, subject to the jurisdiction of this Commission, to Colorado Interstate Gas Company (Colorado Interstate). The renegotiated contract, dated January 4, 1960, hereinafter designated as Black's FPC Gas Rate Schedule No. 6, proposes an increased rate and charge of 12.0 cents per Mcf, at 14.65 psia, effective April 30, 1960, to supersede its originally contracted rates contained in the following-designated filings:

Black's FPC RS No. 1—10 cents per Mcf at 14.65 psia after 10–1–55.[1]
Black's FPC RS No. 2—8 cents per Mcf at 14.65 psia after 5–1–56.[1]
Black's FPC RS No. 3—10 cents per Mcf at 14.65 psia after 5–1–56.[1]

In addition to the above specified rates, the contracts comprising said Rate Schedules Nos. 1, 2, and 3, provide that the price to be paid by buyer shall not be less than 1.0 cents per Mcf above the minimum price set by the Kansas Corporation Commission for Hugoton Field produced gas.

The Kansas Corporation Commission by its order issued December 3, 1953, set a minimum price of 11.0 cents per Mcf to take effect January 1, 1954 for sales of natural gas from the Hugoton Field. In compliance with such order, Colorado Interstate notified Sinclair Oil and Gas Company [2] that it would pay the 12.0 cents per Mcf rate (1.0 cents above the 11.0 cents minimum); provided Sinclair Oil and Gas Company agreed, that in the event such order is invalidated, to refund the difference between the amounts paid by Colorado Interstate and the amounts that would have been legally payable to Sinclair Oil and Gas Company. Sinclair Oil and Gas Com-

[1] Contract price for duration of contract term (for the life of all leases dedicated to the performance of the contract).

[2] Operator of the units involved under Black's FPC Gas Rate Schedules Nos. 1, 2 and 3.

pany, by letter dated March 19, 1954, accepted that agreement. Black filed said letter on January 14, 1957, as a supplement to its Rate Schedules Nos. 1, 2 and 3. The effective rate thereafter was 12.06 cents per Mcf under Rate Schedules Nos. 1 and 2 and 12.05375 cents per Mcf under Rate Schedule No. 3. That portion above 12 cents per Mcf represented the Kansas Severance Tax increment of the rate.

On January 20, 1958, the United States Supreme Court, in Cities Service Gas Co. v. State Corporation Commission of Kansas, 355 U.S. 391, vacated a judgment of the Supreme Court of Kansas thereby holding, in effect, that the State of Kansas cannot lawfully fix a minimum price at the wellhead to be charged for, or attributed to, natural gas where such gas is sold in interstate commerce for resale, either at the wellhead or after production and gathering.

Black's renegotiated contract of January 4, 1960, provides for an increase in rate over those set out in the contracts on file as Black's FPC Gas Rate Schedule Nos. 1, 2, and 3. Black apparently does not consider that the rate provisions set out in the renegotiated contract constitute a change in rate, as set out in section 4 of the Natural Gas Act and in section 154.94 of the Commission's Regulations thereunder, as no notice of change or supporting statement was tendered concurrently with the renegotiated contract on March 30, 1960.

In view of the decision of the Supreme Court in the Cities Service case, supra, and our rule making procedure concerned therewith in Docket No. R–168, it is considered that Black's FPC Gas Rate Schedule No. 6 should be suspended and the use thereof deferred for five months from April 30, 1960, the first day following statutory notice. Such suspension, however, is without prejudice to any action that we may take concerning the invalidated minimum price order of the Kansas Corporation Commission.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: 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 a hearing concerning the lawfulness of the said proposed change, and that Black's FPC Gas Rate Schedule No. 6 be accepted for filing and be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) The contract dated January 4, 1960 and tendered by Black on March 30, 1960, here designated as W. H. Black FPC Gas Rate Schedule No. 6, is hereby accepted for filing subject to the conditions of this order.

(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 regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and changes contained in Black's FPC Gas Rate Schedule No. 6.

(C) Pending such hearing and decision thereon, said rate schedule be and it is hereby suspended and the use thereof deferred until September 30, 1960, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the rate schedule hereby suspended nor those proposed to be superseded shall be changed until this proceeding has been disposed of or until the period of suspension has 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 and 1.37(f)) on or before June 13, 1960.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60–4068; Filed, May 5, 1960; 8:45 a.m.]

[Docket No. CI60–263]

DEEP SOUTH OIL COMPANY OF TEXAS

Notice of Application and Date of Hearing

APRIL 29, 1960.

On February 29, 1960, Deep South Oil Company of Texas (Deep South) filed an application in Docket No. CI60–263 requesting that the Commission grant one of the following alternate proposals set forth in its application: (1) Permission under section 7(b) of the Natural Gas Act to abandon service to Texas Gas Corporation (Texas Gas) with respect to that acreage located in the North Big Hill Area, Jefferson County, Texas; (2) Issue a new or supplemental certificate of public convenience and necessity, pursuant to sections 7 (c) and (e) of the Act, authorizing applicant to render service to a new or additional buyer or (3) Issue an order requiring Texas Gas to take greater volumes of gas from the applicant in the North Big Hill Area.

Applicant alleges in its application that the Commission should undertake to adopt one of the proposals it recommends because it has been wrongfully injured by the actions of certain parties and as a consequence is suffering serious economic loss.

In this connection applicant alleges that Texas Gas made representations and promises to it that it would increase its daily purchase of gas and that consistent with such promises and representations it entered into an expansion program and drilled 30 producing wells in the subject area at a cost of $6,000,000. Applicant further alleges that once committed to this expansion program, Texas Gas, instead of increasing its purchases as anticipated, drastically reduced the volume it was taking from Deep South. Applicant claims that this action was taken on the part of Texas Gas in order to effectuate the purposes of a conspiracy between Texas Gas and Texas Eastern Transmission Corporation and other parties. The object of said conspiracy being to divest the applicant, Deep South, of valuable producing properties, all as more fully set forth in its application which is on file with the Commission and open to public inspection.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by section 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure a formal hearing will be held on May 23, 1960, at 10:00 a.m., e.d.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by the application.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before May 18, 1960.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60–4069; Filed, May 5, 1960; 8:45 a.m.]

[Docket No. RI60–283 etc.]

HIGHLAND OIL CO. ET AL.

Order Providing for Hearings on and Suspending Proposed Changes in Rates [1]

APRIL 29, 1960.

In the matter of Highland Oil Company, Docket No. RI60–283; Sun Oil Company, Docket No. RI60–284; Southwestern Oil & Refining Co. (Operator), et al., Docket No. RI60–285; Sinclair Oil & Gas Company, Docket No. RI60–286; Puenticitas Oil Co., Agent (Operator), et al., Docket No. RI60–287; Ashland Oil & Refining Company, et al., Docket No. RI60–288; Prime Drilling Company, et al., Docket No. RI60–289; San Salvador Development Co., Inc., Docket No. RI60–290; N. Bruce Calder & Curtis E. Calder, Jr. d/b/a Horizon Oil & Gas Co. (Operator), et al., Docket No. RI60–291.

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

[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.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Notice of change dated—	Date tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI60-283	Highland Oil Co.	1	3	Tennessee Gas Transmission Co. (Government Wells Field, Duval County, Tex., RR Dist. No. 4).	undated	4-5-60	[1] 5-6-60	10-6-60	15.095	17.243	G-19866
		2	3	do	do	4-5-60	[1] 5-6-60	10-6-60	15.095	17.243	G-19866
RI60-284	Sun Oil Co.	107	1	Natural Gas Pipeline Co. of America (Camerick Field, Beaver County, Okla.).	4-4-60	4-6-60	[2] 5-8-60	10-8-60	16.2	16.4	
		116	1	do	4-4-60	4-6-60	[2] 5-8-60	10-8-60	16.2	16.4	
RI60-285	Southwestern Oil & Refining Co. (Operator), et al.	3	3	Tennessee Gas Transmission Co. (Bailey Field, Jim Wells County, Tex., RR Dist. No. 4).	undated	4-4-60	[1] 5-5-60	10-5-60	14.876	17.024	G-19997
		5	4	Tennessee Gas Transmission Co. (La Jara Field, Hidalgo County, Tex., RR Dist. No. 4).	do	4-4-60	[1] 5-5-60	10-5-60	15.095	17.243	G-19933
RI60-286	Sinclair Oil & Gas Co.	140	7	Natural Gas Pipeline Co. of America (Grand Valley Field, Beaver County, Okla.).	4-5-60	4-6-60	[2] 5-10-60	10-10-60	16.6	16.8	G-18271
RI60-287	Puenticitas Oil Co., Agent (Operator), et al.	1	5	Tennessee Gas Transmission Co. (Brayton and Aqua Dulce Field, Nueces County, Tex., RR Dist. No. 4).	undated	3-31-60	[1] 5-1-60	10-1-60	11.903	17.024	
RI60-288	Ashland Oil & Refining Co., et al.	3	2	Lone Star Gas Co. (Katie Field, Garvin County, Okla.).	do	3-31-60	[2] 5-1-60	10-1-60	[3] 11.0	16.8	
		4	4	do	do	3-31-60	[2] 5-1-60	10-1-60	[3] 11.0	16.8	
		70	3	do	do	3-31-60	[2] 5-1-60	10-1-60	[3] 11.0	16.8	
RI60-289	Prime Drilling Co., et al.	3	2	Cities Service Gas Co. (Rhodes Field, Barber County, Kans.).	3-29-60	3-31-60	[2] 5-1-50	10-1-60	12.0	13.0	
RI60-290	San Salvador Development Co., Inc.	1	4	Tennessee Gas Transmission Co. (San Salvador Field, Hidalgo County, Tex., RR Dist. No. 4).	undated	4-1-60	[1] 5-2-60	10-2-60	[4] 15.095	[4] 17.243	G-19833
RI60-291	N. Bruce Calder & Curtis E. Calder, Jr., d/b/a Horizon Oil & Gas Co., (Operator) et al.	11	1	Natural Gas Pipeline Co. of America (Camrick Field, Texas County, Okla.).	3-30-60	4-1-60	[1] 5-2-60	10-2-60	16.6	16.8	

[1] First day following statutory notice.
[2] Date proposed by respondent.
[3] Price of the high pressure gas sold under the rate schedule.
[4] Includes 0.21931 cent/Mcf for dehydration deducted by buyer.

As to the favored-nation type of rate increases, Highland Oil, Puenticitas Oil, Southwestern Oil & Refining and Ashland Oil & Refining Company have each submitted one or more of the following in support of the higher prices proposed: (a) Cite contract provisions negotiated after arm's-length bargaining under competitive conditions; (b) cite and identify the rates which triggered the contract; (c) proposed price in line with the value of gas; and (d) the higher price is needed to provide a fair return on investment. Southwestern also adds that it is a small producer and it would suffer an undue burden if compelled to justify the proposed price on a cost basis or by professional testimony.

As to the periodic type of rate increases, Sun Oil, Sinclair Oil & Gas, Prime Drilling and Horizon Oil & Gas have each submitted one or more of the following in support of the higher prices proposed: (a) cites contract provisions which were negotiated after arm's-length bargaining; (b) contracts entered into in good faith to achieve a fair average price over the term of the contract; (c) pricing provisions were important considerations in executing the contracts; (d) proposed price does not exceed the value of gas or is not out of line with recently negotiated contracts or is below recent initial prices; (e) increased prices needed to offset increased costs; and (f) the pricing provisions are beneficial to the buyer in providing lower prices at the time buyers' costs are highest. Horizon Oil & Gas also adds that the well covered by its rate schedule is a poor producer and is incapable of producing either the maximum permitted by the State or the minimum required by the contract.

The proposed changes may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: 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) 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 regulations under the Natural Gas Act (18 CFR Ch. I), public hearings 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.

(B) Pending hearings and decisions thereon, each of the aforementioned supplements is suspended and the use thereof deferred until the time indicated in the above-designated "Date Suspended Until" column, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) 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.

(D) 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 and 1.37(f)) on or before June 15, 1960.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 60-4070; Filed, May 5, 1960; 8:45 a.m.]

[Docket No. G-20520]

MIDWESTERN GAS TRANSMISSION CO. ET AL.

Notice of Application and Date of Hearing

APRIL 29, 1960.

In the matter of Midwestern Gas Transmission Company, Texas Gas Transmission Corporation, Tennessee Gas Transmission Company; Docket No. G-20520.

Take notice that on December 29, 1959, as amended January 26, 1960, Midwestern Gas Transmission Company (Midwestern), Texas Gas Transmission Corporation (Texas Gas), and Tennessee Gas Transmission Company (Tennessee), Delaware corporations, with their respective principal offices in Houston, Texas, Owensboro, Kentucky, and Houston, Texas, filed a joint application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas between the systems of Midwestern and Texas Gas and the construction and operation of the natural gas facilities required to accomplish such exchange, subject to the jurisdiction of the Commission, all as more fully described in the application, which is on

file with the Commission and open to public inspection.

The purpose of the joint proposal herein is to permit Midwestern and Texas Gas to make deliveries to each other when such deliveries can assist the other in their system operations and when such deliveries can be made without curtailment or interruption of service to the markets of the party making the deliveries. Pursuant to the Exchange Agreement dated December 4, 1959, the party receiving deliveries is obligated to return a like quantity of gas to the other party within 60 days after the original delivery or at some later date agreeable to all parties.

Deliveries of natural gas by either Midwestern or Texas Gas to the other, can be effected by the metering and interconnecting facilities installed or to be installed at the following proposed delivery points:

A. Where Midwestern's 30-inch pipeline crosses the 26-inch system of Texas Gas near Whitesville, in Daviess County, Kentucky.

B. Where Midwestern's 30-inch pipeline crosses the 12-inch line of Texas Gas near Bicknell, in Knox County, Indiana.

C. Where the facilities of Midwestern and Texas Gas interconnect with the facilities of Tennessee near Portland, Tennessee. The exchange at this point will be accomplished through the utilization of Tennessee's existing facilities, by Tennessee increasing its deliveries to Midwestern or Texas Gas and decreasing its deliveries to the other.

Texas Gas will construct and operate the necessary metering equipment at the interconnection to be installed near Bicknell in Knox County, Indiana and Midwestern will construct and operate the necessary metering equipment at the interconnection to be installed near Whitesville in Daviess County, Kentucky. The total cost of the proposed facilities is estimated to be $47,387, of which $8,830 will be borne by Texas Gas and $38,557 by Midwestern.

Applicants state that the proposed exchange of gas will be beneficial to both Midwestern and Texas Gas in that it will provide added flexibility of operation to their respective systems.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 31, 1960, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street, NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *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 the Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before May 18, 1960. Failure of any party to appear at and participate in the hearing shall be construed as a waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-4071; Filed, May 5, 1960; 8:45 a.m.]

[Docket No. G-19780]

PANHANDLE EASTERN PIPE LINE CO.

Order Denying Oral Argument and Granting Motion for Order Prescribing Procedure Upon Resumption of Hearing

APRIL 29, 1960.

On September 10, 1959, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Original Volume No. 1, which reflect an annual increase in its rates of $8,653,700, or 8.0 percent, based on sales for the year ended May 31, 1959, as adjusted, over rates in effect subject to refund in Docket No. G-14755.

By order issued October 23, 1959, the Commission, pursuant to Sections 4 and 15 of the Natural Gas Act, suspended and deferred the use of the proposed tariff changes until March 26, 1960, and until such further time as they might be made effective in the manner prescribed by the Natural Gas Act. Upon motion filed by Panhandle, the Commission by order issued March 25, 1960, made effective the proposed tariff changes upon filing of undertaking to assure refund of excess charges.

Hearing was commenced on January 5, 1960, and was recessed on January 8, 1960, Panhandle having completed presentation of its case-in-chief.

On February 5, 1960, the Commission staff filed a motion for order prescribing procedure upon resumption of hearing. On February 15, 1960, Panhandle filed its answer and objections to staff's motion. Various interveners also filed answers to staff's motion.

The Presiding Examiner by notice dated February 19, 1960, set March 14, 1960, for resumption of the hearing to discuss staff's motion and the various answers and objections filed by Panhandle and interveners. At the hearing on March 14, 1960, the staff made an extended statement in respect to its motion and related matters, and staff's motion and objections thereto were discussed generally. Upon conclusion of the hearing held on March 14, 1960, it was recessed indefinitely. On March 18, 1960, the Presiding Examiner certified to the Commission for its disposition the motion filed by staff on February 5, 1960.

Pursuant to § 1.31(d)(2) of the Commission's rules of practice and procedure, Panhandle on March 21, 1960, filed a motion for oral argument on staff's motion and related matters. Various interveners likewise filed motions for oral argument. We do not believe that an oral argument on these matters would be of significant assistance. The staff's motion of February 5, 1960, and the extensive statement made on the record in the hearing held March 14, 1960, present its proposal and position in detail. The lengthy answers and objections filed by Panhandle and various interveners also present their respective positions in detail. From the record and above filings, we have before us the various contentions with supporting statements requisite for our determination.

The staff's motion proposes the adoption of an interim order procedure. Panhandle's case-in-chief has been completed. Under the proposed procedure the cross-examination would be limited to the area of selected issues which staff believes can be disposed of expeditiously; staff would present immediately its direct case on the selected issues; the interveners would utilize the same procedures for the issues specified; and Panhandle would retain its right to cross-examine and to present rebuttal evidence as to those issues.

Upon completion of this limited presentation, staff proposes to file its motion requesting waiver of the intermediate decision procedure in order to obtain, as soon as possible, the Commission's ruling upon the selected issues. As soon as possible thereafter, staff proposes that it would move for commencement of a further hearing as to those issues not disposed of under the procedure to be applied above. These remaining issues are to be disposed of in the second phase of the proceeding after field investigation.

The stated objectives of staff's proposal are the disposition of certain issues as soon as possible after a proposed increased rate is filed and to lessen the amount of a proposed increased rate placed in effect subject to refund, upon the theory that some issues present in this proceeding can be disposed of expeditiously and without field investigation. The Commission staff having an extreme workload often is unable to complete its field investigation until some time after a proposed increased rate is placed in effect subject to refund.

Staff states that a major advantage in adopting its so-called interim order procedure for this proceeding would be to reduce the amount of the proposed increased rate in effect subject to refund substantially prior to the time the field investigation and subsequent hearing and disposition as to all issues could be completed. The staff asserts that this would alleviate the situation wherein

the respondent pipeline company, its purchasers, and the consumers suffer from the financial instability resulting from not knowing what portion, if any, of the proposed increased rate will be ordered to be refunded.

Panhandle and various interveners have presented a number of objections to staff's motion, including the argument that the interim order procedure is not directed toward expediting the ultimate disposition of the proceeding in conformity with the principles enunciated in Commission Order No. 217, issued November 20, 1959, providing, inter alia, for the use of conferences to delineate issues and to shorten time spent in hearing. As we understand the interim order procedure, however, it is compatible to the informal conference procedure outlined in Order No. 217. Staff's proposal also may have a significant advantage in the possible reduction in the dollar amount of the proposed increased rates in effect subject to refund and the benefits resulting therefrom. Each of these procedures, in its own way, may assist in reducing the backlog of cases before this Commission.

Furthermore, it is asserted that a decision on the first phase issues will constitute prejudgment of the remaining issues. However, we are unable to see wherein a decision on the issues we will prescribe herein would be determinative of other possible remaining issues.

It is also urged that until all issues are decided, no reduction in rate, temporary or permanent, will be made. This remains to be seen. We will deal at this time only with a few issues, including the crucial rate of return. Of course, if the components of the rate base or other items making up a cost of service are not placed in issue until the second phase of the proposed procedure, they would be accepted arguendo and only for the purposes of the interim order until such components are disposed of finally by Commission order.

Also, Panhandle maintains that staff's motion should be denied because the two-phase procedure will double the briefing periods and the number of recesses to prepare for cross-examination and evidence. We cannot see where this would unduly burden the parties, for the time spent in preparation for hearing, in hearing, and in briefing will not be increased since, in a proceeding wherein the interim order procedure is not utilized, all issues must be prepared for presentation in hearing. The time consumed in hearing under the two-phase procedure should not be greater than the time consumed in a proceeding which has only one phase, and the same issues that are briefed in both phases of staff's proposed procedure will need likewise to be briefed in a one-phase proceeding.

Another objection made to staff's motion is that the two phase proceeding will be unjust by reason of having appeals in progress while the remaining issues are in the process of disposition. First, this assumes that an appeal will be taken from an interim order of the Commission. Secondly, since the issues to be decided by interim order will be severable as to the whole, it is difficult to see wherein any party may be injured.

An interim order procedure as proposed by staff's motion is not unique to this Commission or other regulatory agencies. The Commission applied an interim order in Illinois Commerce Commission v. Natural Gas Pipeline Co. of America, et al., 2 F.P.C. 218 (1940), 120 F. 2d 625 (CA7, 1941), affirmed 315 U.S. 575. Courts have upheld other interim orders issued by this Commission. In particular see Panhandle Eastern Pipe Line Co. v. F.P.C., 236 F. 2d 606 (CA3, 1956). See also State Corp. Commission of Kansas v. F.P.C. 206 F. 2d 690 (CA8, 1953), certiorari denied 346 U.S. 922, rehrg. denied 347 U.S. 1022. For use of the interim order procedure by a state regulatory agency see Houston Chamber of Commerce v. Railroad Commission, PUR 1930B, 388 19 S.W. 2d 583 (Court of Civil Appeals, Texas, 1929). The Interstate Commerce Commission in its ex parte rate increase proceedings utilizes procedures closely analogous to those proposed in staff's motion, e.g., Ex Parte No. 175, 281 I.C.C. 557; Ex Parte No. 168, 272 I.C.C. 695; Ex Parte No. 206, 299 I.C.C. 429.

Panhandle and various interveners have presented objections to staff's motion other than those heretofore discussed. Upon consideration of these objections, we find them to be neither persuasive nor sufficiently substantial to change our conclusion.

The Commission finds:

(1) For the reasons heretofore stated and as hereinafter ordered, it is in the public interest that the motion filed by Commission staff herein on February 5, 1960, be granted.

(2) For the reasons heretofore stated, the motions for oral argument on staff's motion of February 5, 1960, should be denied.

The Commission orders:

(A) The motion for order prescribing procedure upon resumption of hearing filed by Commission staff on February 5, 1960, in the proceeding in Docket No. G-19780 is granted subject to the conditions hereinafter provided.

(B) Upon resumption of the hearing as herinafter ordered, evidence of the following issues set forth in staff's motion of February 5, 1960, shall be presented and those issues shall be disposed of: Rate of return and related income tax allowances, working capital allowance, field price of produced gas as against the actual cost of production of company produced gas and a cost of service utilizing the allocation principles relied upon by the Commission in Opinion No. 269, as modified in City of Detroit v. F.P.C., 230 F. 2d 810, certiorari denied, 352 U.S. 829, 77 S. Ct. 24, 1 L. Ed. 2d 48.

(C) Commission staff shall, on or before May 4, 1960, serve upon all parties to this proceeding its proposed exhibits and testimony in respect to those issues listed in paragraph (B) hereof.

(D) A public hearing in the proceeding in this docket shall be reconvened on May 23, 1960, at 10:00 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the issues listed in paragraph (B) hereof.

(E) A public hearing in the proceeding in this docket on issues other than those disposed of pursuant to paragraphs (A), (B), (C), and (D) hereof, shall be commenced on January 24, 1961, at 10:00 a.m. e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., except said hearing may be held upon a date earlier, if at such earlier date and upon proper notice, Commission staff is prepared to proceed.

(F) The motions for oral argument on staff's motion of February 5, 1960, are denied.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-4072; Filed, May 5, 1960; 8:46 a.m.]

[Docket No. RI60-292 etc.]

SOCONY MOBIL OIL CO., INC., ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

APRIL 29, 1960.

In the matter of Socony Mobil Oil Company, Inc. (Operator), et al., Docket No. RI60-292; Socony Mobil Oil Company, Inc., Docket No. RI60-293; Ralph E. Fair, Inc., et al., Docket No. RI60-294; Ralph E. Fair, et al., Docket No. RI60-295; Renwar Oil Corporation, Docket No. RI60-296; Mound Company, et al., Docket No. RI60-297; Sinclair Oil & Gas Company, Docket No. RI60-298; Arkansas Fuel Oil Corporation, Docket No. RI60-299; Pan American Petroleum Corporation, Docket No. RI60-300; The Atlantic Refining Company, Docket No. RI60-301; Shell Oil Company, Docket No. RI60-302; Sunray Mid-Continent Oil Company, Docket No. RI60-303; Sunray Mid-Continent Oil Company (Operator), et al., Docket No. RI60-304; Signal Oil & Gas Company, et al., Docket No. RI60-305; Southland Royalty Company (Operator), et al., Docket No. RI60-306; Northern Pump Company (Operator), et al., Docket No. RI60-307.

The above-named respondents have tendered for filing proposed changes in presently effective rate schedules for sale of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

[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.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Notice of change dated—	Date tendered	Effective date unless suspended [1]	Date suspended until—	Cents per Mcf: Rate in effect [2]	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI60-292	Socony Mobil Oil Co., Inc. (Operator), et al.	83	7	Tennessee Gas Transmission Co. (La Reforma Field Starr and Hidalgo Counties, Tex.).	3-31-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19892
		21	5	(Piedre Lumbra Field, Duval County, Tex.).	3-31-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19892
		27	10	(Edinburg Field, Hidalgo County, Tex.).	3-31-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19892
		45	13	(N. Government Field, Duval County, Tex.).	3-31-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19892
		57	13	(Hagist Ranch and N. Government Wells Fields, Duval County, Tex.).	3-31-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19892
		178	2	(Seeligson Field, Jim Wells County, Tex.).	3-31-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19892
RI60-293	Socony Mobil Oil Co., Inc.	84	7	Tennessee Gas Transmission Co. (La Reforma Field, Starr and Hidalgo Counties, Tex.).	3-31-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19891
		87	3	(Sun Field, Starr County, Tex.)	3-31-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19891
		47	13	(San Salvador Field, Hidalgo County, Tex.).	3-31-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19891
		53	6	(San Ramon Field, Hidalgo County, Tex.).	3-31-60	[3] 4-1-60	5-2 60	10-2-60	15.0952	17.24347	G-19891
		81	8	(Donna Field, Hidalgo County, Tex.).	3-31-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19891
RI60-294	Ralph E. Fair, Inc., et al.	1	14	Tennessee Gas Transmission Co.	Undated	[3] 4-4-60	5-5-60	10-5-60	15.0952	17.24347	G-19859
		1	15	(Premont, W. Magnolia City, Goverment Wells and Hagist Ranch Fields, Jim Wells and Duval Counties, Tex.).							
RI60-295	Ralph E. Fair, et al.	2	5	Tennessee Gas Transmission Co. (McAllen Field, Hidalgo County, Tex.).	do	4-4-60	5-5-60	10-5-60	15.0952	17.24347	G-19858
RI60-296	Renwar Oil Corp	13	2	Tennessee Gas Transmission Co. (Seeligson Field, Jim Wells and Kleberg Counties, Tex.).	do	4-4-60	5-5-60	10-5-60	15.0952	17.24347	G-19885
RI60-297	Mound Co. (Operator), et al.	3	6	Tennessee Gas Transmission Co. (La Gloria Field, Brooks County, Tex.).	3-31-60	4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19880
		4	7	(E. Alice Field, Jim Wells County, Tex.).	3-31-60	4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19880
RI60-298	Sinclair Oil & Gas Co	1	9	Tennessee Gas Transmission Co. (Mustang Island Field, Nueces County, Tex.).	4-4-60	4-4-60	5-5-60	10-5-60	15.26187	17.24347	G-19826
		3	8	(Donna Field, Hidalgo County, Tex.).	4-4-60	4-4-60	5-5-60	10-5-60	15.0952	17.24347	G-19826
		35	4	(Edinburg Field, Hidalgo County, Tex.).	4-4-60	4-4-60	5-5-60	10-5-60	15.0952	17.24347	G-19826
		173	2	(Seeligson Field, Jim Wells County, Tex.).	4-4-60	4-4-60	5-5-60	10-5-60	15.0952	17.24347	G-19826
RI60-299	Arkansas Fuel Oil Corp.	5	5	Tennessee Gas Transmission Co. (Mariposa Field, Brooks County, Tex.).	3-28-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19846
		45	4	(N. Rincon Field, Starr County, Tex.).	3-28-60	[3] 4-1-60	5-2-60	10-2-60	15.0952	17.24347	G-19846
RI60-300	Pan American Petroleum Corp.	13	6	Tennessee Gas Transmission Co. (Alamo Field, Hidalgo County, Tex.).	4-1-60	4-4-60	5-5-60	10-5-60	15.0952	17.24347	G-19482
		12	4	(La Sal Vieja Field, Hidalgo County, Tex.).	4-1-60	4-4-60	5-5-60	10-5-60	15.0952	17.24347	G-19481
RI60-301	The Atlantic Refining Co.	6	8	Tennessee Gas Transmission Co. (N. Minnie Bock Field, Nueces County, Tex.).	4-1-60	4-4-60	5-5-60	10-5-60	15.0952	17.24347	G-19847
		5	6	(Mustang Island Field, Nueces County, Tex.).	4-1-60	4-4-60	5-5-60	10-5-60	15.26187	17.24347	G-19847
RI60-302	Shell Oil Co	14	5	Tennessee Gas Transmission Co. (Stedman Island Field, Nueces County, Tex.).	2-29-60	4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-19887
		92	6	(Riverside Field, Nueces County, Tex.).	2-29-60	4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-19887
		131	4	(Seven Sisters Field, Duval County, Tex.).	2-29-60	4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-19887
		136	2	(N. Government Wells Field, Duval County, Tex.).	2-29-60	4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-19887
		137	3	(La Copita Field, Starr County, Tex.).	2-29-60	4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-19887
		172	2	(E. Cameron Field, Starr County, Tex.).	2-29-60	4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-19887
		188	2	(Seeligson Field, Jim Wells County, Tex.).	2-29-60	4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-19887
RI60-303	Sunray Mid-Continent Oil Co.	1	6	Tennessee Gas Transmission Co.,	4-6-60	[3] 4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-20000
		72	5	(Edinburg and Beaurline Fields Hidalgo County, Tex.).							
		74	5	(Rincom and Flores Fields, Starr and Hidalgo Counties, Tex.).	4-6-60	[3] 4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-20000
		175	3	(Seeligson Field, Jim Wells County, Tex.).	4-6-60	[3] 4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-19905
RI60-304	Sunray Mid-Continent Oil Co. (Operator), et al.	3	7	Tennessee Gas Transmission Co. (Premont Field, Jim Wells County, Tex.).	4-6-60	[3] 4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-19988
RI60-304	do	75	4	Tennessee Gas Transmission Co. (El Panal Field, Starr County, Tex.)	4-6-60	[3] 4-6-60	5-7-60	10-7-60	15.0952	17.24347	G-19988
RI60-305	Signal Oil & Gas Co., et al.	7	2	El Paso Natural Gas Co. (S. Andrews Field, Andrews County, Tex.)	3-29-60	4-4-60	5-5-60	10-5-60	8.0	13.5	----------
RI60-306	Southland Royalty Co. (Operator), et al.	17	1	El Paso Natural Gas Co. (Cox-Ingham Field, Crockett County, Tex.)	4-1-60	4-1-60	5-2-60	10-2-60	10.6008	15.6488	----------
RI60-307	Northern Pump Co. (Operator), et al.	13	3	Northern Natural Gas Co. (Hugoton Field, Haskell County, Kans.)	3-29-60	4-1-60	5-2-60	10-2-60	11.0	15.0	----------

[1] The stated effective dates are those requested by Respondents, or the first day after expiration or the required statutory notice, whichever is later.
[2] The pressure base is 14.65 psia.
[3] Requests waiver of notice.

Shell Oil Company (Shell), cites the contract provisions and arm's-length bargaining, and states that the pricing provisions responsible for the increases were essential inducements to Shell to enter into the long-term contracts.

In support of the proposed favored-nation increased rates, Sunray states that its contracts were entered into at arm's-length; that the pricing provisions contained therein were designed to assure seller of receiving a price that approximates the current market value of the gas; and that the proposed rates do not exceed the market value of the gas in the area.

Signal Oil & Gas Company, et al. (Signal) and Southland Royalty Company (Operator), Southland proposed two renegotiated rate increases for gas sales to El Paso Natural Gas Company (El Paso). Each producer states that the contract amendments were negotiated at arm's-length. Signal further states that the Commission has approved prices in excess of 10 cents per Mcf for gas sold in the South Andrews area in Texas and that the proposed rate will not result in an excessive rate of return to sellers. Southland states that the elimination of the favored-nation clauses will aid in stabilizing El Paso's gas purchase costs in the Permian Basin.

Northern Pump Company (Operator), et al. (Northern Pump), proposed an arbitrated rate increase for gas sold to Northern Natural Gas Company. Northern Pump states that the contract was negotiated at arm's-length; that the price of gas is far below the price of competing fuels; and that the proposed increased rate does not exceed the current market price for gas in the area.

The proposed changes may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: 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) 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 regulations 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.

In support of the proposed favored-nation increased rates, Socony Mobil states that its contracts were negotiated at arm's-length; that the gas is sold on an installment basis; that gas is a commodity the price of which should be based on the law of supply and demand; and the cost of doing business has been increasing.

Robert E. Fair, Inc., et al., and Robert E. Fair (Operator), et al., state that the proposed favored-nation increases are in accordance with the terms and conditions of the existing contract; that the gas delivered from Magnolia City Field is under multiple stage compression; and that it will soon be necessary to install multiple stage compression facilities in the Premont Field, Texas.

Renwar Oil Corporation states that the proposed favored-nation increased rate is not out of line with prices presently paid in District No. 4, and is below the highest price being paid for gas produced in the Texas Gulf Coast area.

In support of the proposed favored-nation increased rates, Mound Company, et al., state that during recent years the cost of producing natural gas has materially increased and the increased rates will help offset increased expenses of operation and will help to provide the incentive and capital with which to replace depleting gas supplies.

Sinclair Oil & Gas Company, in support of the proposed favored-nation increased rates, states that its contracts were negotiated at arm's-length and that the proposed rates are not out of line with recently negotiated contract prices in the area.

Arkansas Fuel Oil Corporation, in support of the proposed favored-nation increased rates, states that its sales are made under arm's-length contracts and that the pricing provisions collectively represent the negotiated contract price.

In support of the proposed favored-nation increased rates, Pan American Petroleum Corporation mentions arm's-length bargaining and states that the proposed rates are an integral part of the initial rate filings and that the price of gas is below the price of competing fuels.

The Atlantic Refining Company (Atlantic), in support of the proposed favored-nation increased rates, states that the proposed rates will not result in an excessive return from its regulated business but will have the effect of obtaining for Atlantic a return commensurate with the risks inherent in the exploration and development, production, gathering and sales of natural gas.

(B) Pending hearings and decisions thereon, each of the above-designated supplements is hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) 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.

(D) 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 and 1.37(f)) on or before June 13, 1960.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-4073; Filed, May 5, 1960; 8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24D-2273]

AGRICULTURAL MARKETING ASSOCIATION

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

MAY 2, 1960.

I. Agricultural Marketing Association (issuer), a New Mexico corporation, Socorro, New Mexico, filed with the Commission on December 3, 1957 a notification on Form 1-A and an offering circular relating to an offering of 300,000 shares of its $1 par value common stock at $1 per share for an aggregate of $300,000 and thereafter filed various amendments thereto, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof, and Regulation A, promulgated thereunder; and

II. The Commission has reasonable cause to believe that:

A. The terms and conditions of Regulation A have not been complied with in that:

1. The aggregate offering price, computed in the manner prescribed in the regulation, exceeds $300,000;

2. Use has been made of an offering circular which has not been filed with the Commission;

3. Use has been made of sales material without its first having been filed with the Commission.

B. The offering circular contains untrue statements of material facts and omits to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The failure to disclose changes in the issuer's directors and officers;

2. The failure to disclose interests of a director of the issuer in a tract of land which the issuer holds under option to purchase;

3. The failure to disclose the reclassification of the issuer's $1 par value common capital stock to 33⅓ cents par value;

4. The failure to disclose the acquisition of certain machinery and equipment from certain of its officers and directors out of the proceeds of its Regulation A offering;

5. The failure to disclose the granting on February 4, 1959, of options to its existing shareholders to acquire its common capital stock at par value;

6. The failure to disclose the intention to pay salaries and fees to officers and directors out of proceeds of the offering;

7. The failure to disclose the issuance of other securities by the issuer.

C. The offering has been and is being made in violation of section 17(a) of the Securities Act of 1933, as amended.

III. *It is ordered,* Pursuant to Rule 261(a) of the general rules and regula-

tions under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission, for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will promptly be given by the Commission.

By the Commission.

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

[F.R. Doc. 60-4074; Filed, May 5, 1960; 8:46 a.m.]

[File No. 24D-2367]

BORDER FARMS, INC.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

MAY 2, 1960.

I. Border Farms, Inc. (issuer), a New Mexico corporation, Post Office Box 747, Portales, New Mexico, filed with the Commission on April 8, 1959 a notification on Form 1-A and an offering circular relating to an offering of 2,500 shares of its no par value common stock and 5,000 shares of its 6 percent cumulative preferred stock at $10 per share in each case for an aggregate of $75,000 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder; and

II. The Commission has reasonable cause to believe that:

A. The terms and conditions of Regulation A have not been compiled with in that:

1. The notification fails to reflect appropriate information regarding unregistered securities theretofore sold as required by Item 9 thereof.

2. The notification does not include copies of the provisions of the governing instruments defining the rights of holders of securities to be sold as required by Item 11 thereof.

B. The notification and offering circular contain untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The correct address of the company;

2. The failure to describe adequately and accurately the type of business to be conducted by the issuer;

3. The failure to set forth a reasonable itemized statement of the purposes for which the proceeds of the offering are to be used;

4. The failure to describe adequately and accurately the properties held or intended to be acquired;

5. The inclusion of estimated future earnings;

6. The failure to describe adequately the securities to be offered.

C. The offering, if made on the basis of the material filed, would be made in violation of section 17 of the Securities Act of 1933, as amended.

III. *It is ordered,* Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will promptly be given by the Commission.

By the Commission.

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

[F.R. Doc. 60-4075; Filed, May 5, 1960; 8:46 a.m.]

[File No. 812-1299]

FIRST PELHAM CORP.

Filing of Application for Order Exempting Transaction Between Affiliates and Permitting Closed-End Investment Company To Acquire Capital Stock Issued By It

MAY 2, 1960.

Notice is hereby given that The First Pelham Corporation ("Pelham") a registered closed-end, non-diversified investment company has filed an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an order exempting from the provisions of section 17(a) (2) of the Act:

(1) The proposed acquisition from Pelham by Warren E. Buffett and certain partnerships in which Buffett is a partner, pursuant to an agreement dated March 22, 1960, of equity securities in the portfolio of Pelham (other than shares of common stock of Sanborn Map Company, Inc.) having a market value of $768,859 on the date preceding the closing, in exchange for the sale and transfer by Buffett and the partnerships to Pelham of 10,355 shares of Pelham $25 par value capital stock at a price of $74.25 a share; and

(2) The acquisition from Pelham by Daniel G. Dobbins of equity securities in the portfolio of Pelham having a market value of $18,563 on the date preceding the closing of the Buffett transaction, provided Dobbins accepts an offer, referred to below, to be made by Pelham to all its stockholders and sells and transfers his holdings of 250 shares of Pelham capital stock to Pelham at a price of $74.25 a share payable in Pelham's portfolio securities as aforesaid.

The agreement between Pelham and Buffett provides, among other things, that Buffett and certain of his relatives will also sell to Pelham an additional 2,137 shares of Pelham capital stock on the same terms as those described above; that Pelham has the sole discretion to select the particular portfolio securities to be delivered to Buffett and others; and that Pelham will offer to purchase from all of its other stockholders any shares of Pelham capital stock properly tendered for sale and transfer on or before the day preceding the closing of the Buffett transaction at the same price that Buffett is to receive and on the same terms and conditions, except that the Buffett interests, unlike other stockholders who tender their Pelham capital stock, will not be free to withdraw their shares of stock before the closing date.

The application filed by Pelham also requests an order pursuant to section 23(c)(3) of the Act permitting Pelham to purchase its stock from the Buffett interests and from any other stockholders who tender their stock for sale to Pelham at the same price to be received by Buffett and on the same terms and conditions. Pelham is obligated to purchase only 65,000 shares of its capital stock (including the 12,492 to be acquired from the Buffett interests.)

If more than 65,000 shares are deposited, Pelham's obligation is limited to the purchase of 65,000 shares on a pro rata basis, subject to adjustments necessary to eliminate purchase of fractional shares. Pelham reserves the right to purchase more than 65,000 shares if it so desires but is under no obligation to do so. All shares purchased are to be acquired for retirement.

Pelham has obtained commitments from certain of its stockholders not to tender their shares of Pelham capital stock for sale in order to assist in achieving tax consequences which will enable Pelham stockholders who do sell their stock to realize capital gain or loss if certain conditions are met.

With the exception of Buffett and Dobbins, all directives and officers of Pelham, together with the wives of such directors owning capital stock of Pelham, have

agreed not to sell their shares of Pelham capital stock to Pelham, but rather to retain their holdings.

The following information with respect to Pelham's requests is contained in the application:

Pelham, a corporation which was organized in 1876 under the laws of New York, has a capitalization consisting solely of 105,000 shares of $25 par value capital stock, of which 10,355 shares or 9.84 percent of the total outstanding are owned by Warren E. Buffett, a director of Pelham, and eight partnerships in which he has interests.

The assets of Pelham consist of a relatively small amount of cash, all of the outstanding capital stock of Sanborn Map Company, Inc. ("Sanborn") and, in addition, a substantial portfolio of investment securities. The map business of Sanborn was acquired by it through transfer from Pelham on December 31, 1959; and Pelham, which prior to such transfer was engaged directly in the map business, is now engaged, indirectly through its wholly-owned subsidiary Sanborn, in the same map business.

The map business consists predominantly of the publication of a nationwide coverage of large scale urban maps and the sale of such maps and services to the fire insurance industry. In addition, such maps are sold to municipalities, public utilities, savings bank and life insurance companies. Custom services are also rendered to governmental agencies, private research organizations, public utilities and some industrial companies.

Approximately 6 percent of Sanborn's annual sales are to the America Fore-Loyalty Group of insurance companies; and the chairman of the Board of the Loyalty Insurance Group, an affiliate of the America Fore-Loyalty Group, is a director of the Pelham and Sanborn. Of the 14 persons who have been directors of Pelham since January 1, 1959, nine have been associated with insurance industry.

Pursuant to the definition contained in section 2(a)(3) of the Act, Warren E. Buffett and Daniel G. Dobbins are affiliated persons of Pelham. Generally speaking, section 17(a) of the Act prohibits an affiliated person (Buffett and Dobbins) of a registered investment company (Pelham) from purchasing from such registered company any security of which the seller is not the issuer (portfolio securities of Pelham), unless the Commission by order upon application pursuant to section 17(b) of the Act grants an exemption from section 17(a) of the Act, upon a finding that the terms of the proposed transaction, including the consideration to be paid or received are reasonable and fair and do not involve overreaching on the part of any person concerned; and that the proposed transaction is consistent with the policy of the investment company concerned, and consistent with the general purposes of the Act.

Section 23(c)(3) of the Act prohibits a registered closed-end investment company from purchasing its own securities other than on a securities exchange or pursuant to tenders after opportunity to all security holders of the class to submit tenders, except under such circumstances as the Commission may permit by order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class of securities to be purchased. Since the proposed purchase by Pelham from its stockholders of its capital stock does not involve purchase on a securities exchange; and in view of the fact that the agreements obtained from certain persons not to tender their Pelham capital stock to Pelham may be considered as precluding an opportunity to all Pelham stockholders to tender their stock, the purchase by Pelham of its capital stock may be prohibited unless the Commission issues its order permitting it.

The application states that the terms of the proposed transactions are fair and that the purchase price of $74.25 per share of Pelham capital stock was determined to be a fair price by Pelham's management in its negotiations with Mr. Buffett after consideration of all relevant data, primarily the value of Pelham's portfolio securities and of its wholly-owned subsidiary, Sanborn. In arriving at the price of $74.25 per share of Pelham capital stock, the portfolio of securities was valued at market on March 21, 1960 at $6,468,724 and Pelham's investment in Sanborn was valued at $1,417,500, which represents a discount of $289,221.39 from the $1,706,721 carrying value thereof on the books of Pelham. Pelham believes that this discount, by reducing the amount paid to those stockholders who accept the offer to purchase their stock, fairly balances the advantage to them of receiving readily marketable securities against the fact that those shareholders who elect to retain their interest in Pelham will be retaining stock for which there is not likely to be such a ready market. The above determinations resulted in a value of $75.11 per share for Pelham's capital stock, which amount was reduced to $74.25 to provide a reserve of approximately $90,000 for expenses and other contingencies incident to the proposal.

The application states that Pelham's capital stock is traded in the over-the-counter market; that at December 31, 1959, the capital stock of Pelham had a market value of $61.50 a share; and that during the first three months of 1960 the bid prices for Pelham's capital stock ranged from a low of 57 to a high of 63.

For the year ended December 31, 1959, net operating income of the map business (now operated by Sanborn) after taxes attributable thereto amounted to $65,394. For each of the five years 1955–1959, inclusive, the map business net operating income after taxes amounted to $350,475, $213,837, $163,646, $94,219 and $65,394, respectively; for the three months ended March 31, 1959 and 1960, the map business net operating income after taxes amounted to $19,229 and $38,513, respectively.

Pelham states that the proposed transactions do not involve overreaching on the part of any person, are consistent with the policies of Pelham and with the general purposes of the Act and do not unfairly discriminate against any holders of its capital stock.

Pelham further states the proposals are advantageous to all stockholders in that it permits an election which gives those stockholders having little interest in the map business an opportunity to realize more than the recent market value of their holdings in Pelham; whereas, under the proposed arrangement, stockholders whose primary interest is an investment in the map business need not offer their stock for sale, and so remain stockholders in the continuing enterprise.

Notice is further given that any interested person may, not later than May 13, 1960, at 5:30 p.m., e.d.s.t., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 60–4076; Filed, May 5, 1960; 8:46 a.m.]

GENERAL SERVICES ADMINISTRATION

KYANITE AND MULLITE HELD IN 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 1,627 short dry tons of kyanite ore and 5,699 short dry tons of mullite 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 kyanite and mullite. The revised determination was based upon the finding of the Office of Civil and Defense Mobilization that said materials are obsolescent for use in time of war.

General Services Administration proposes to offer approximately one-half of the combined quantity of 7,326 tons for transfer to Federal agencies, or for sale on a competitive basis, beginning six

months after the date of publication of this notice in the FEDERAL REGISTER. The remaining quantity will be offered for transfer, or for sale on a competitive basis, beginning not earlier than twelve 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: April 28, 1960.

FRANKLIN FLOETE,
Administrator.

[F.R. Doc. 60-4092; Filed, May 5, 1960; 8:49 a.m.]

HOUSING AND HOME FINANCE AGENCY

DEPUTY REGIONAL ADMINISTRATOR, REGION I, NEW YORK

Delegation of Authority To Serve as Acting Regional Administrator Region I, New York

The Deputy Regional Administrator of the Housing and Home Finance Agency, Region I, New York, New York, is hereby authorized during the vacancy in the position of Regional Administrator, Region I, to serve as Acting Regional Administrator and to take all actions authorized to be taken by the Regional Administrator with respect to matters within Region I, New York, New York.

(Reorg. Plan 3 of 1947, 61 Stat. 954 (1947); 62 Stat. 1283 (1948), as amended by 64 Stat. 80 (1950), 12 U.S.C., 1958 ed. 1701c; Reorg. Order 1, 19 F.R. 9303-5 (December 29, 1954))

Effective as of the 4th day of May 1960.

[SEAL] NORMAN P. MASON,
Housing and Home Finance Administrator.

[F.R. Doc. 60-4099; Filed, May 5, 1960; 8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 308]

MOTOR CARRIER TRANSFER PROCEEDINGS

MAY 3, 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 62973. By order of April 29, 1960, the Transfer Board approved the transfer to Basil A. Chatterton, doing business as Chatterton's Express, Attleboro, Mass., of Certificate No. MC 29751 issued April 5, 1949 in the name of Alfred Chatterton and Basil A. Chatterton, a partnership, doing business as Chatterton's Express, Attleboro, Mass., authorizing the transportation of commodities generally, including household goods, but excluding commodities in bulk and various specified commodities, between Attleboro, Mass., and Providence, R.I.; between Attleboro, Mass., and Norton, Mass., and between Attleboro, Mass., and Plainville, Mass. Henri G. Proulx, 10 Park Street, Attleboro, Mass., for applicants.

No. MC-FC 63035. By order of April 29, 1960, the Transfer Board approved the transfer to L. E. Rieger and Bernard Rieger, doing business as Rieger Truck Line, Powhattan, Kans., of Certificate No. MC 669, issued February 25, 1941, to L. E. Rieger, Powhattan, Kansas, authorizing the transportation of: livestock, from Powhattan, Kans., to St. Joseph, Mo., serving intermediate and off-route points within 16 miles of Powhattan, restricted to pick-up only; and feed, farm machinery, and livestock, from St. Joseph, to Powhattan, Kans., serving intermediate and off-route points within 16 miles of Powhattan, restricted to delivery only.

No. MC-FC 63074. By order of April 29, 1960, the Transfer Board approved the transfer to Warners Motor Express, Inc., Red Lion, Pa.; of Certificate in No. MC 9975 Sub 1, issued February 14, 1958, to Merle H. Miller and Keith M. Miller, a partnership, doing business as Miller Moving Co., Philadelphia, Pa.; authorizing the transportation of: new furniture, between Philadelphia, Pa., on the one hand, and, on the other, points in New Jersey, Delaware, and Maryland. Morris J. Winokur, 512 Market Street National Bank Building, Philadelphia, Pa., for applicants.

No. MC-FC 63115. By order of April 29, 1960, the Transfer Board approved the transfer to R. L. Shillito, South Baltimore Street, Dillsburg, Pennsylvania, of a Certificate in No. MC 84387, issued to M. E. Shillito, South Baltimore Street, Dillsburg, Pennsylvania authorizing the transportation, over irregular routes, of specific commodities, from, to, and between, specified points in Pennsylvania, Maryland, New York, and Washington, D.C.

No. MC-FC 63128. By order of April 29, 1960, the Transfer Board approved the transfer to Frette Truck Line, Inc., 301-Eighth Street, Story City, Iowa, of Certificates in Nos. MC 7906 and MC 7906 Sub 1, issued June 12, 1941, and September 29, 1949, respectively, to O. E. Walker, Wilke (P.O. Alden), Iowa, authorizing the transportation of: farm machinery, farm implements, paint, twine, wire, gates, nails, staples, farm hardware, mill feeds, tankage, livestock, poultry, eggs, stock, feeder cattle, household goods, and agricultural implements, from, to, or between specified points in Iowa, South Dakota, Nebraska, Minnesota, Illinois, Colorado, Kansas, Missouri, North Dakota, and Wisconsin.

No. MC-FC 63166. By order of April 29, 1960, the Transfer Board approved the transfer to Yates Truck Lines, Inc., Maud, Kentucky, of a Certificate in No. MC 99090 Sub 1, issued November 26, 1958 to Rudolph W. Yates, doing business as Yates Truck Line, Maud, Kentucky which authorizes the transportation of general commodities, except household goods as defined by the Commission, and other specified commodities, over regular routes from, to, and between specified points in Kentucky. Fred F. Bradley, McChesney, Kinker, and Pearce, Seventh Floor, McClure Building, Frankfort, Ky., for applicants.

No. MC-FC 63188. By order of April 29, 1960, the Transfer Board approved the transfer to F. B. Neil and Weston Neil, doing business as Neil Truck Line, Hepler, Kans., of Certificates Nos. MC 52221 and MC 52221 Sub 1, issued March 24, 1943 and September 7, 1949, respectively, in the name of F. B. Neil, Hepler, Kans., authorizing the transportation of: livestock, over irregular routes, between Walnut, Kans., on the one hand, and, on the other, Kansas City, Kans., Kansas City, North Kansas City, and Joplin, Mo.; between points within 12 miles of Walnut, Kans., including Walnut; and between Hiattville, Kans., and points within 10 miles of Hiattville, on the one hand, and, on the other, Kansas City, Kans., and Kansas City, Mo.; agricultural commodities and hides, between points within 12 miles of Walnut, Kans., including Walnut; from Walnut, Kans., to Kansas City, Kans., and Kansas City and North Kansas City, Mo.; feed, farm machinery and parts, fertilizer, building materials, and hardware, between points within 12 miles of Walnut, Kans., including Walnut; from Kansas City and North Kansas City, Mo., and Kansas City, Kans. to Walnut, Kans.; and feed, tractors, and agricultural implements, from Kansas City, Mo., and Kansas City, Kans., to Hiattville, Kans., and points within 10 miles of Hiattville. Ernest E. Blincoe, 1½ North Main Street, Fort Scott, Kans., for applicants.

No. MC-FC 63194. By order of April 29, 1960, the Transfer Board approved the transfer to R. E. Ensminger, Inc., Holyoke, Colo., of Certificate No. MC 105280 issued October 25, 1949, in the name of R. E. Ensminger, Holyoke, Colo., authorizing the transportation over regular routes of petroleum products, in bulk, from Sinclair and Casper, Wyo., to Julesburg, Holyoke, and Peetz, Colo.; from Webber, Coffeyville, Hutchinson, Great Bend, and Shallow Water, Kans., to Amherst, Fort Morgan, and Julesburg, Colo., petroleum products, in bulk, over regular and irregular routes, from points within five miles of Casper, Wyo., to Julesburg and Holyoke, Colo.; and refined petroleum products, over irregular routes, from refining and distributing points in Kansas to Yuma and Julesburg, Colo., and points on U.S. Highway 6 between Holyoke and Sterling, Colo., inclusive. Truman A Stock-

ton, Jr., The 1650 Grant Street Building, Denver 3, Colo., for applicants.

No. MC–FC 63207. By order of April 29, 1960, the Transfer Board approved the transfer to Atlas Moving & Storage Co., Inc., West Haven, Conn., of a Certificate in No. MC 118965 issued September 3, 1959 to William D. Long, Middletown, Ohio, authorizing the transportation of household goods, as defined by the Commission, over irregular routes, between points in Butler County, Ohio, and those in Warren County on and west of Ohio Highway 48, on the one hand, and, on the other, points in Indiana, Pennsylvania, Kentucky, Illinois, Michigan, and West Virginia. James M. Burtch, Jr., 44 East Broad Street, Columbus 15, Ohio, and Arthur J. Pikin, 160–16 Jamaica Avenue, Jamaica 32, N.Y., for applicants.

No. MC–FC 63210. By order of April 29, 1960, the Transfer Board approved the transfer to Luxart Vans Service, Inc., Sunland, California, of a portion of Certificate No. MC 71462 and the entire Certificate No. MC 71462 Sub 28, issued March 19, 1957 and March 3, 1960, respectively, in the name of Sorenson Truck Service, Inc., Longmont, Colo., authorizing the transportation of livestock (other than ordinary), over irregular routes, between Longmont, Colo., and points within 50 miles thereof, on the one hand, and, on the other, points in Colorado; between points in Arizona, Arkansas, California, Colorado, Idaho, Kansas, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming; and supplies and equipment used in the care, exhibition and racing of livestock (other than ordinary), mascots, lead ponies, and the personal effects of attendants and trainers, to be transported in the same vehicle with such livestock, between points in Arizona, Arkansas, California, Colorado, Idaho, Kansas, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. Phil Jacobson, 510 West Sixth Street, Los Angeles 14, Calif., for transferee. Leslie R. Kehl, 526 Denham Building, Denver 2, Colo., for transferor.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 60–4078; Filed, May 5, 1960; 8:46 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

MAY 3, 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. 36207: *Cast iron pipe—South to points in official territory.* Filed by O. W. South, Jr., Agent (SFA No. A3940), for carriers parties to schedule listed below. Rates on cast iron pipe and fittings, and related articles, in carloads, as described in the application from Producing points in southern territory to Base points in official (not including Illinois) territory and points grouped therewith.

Grounds for relief: Short-line distance formula and grouping.

Tariff: Supplement 32 to Southern Freight Association tariff I.C.C. S–6.

FSA No. 36208: *Substituted service—Pan-Atlantic Steamship Corporation, for Allied Van Lines, Inc.* Filed by Household Goods Carriers' Bureau, Agent (No. 22), for interested carriers. Rates on property loaded in highway trailers and transported aboard ships between Port of New York, N.Y., or Port Newark, N.J., on the one hand, and Jacksonville, Miami, Tampa, New Orleans, La., and Houston, Tex., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Ground for relief: Motor-truck competition.

Tariff: Supplement 4 to Household Goods Carriers' Bureau tariff MF–I.C.C. 91.

FSA No. 36209: *Substituted service—PRR, RF&P and SAL for Allied Van Lines, Inc.* Filed by Household Goods Carriers' Bureau, Agent (No. 23), for interested carriers. Rates on property loaded in highway trailers and transported on railroad flat cars between Kearny, N.J., and Philadelphia, Pa., on the one hand, and Atlanta, Ga., Charlotte, N.C., Jacksonville, Fla., or Savannah, Ga., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 4 to Household Goods Carriers' Bureau tariff, MF–I.C.C. No. 4.

FSA No. 36210: *Cement between points in southern territory and border points.* Filed by O. W. South, Jr., Agent (SFA No. A3942), for interested rail carriers. Rates on cement and related articles in carloads between points in southern territory, also from Alpha, Prospect Hill, and St. Louis, Mo., and East St. Louis, Ill., to points in southern territory.

Grounds for relief: Motor-truck competition, short-line distance formula and grouping.

Tariff: Supplement 19 to Southern Freight Association tariff I.C.C. S–61.

FSA No. 36211: *Cement—Trunk line territory to the south.* Filed by Traffic Executive Association-Eastern Railroads, Agent (ER No. 2536), for interested rail carriers. Rates on cement and related articles, in carloads from cement and related articles, in carloads from points in trunk-line territory to points in southern territory, also border points.

Grounds for relief: Market competition, short-line distance formula and grouping.

Tariffs: Supplement 319 to R. B. LeGrande, Agent, tariff I.C.C. 253. Chesapeake and Ohio Railway tariff, I.C.C. 13662. Norfolk and Western Railway tariff, I.C.C. 9750.

FSA No. 36212: *Corn oil—Points in Central Territory to Montreal, Quebec, Canada.* Filed by H. R. Hinsch, Agent (CTR No. 2432), for interested rail carriers. Rates on corn oil, in packages, in carloads, and in tank-car loads from specified points in Illinois, Indiana, Michigan, Missouri, Ohio and Milwaukee, Wis., to Montreal, Quebec, Canada.

Grounds for relief: Competition with soy bean oil.

Tariff: Supplement 140 to Central Territory Railroads tariff, I.C.C. 4460 (Hinsch series).

FSA No. 36213: *Pig iron from points in Ohio and Pennsylvania.* Filed by Traffic Executive Association-Eastern Railroads, Agent (ER No. 2534), for interested rail carriers. Rates on pig iron, in carloads from Cleveland and Jackson, Ohio, Erie, Neville Island and Sharpsville, Pa., to specified points in Delaware, New Jersey and Pennsylvania.

Grounds for relief: Market competition.

Tariffs: Supplement 151 to Central Territory Railroads tariff I.C.C. 4350 (Hinsch series). Supplement 28 to Pennsylvania Railroad tariff I.C.C. 3549. Supplement 12 to Pittsburgh and Lake Erie Railroad tariff I.C.C. 3581.

FSA No. 36214: *Wood chips—Augusta, Ga., to Quinlan, Fla.* Filed by O. W. South, Jr., agent (SFA No. A3943), for interested rail carriers. Rates on wood chips (pulpwood), in carloads, as described in the application from Augusta, Ga., to Quinlan, Fla.

Grounds for relief: Operation through higher-rated intermediate points.

Tariff: Supplement 6 to Central of Georgia Railway tariff I.C.C. 3383.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 60–4077; Filed, May 5, 1960; 8:46 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

H. MARTYN SNOW

Appeals Board Decision

In the matter of H. Martyn Snow, 105 Coleherne Court, London S.W.5, England; Appeals Board Docket No. FC–55, B.F.C. Case No. 262.

H. Martyn Snow has appealed from the Order Denying Export Privileges, dated November 13, 1959 (24 F.R. 9948, 12–9–59), herein called the Order, issued by the Director, Office of Export Supply, Bureau of Foreign Commerce, herein called the Bureau. Among other things, the Order denied to him all United States export privileges so long as United States export controls shall be in effect. Mr. Snow advised the Board that he would be unable to appear in person or be represented by counsel for an oral hearing. Consequently, this decision is made upon the record in this case.

The record is identified as follows: The charging letter, dated June 17, 1959; answers to the charging letter dated

June 29 and August 22, 1959; Mr. Snow's letter of April 14, 1959, and attachment thereto; the Bureau's exhibits 1 through 15 as presented to the Bureau's Compliance Commissioner; the transcript of proceedings before the Compliance Commissioner on September 24, 1959; the Compliance Commissioner's Report and Recommendation dated October 20, 1959; the Order Denying Export Privileges dated November 13, 1959; Mr. Snow's letter of appeal dated December 8, 1959, supplemented by letters of December 14 and January 18 and 19, 1960, together with procedural correspondence between Mr. Snow and the Board.

This case involved transshipments through Poland to Communist China, by Bakeley Distributors Limited of which appellant was senior director, of (1) a microtome knife sharpener and (2) metal gauges which had been authorized for export to Poland. Appellant does not take issue with the findings that he violated U.S. Export control regulations in the course of this transaction. He contends that denial of trading privileges for the duration of export controls is too harsh in the light of mitigating factors.

Among the mitigating factors asserted are that appellant: Admitted infringement of U.S. regulations; made free disclosure of all relevant facts; was dealing for the first time with American Exporters; was dealing in a small shipment of non-strategic goods; believed that a General License meant license to export to anywhere in the world; determined that the items were not under the Strategic List of the United Kingdom.

The Board has studied the record in the light of appellant's assertions. It does not support his claimed belief (1) that a General License from the U.S. means a license to export to anywhere in the world including Communist China, and (2) that permissibility of export to Communist China under U.K. regulations also means permissibility of such export under U.S. regulations. In making these two assertions, appellant is in effect claiming that he did not know of the U.S. embargo on shipment of American goods to Communist China. Aside from the fact that this is a firmly established, widely known feature of U.S. policy on east-west trade, the details of the record in this case fully support the Bureau's finding that appellant knew that Export Control Regulations of the United States did not permit the exportation of goods from the United States to Communist China.

On the other hand, the record shows that Bakeley Distributors Limited has been dissolved and, more important, that appellant has severed his relations with the other individual respondent who the record shows had the more detailed knowledge of U.S. export regulations at the time of the violations. That respondent did not appeal the Bureau's Order. Furthermore, appellant claims in effect that this violation was an isolated instance which he would not repeat.

While the Board finds that the Bureau's findings are supported by substantial evidence, and the provisions of the Order appealed from are appropriate, nevertheless the Board does believe that, on the whole record in this case, some provision should be made whereby appellant may exculpate himself and obtain relief from the full burden of the Order.

Accordingly, the Order is hereby sustained and the appeal denied;

Provided, That on or after November 13, 1961, appellant Martyn Snow shall have the right to file with the Bureau (by mail or otherwise) a declaration under oath that, at no time since June 29, 1959 (the date of the answer by appellant to the charging letter in this case) has appellant knowingly committed any violation of the provisions of the Export Control Act of 1949 (63 Stat. 7), or of the regulations promulgated thereunder, or of the Order appealed from since November 13, 1959, the date of such Order. As of the date thirty days after such declaration is received by the Bureau, the Order shall be forthwith automatically terminated as to the appellant,

Unless the Bureau shall have rejected such declaration as untrue within such thirty days of the receipt thereof, in which case it shall, within a further period of thirty days, and not more than sixty days after the receipt of such declaration, furnish the appellant with a statement describing specific instances as to which the Bureau alleges that the declaration is not, in fact, true.

Provided further, That if such declaration is made and so rejected, the matter shall, upon proper evidentiary showing by the appellant be heard as promptly as possible by a Compliance Commissioner of the Bureau. If the Compliance Commissioner shall find, and his findings be approved by the Director, Office of Export Supply of the Bureau, that such declaration should have been accepted as true by the Bureau, then the Order shall be terminated as to the appellant without further order as from the date of the approval of such finding. In the event that the finding of the Compliance Commissioner, approved by the Director, Office of Export Supply, be adverse to the appellant making such declaration, then an appeal therefrom may be taken by the appellant to this Board in due course, and the pertinent provisions of the Order shall remain in full force and effect during the pendency of such appeal.

GRISWOLD FORBES,
Chairman,
Appeals Board.

APRIL 1, 1960.

[F.R. Doc. 60-4091; Filed, May 5, 1960; 8:48 a.m.]

CHARLES F. McCAHILL

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 April 26, 1960.

CHARLES F. MCCAHILL.

[F.R. Doc. 60-4086; Filed, May 5, 1960; 8:48 a.m.]

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PART II

FEDERAL REGISTER

VOLUME 25 NUMBER 89

Washington, Friday, May 6, 1960

Distilled Spirits Plants Proposed Regulations

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 201]

DISTILLED SPIRITS PLANTS

Notice of Proposed Rule Making

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. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the 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.

In order to further implement the provisions of chapter 51 of the Internal Revenue Code of 1954 as amended by section 201 of the Excise Tax Technical Changes Act of 1958 (Public Law 85–859, 72 Stat. 1313) which are applicable to distilled spirits plants, the following regulations are hereby prescribed as Part 201 of Title 26 of the Code of Federal Regulations:

Preamble. 1. The regulations in this part shall supersede the 1959 edition of Part 201 of this chapter, the regulations in Subparts C, H, J, and K of Part 170 of this chapter, the regulations in Subpart T of Part 170 of this chapter except as such subpart relates to the redemption of unused distilled spirits excise tax stamps and unused rectification tax sheet stamps, the regulations in Parts 182, 216, 220, 221, 225, 230 and 235 of this chapter in their entirety, and the regulations in §§ 171.170 through 171.280 of 26 CFR (1939) Part 171.

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.

3. The regulations in this part shall be effective on July 1, 1960.

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AUTHORITY: §§ 201.1 to 201.635 issued under sec. 7805, 68A Stat. 917; 26 U.S.C. 7805. Statutory provisions interpreted or applied are cited to text in parentheses.

Subpart A—Scope

§ 201.1 General.

The regulations in this part relate to the location, construction, equipment, arrangement, qualification, and operation (including activities incident thereto) of distilled spirits plants.

§ 201.2 Territorial extent.

This part applies to the several States of the United States and the District of Columbia.

§ 201.3 Status of existing qualified plants.

Distilled spirits plants heretofore qualified to operate may continue to operate, pursuant to their prior qualification, after the effective date of these regulations. All plants hereafter established, and changes in existing plants, shall be in conformity with this part. Operations of all plants shall be conducted pursuant to the provisions of this part, except that where the assistant regional commissioner has, pursuant to provisions of section 5178(a)(1)(C), I.R.C., approved the method of operation of any establishment which was qualified to operate on June 30, 1959, he may continue the approval.

§ 201.4 Related regulations.

Regulations relating to this part are listed below:

26 CFR Part 170—Miscellaneous Regulations Relating to Liquor.
26 CFR Part 175—Traffic in Containers of Distilled Spirits.
26 CFR Part 186—Gauging Manual.
26 CFR Part 194—Liquor Dealers.
26 CFR Part 196—Stills.
26 CFR Part 197—Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products.
26 CFR Part 200—Rules of Practice in Permit Proceedings.
26 CFR Part 211—Distribution and Use of Denatured Alcohol and Rum.
26 CFR Part 212—Formulas for Denatured Alcohol and Rum.
26 CFR Part 213—Distribution and Use of Tax-Free Alcohol.
26 CFR Part 240—Wine.
26 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
26 CFR Part 251—Importation of Distilled Spirits, Wines, and Beer.
26 CFR Part 252—Exportation of Liquors.
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR Part 2—Nonindustrial Use of Distilled Spirits and Wine.
27 CFR Part 3—Bulk Sales and Bottling of Distilled Spirits.
27 CFR Part 4—Labeling and Advertising of Wine.
27 CFR Part 5—Labeling and Advertising of Distilled Spirits.
31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

Subpart B—Definitions

§ 201.11 Meaning of terms.

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

enumerated which are in the same general class.

Application for registration. The application required under section 5171(a), I.R.C.

Assigned officer. The internal revenue officer assigned to duties at the plant.

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

Basic permit. The document authorizing the person named therein to engage in a designated business or activity under the Federal Alcohol Administration Act.

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

Bonded warehouse. The part of the bonded premises, as described in the application for registration, in which spirits are authorized to be stored after entry for deposit in storage and prior to payment or determination of the internal revenue tax or withdrawal as provided in section 5214 or 7510, I.R.C.

Bottler. A proprietor of a distilled spirits plant qualified under this part to bottle taxpaid spirits or taxpaid spirits and wines.

Bottling-in-bond facilities. The part of the bonded premises in which spirits are bottled in bond under section 5233, I.R.C.

Bottling premises. The premises of a distilled spirits plant, or part thereof, as described in the application for registration, on which operations relating to the rectification or bottling of spirits or wines on which the tax has been paid or determined are authorized to be conducted.

Bulk container. Any approved container of five gallons or more.

Bulk conveyance. A tank car, tank truck, tank ship, tank barge, or a compartment of any such conveyance, or other container approved by the Director for the conveyance of comparable quantities of spirits, including denatured spirits.

Business day. Any day, other than a Saturday, Sunday, or a legal holiday. (The term legal holiday includes all holidays in the District of Columbia and statewide holidays in the particular State in which the claim, report, or return, as the case may be, is required to be filed, or the act is required to be performed.)

Carrier. Any person, company, corporation, or organization, including a proprietor, owner, consignor, consignee, or bailee, who transports distilled spirits (including denatured spirits) in any manner for himself or others.

CFR. The Code of Federal Regulations.

Commissioner. The Commissioner of Internal Revenue.

Completions. The spirits products bottled and cased or otherwise packaged or placed in approved containers for removal from the bottling premises.

Container. A receptacle, vessel, or form of bottle, can, package, tank, or pipeline (where specifically included) used or capable of being used to contain, store, transfer, convey, remove, or withdraw spirits, including denatured spirits.

Denaturant or denaturing material. Any material authorized under Part 212 of this chapter for addition to spirits in the production of denatured spirits.

Denatured spirits. Spirits to which denaturants have been added as provided in Part 212 of this chapter.

Denaturing facilities. The facilities of the bonded premises in which the denaturation of spirits is authorized to be conducted.

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

Distillery. A distilled spirits plant, or part thereof, as described in the application for registration, authorized for the production of spirits.

Distilling material. Any fermented or other alcoholic substance capable of, or intended for use in, the original distillation or other original processing of spirits.

District director. A district director of internal revenue.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this _____ (insert type of document, such as, statement, report, claim, certificate), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

Export or exportation. A severance of goods from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country.

Fermenting material. Any material which is to be subjected to a process of fermentation to produce distilling material.

Fiduciary. A guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

Fiscal year. The period from July 1 of one calendar year through June 30 of the following year.

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

In bond. When used with respect to spirits (including denatured spirits) refers to such spirits possessed under bond to secure the payment of the internal revenue tax imposed by section 5001 (a)(1), I.R.C., and in respect to which the tax imposed by such section has not been determined as provided in this part, and includes such spirits on the bonded premises of a distilled spirits plant, in transit between such premises, in transit from customs custody to such premises, and such spirits withdrawn without payment of tax under section 5214, I.R.C., and with respect to which relief from liability has not yet occurred under the provisions of section 5005(e)(2), I.R.C.

Industrial use. As applied to spirits, shall have the meaning ascribed in 27 CFR Part 2.

Intermediate product. Any product manufactured pursuant to an approved formula not intended for sale as such but for use in the manufacture of a rectified product.

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

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

Liquor bottle. A liquor bottle as defined in Part 175 of this chapter.

Mash, wort, wash. Any fermented material capable of, or intended for, use as a distilling material.

Nonindustrial use. As applied to spirits, shall have the meaning ascribed in 27 CFR Part 2.

Operating permit. The document issued pursuant to section 5171(b), I.R.C., authorizing the person named therein to engage in the business or operation described therein.

Package. A cask or barrel or similar wooden container, or a drum or similar metal container.

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

Plant or distilled spirits plant. An establishment qualified under this part for the production, bonded storage, or bottling of spirits, or for rectification, or for any combination of such operations.

Plant number. The number assigned to a distilled spirits plant by the assistant regional commissioner, preceded by the abbreviation of the State in which the plant is located and the letters DSP; for example, "DSP–Md–17".

Production facilities. The facilities of the bonded premises qualified under this part for the production of spirits.

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

Proof of distillation. The composite proof of the spirits at the time the production gauge is made, or, if the spirits had been reduced in proof prior to the production gauge, the proof of the spirits prior to such reduction, unless the spirits are subsequently redistilled at a higher proof than the proof prior to reduction.

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

Proprietor. The person qualified under this part to operate the distilled spirits plant.

Rectification. Any act constituting engaging in the business of rectifying.

Rectifier. Every person who rectifies, purifies, or refines distilled spirits or wines by any process (other than by original and continuous distillation, or original and continuous processing from mash, wort, wash, or any other substance, through continuous closed ves-

sels and pipes, until the production thereof is complete), and every person who, without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine, or other liquor with any material, manufacture any spurious, imitation, or compound liquors for sale, under the name of whisky, brandy, rum, gin, wine, spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and as being engaged in the business of rectifying.

Rectifying facilities. The facilities of the bottling premises qualified under this part for the rectification of taxpaid spirits or wines.

Region. An internal revenue region.

Regional commissioner. A regional commissioner of internal revenue.

Sealed conveyance. A conveyance, secured by Government seals or other devices approved by the Director, for the transportation of packages of spirits in bond.

Season. The period from January 1 through June 30 is the spring season and the period from July 1 through December 31 is the fall season.

Secretary. The Secretary of the Treasury.

Spirits or distilled spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, and shall include whisky, brandy, rum, gin, and vodka, but not denatured spirits unless specifically stated.

Stillage. The residue of distilling material after distillation.

Tank truck. A tank-equipped semitrailer, trailer, or truck conforming to the requirements of this part.

Tax-determined or determined. When used with respect to the tax on any distilled spirits to be withdrawn from bond on determination of tax, shall mean that all things (other than packaging, marking, and stamping incident to removal) required by law and this part to be done before such spirits may be removed from the bonded premises (and culminating in execution by the internal revenue officer of his certificate of tax determination) have been completed. When used in reference to taxes with respect to rectified products, shall mean that the taxable quantity of spirits or wines has been established, and the tax payable with respect thereto has been calculated as prescribed in this part.

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

Taxes on rectified products. The taxes imposed by sections 5021, 5022, and 5041, I.R.C., on products manufactured on bottling premises.

Taxpaid. When used with respect to distilled spirits, rectified products, or wines shall mean that all applicable taxes imposed by law in respect of such articles have been determined or paid as provided by law.

Taxpaid bottling facilities. The facilities of the bottling premises qualified under this part for the bottling or packaging of taxpaid spirits or taxpaid spirits and wines, but not qualified for rectification.

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

Transfer in bond. The removal of spirits (including denatured spirits) from one bonded premises to another bonded premises pursuant to this part.

Unfinished spirits. Spirits in the production system prior to production gauge.

U.S.C. The United States Code.

Wine spirits. As authorized for use in wine production by section 5373, I.R.C., means brandy or wine spirits produced in a distilled spirits plant (with or without the use of water to facilitate extraction and distillation) exclusively from fresh or dried fruit, or their residues, or the wine or wine residues therefrom (except that where, in the production of natural wine, sugar has been used, the wine or the residuum thereof may not be used, if the unfermented sugars therein have been refermented). Such wine spirits shall not be reduced with water from the distillation proof, nor be distilled at less than 140 degrees of proof (except that commercial brandy aged in wood for a period of not less than 2 years, and barreled at not less than 100 degrees of proof, shall be deemed wine spirits).

Subpart C—Taxes

SPIRITS

§ 201.21 Tax.

A tax is imposed by section 5001, I.R.C., on all spirits in bond or produced in or imported into the United States at the rate prescribed in such section on each proof gallon or wine gallon when below 100 degrees of proof and a proportionate tax at a like rate on all fractional parts of such proof gallon or wine gallon. Wines containing more than 24 percent of alcohol by volume are taxed as spirits, and all products of distillation, by whatever name known, which contain spirits, on which the tax imposed by law has not been paid, are considered and taxed as spirits.

(72 Stat. 1314; 26 U.S.C. 5001)

§ 201.22 Attachment of tax.

Under the provisions of section 5001 (b), I.R.C., the tax attaches to spirits as soon as such substance comes into existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production, or by any subsequent process.

(72 Stat. 1314; 26 U.S.C. 5001)

§ 201.23 Lien.

(a) *General.* Except as set forth in paragraph (b) of this section, the tax on the spirits becomes under the law (section 5004, I.R.C.) a first lien on the spirits distilled, on the distillery used for producing the spirits, and stills, vessels, and fixtures therein, the lot or tract of land on which such distillery is situated, and on any building thereon, from the time the spirits come into existence as such. In the case of a plant producing spirits, the premises subject to lien comprise the bonded premises of such plant, any building containing any part of the bonded premises, and land on which such building is situated, as described in the application for registration.

(b) *Exception during term of bond.* No lien attaches to any lot or tract of land, distillery, building, or distilling apparatus, described in paragraph (a) of this section, by reason of distilling done during any period included within the term of an indemnity bond given as provided in § 201.200.

(c) *Conditions under which extinguished.* Section 5004, I.R.C., sets forth the conditions under which such first lien on the spirits and first lien on the other property described in paragraph (a) of this section shall be terminated or discharged.

(72 Stat. 1317; 26 U.S.C. 5004)

§ 201.24 Certificate of discharge of lien.

Any person claiming any interest in the property subject to lien under section 5004(b)(1), I.R.C., may apply to the assistant regional commissioner for a duly acknowledged certificate to the effect that such lien is discharged and if the assistant regional commissioner determines that such lien is extinguished, he shall issue such certificate, and any such certificate may be recorded.

(72 Stat. 1317; 26 U.S.C. 5004)

§ 201.25 Persons liable for tax.

(a) *Distilling.* Section 5005, I.R.C., provides that the distiller of spirits is liable for the tax thereon and that every proprietor or possessor of, and any person in any manner interested in the use of, any still, distilling apparatus, or distillery, shall be jointly and severally liable for the tax on distilled spirits produced therefrom: *Provided,* That a person, not an officer or director of a corporate proprietor, owning or having the right of control of not more than 10 percent of any class of stock of such proprietor, is not liable by reason of such stock ownership or control: *Provided further,* That (1) when spirits are transferred in bond persons so liable for the tax are relieved of such liability if (i) the proprietors of transferring and receiving premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other and (ii) no person so liable for the tax on the spirits transferred retains any interest in such spirits, and (2) when spirits are withdrawn on determination of tax under withdrawal bond the persons so liable for the tax are relieved of such liability if (i) the person withdrawing such spirits and the person or persons so liable for the tax are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and (ii) all persons so liable for the tax have divested themselves of all interest in the spirits so withdrawn. The relief provisions of this paragraph shall apply to spirits transferred in bond,

whether such transfers occurred prior to, or on, or after July 1, 1959, but shall not apply in any case in which the tax was paid or determined prior to such date.

(b) *Storage on bonded premises.* Section 5005(c), I.R.C. provides that every person operating bonded premises shall be liable for the tax on all spirits while the spirits are stored on such premises, and on all spirits which are in transit to such premises (from the time of removal from the transferor's bonded premises) pursuant to application made by him. Such liability for the tax continues until the spirits are transferred or withdrawn from bonded premises as authorized by law, or until such liability for tax is relieved under the provisions of section 5008(a), I.R.C. Claims for relief from liability for spirits lost on bonded premises are provided for in § 201.43. Voluntary destruction of spirits in bond is provided for in Subpart R of this part.

(c) *Withdrawals without payment of tax.* Pursuant to section 5005(e), I.R.C., any person who withdraws spirits from the bonded premises of a plant without payment of tax, as provided in section 5214, I.R.C., shall be liable for the tax on such spirits from the time of such withdrawal. Such persons shall be relieved of any such liability at the time, as the case may be, the spirits are exported, deposited in a foreign-trade zone, used in production of wine, deposited in a customs manufacturing bonded warehouse, or laden as supplies upon or used in the maintenance or repair of certain vessels or aircraft, as provided by law.

(d) *Withdrawals free of tax.* Persons liable for tax under paragraph (a) of this section are relieved of such liability as to spirits withdrawn from bonded premises free of tax under this part at the time such spirits are so withdrawn.

(e) *Withdrawals on tax determination.* Pursuant to section 5005(c)(3), I.R.C., any person who gives a withdrawal bond, as provided for in section 5174, I.R.C., shall be liable for the tax on spirits withdrawn on determination of tax from bonded premises by him under such bond from the time of such withdrawal.

(72 Stat. 1318; 26 U.S.C. 5005)

§ 201.26 Time for tax determination.

The tax on spirits in bond shall be determined when the spirits are withdrawn therefrom, and in the case of spirits withdrawn from bonded premises, upon completion of the gauge for determination of tax and before withdrawal from such premises. In any case, such tax shall be determined (except as to spirits (a) of 190 degrees or more of proof, (b) denatured spirits or (c) spirits which on July 26, 1936, were 8 years of age or older and which were in bonded warehouses on that date) as to spirits entered for deposit in storage in internal revenue bond, within 20 years from the date of original entry for such deposit.

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

Rums or Fruit Brandies

§ 201.27 Tax on blends of rums or fruit brandies.

In addition to the tax imposed by section 5001, I.R.C., a tax is imposed by section 5023, I.R.C., at the rate prescribed therein on each proof gallon and at a proportionate rate on fractions thereof, in the case of rums or fruit brandies mixed or blended on bonded premises pursuant to section 5234(c), I.R.C., and Subpart J, and withdrawn from bonded premises, except that the tax does not apply where such spirits (a) have been aged in wood at least 2 years at the time of their first blending or mixing, or (b) are withdrawn free of tax or without payment of tax as provided in section 5214 or 7510, I.R.C.

(72 Stat. 1328, 1367; 26 U.S.C. 5023, 5234)

Rectified Products

§ 201.28 Rectification tax.

A tax is imposed by section 5021, I.R.C., at the rate prescribed therein, on each proof gallon and a proportionate tax at a like rate on all fractional parts thereof (in addition to the other taxes imposed by chapter 51, I.R.C.) on spirits and wines which are rectified, purified, or refined in such manner, and on all mixtures produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier (as defined in section 5082, I.R.C.): *Provided,* That a rectifier shall not twice be required to pay such tax because of separate acts of rectification of a lot of spirits or wines, pursuant to an approved formula, between the time the spirits or wines are received on bottling premises and the time they are removed therefrom: *Provided further,* That if any additional acts of rectification performed before removal from the premises, pursuant to approved formula, result in increasing the taxable quantity of the product, the rectifier is required to pay additional rectification tax on such quantity. Transfers from one proprietor to another (including transfers between alternate proprietors) are deemed to be removals from bottling premises for the purpose of this section. If products which have been subjected to taxable rectification are in process at the time of discontinuance of business or at the time of transfer between proprietors (including transfers between alternate proprietors) the tax shall be paid by the outgoing proprietor, and if such products are subjected to further taxable rectification by another proprietor the tax shall again be paid.

(72 Stat. 1328, 1338; 26 U.S.C. 5021, 5082)

§ 201.29 Exemption from rectification tax.

The rectification tax imposed by section 5021, I.R.C., does not apply in the case of—

(a) Absolute alcohol produced on bonded premises from high-proof distilled spirits by the extraction of water pursuant to the provisions of subpart I;

(b) Gin produced on bonded premises in the course of original and continuous distillation over juniper berries and other natural aromatics;

(c) Gin produced on bottling premises by redistillation of pure spirits over juniper berries and other natural aromatics in the manner authorized on bonded premises;

(d) Vodka (as defined in 27 CFR Part 5) produced on bonded premises in the course of original and continuous distillation or other original and continuous processing, including processing through any material which will not remain incorporated with such spirits when the production thereof is complete;

(e) Vodka produced on bottling premises of plants from pure spirits in the manner authorized on bonded premises;

(f) Spirits purified or refined on bonded premises in the course of original and continuous distillation or other original and continuous processing, through any material which will not remain incorporated with such spirits when the production thereof is complete;

(g) Spirits (including denatured spirits) redistilled on bonded premises;

(h) Mixed or blended wines, when mixed or blended for the sole purpose of perfecting such wines in accordance with recognized commercial standards, as provided in Subpart N of this part;

(i) Wines of the same kind and taxable grade mixed together to facilitate handling, as provided in Subpart N of this part.

(j) Wines subjected to preserving, filtering, or clarifying treatment, as provided in Subpart N of this part;

(k) Cordials or liqueurs, on which a tax is imposed by section 5022, I.R.C.;

(l) Blends made, as provided in Subpart N of this part, exclusively of two or more straight whiskies aged in wood for a period of not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water, and if not reduced below 80 proof;

(m) Blends made, as provided in Subpart N, exclusively of two or more pure fruit brandies distilled from the same kind of fruit, or of two or more rums, aged in wood for a period of not less than two years and without the addition of coloring or flavoring matter (other than caramel) or any other substance than pure water, and if not reduced below 80 proof;

(n) Spirits distilled at 190 degrees or more of proof (with or without reduction subsequent to distillation) mingled on bonded premises;

(o) Spirits mingled on bonded premises, or in the course of removal therefrom, for redistillation, storage, or any other purpose, incident to the requirements of National defense;

(p) Heterogeneous spirits mingled, as provided in Subpart J of this part, in bulk gauging tanks on bonded premises for immediate removal to bottling premises, exclusively for use in taxable rectification, or in blends of straight whiskies, fruit brandies, or rums;

(q) Mixtures or blends, made on bonded premises, of fruit brandies distilled from the same kind of fruit at not

more than 170 degrees of proof, or of beverage rums, mixed or blended for the sole purpose of perfecting such brandies or rums according to commercial standards, as provided in Subpart J of this part;

(r) Mingled homogeneous spirits;

(s) Spirits mingled on bonded premises for immediate redistillation, immediate denaturation, or immediate removal from such premises free of tax under section 5214(a) (1), (2), or (3), or section 7510, I.R.C.;

(t) Spirits mingled on bonded premises for further storage in bond, as provided in section 5234(a)(2), I.R.C., and Subpart J of this part;

(u) Commercial brandy or rum by reason of the addition of caramel on bonded premises, as provided in Subparts I and J of this part;

(v) Spirits from which only extraneous insoluble materials have been removed, or in which only minor changes in the soluble color or soluble solids have been made, as provided in Subparts K and N of this part;

(w) Wines or distilled spirits used by apothecaries exclusively in the preparation or making up of medicines unfit for use for beverage purposes;

(x) Distilled spirits, on which the tax has been paid or determined, which are recovered by a manufacturer from dregs or marc of percolation or extraction, or from medicines, medicinal preparations, food products, flavors, or flavoring extracts, which do not meet the manufacturer's standards, if such recovered distilled spirits are used by such manufacturer in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for use for beverage purposes.

The exemption of products from the rectification tax by reason of the acts enumerated in this section does not exempt such products from the rectification tax if such products are otherwise subjected to an act of taxable rectification. The additing of denaturants to spirits under this part does not constitute rectification.

(68A Stat. 900, 72 Stat. 1328, 1338, 1356, 1362, 1365, 1367, 1381; 26 U.S.C. 7510, 5021, 5022, 5023, 5025, 5082, 5201, 5214, 5223, 5234, 5363)

§ 201.30 Tax on cordials and liqueurs containing wine.

A tax is imposed by section 5022, I.R.C., at the rate imposed therein on each wine gallon, and at a proportionate rate on fractions thereof, in lieu of rectification tax, on all liqueurs, cordials, or similar compounds produced in the United States and not produced for sale as wine, wine specialties, or cocktails, which contain more than 2½ percent by volume of wine of an alcoholic content in excess of 14 percent by volume. "Liqueurs, cordials, or similar compounds" shall mean those products which contain not less than 2½ percent by weight of sweetening material and possess the taste, aroma, and characteristics generally attributed to liqueurs and cordials.

(72 Stat. 1328; 26 U.S.C. 5022)

OCCUPATIONAL TAXES

§ 201.31 Rectifier's special tax.

Every person engaging in business as a rectifier, within the meaning of the term as defined in subpart B, shall file Form 11 with the district director and pay special tax at the applicable rate prescribed in section 5081, I.R.C. The tax is imposed as of the first day of July in each year, or on commencing such business. In the former case the tax is reckoned for one year and in the latter case it is reckoned proportionately from the first day of the month in which the liability to special tax commenced and to and including the 30th day of June following. Section 5142, I.R.C., provides that no person shall engage in or carry on the business of a rectifier until he has paid the special tax therefor. The stamp issued as a receipt for the payment of the special tax is required by section 6806(a), I.R.C., to be conspicuously placed and kept in the rectifier's place of business.

(68A Stat. 831, 846, 72 Stat. 1338, 1346, 1347; 26 U.S.C. 6806, 7011, 5081, 5082, 5142, 5143)

§ 201.32 Change to higher or lower rate.

A rectifier who has paid the special tax as a rectifier of less than 20,000 proof gallons and who exceeds that quantity shall immediately file with the district director an amended Form 11 and pay the special tax as a rectifier of 20,000 proof gallons or more. The rectifier may submit the stamp representing the special tax paid at the lower rate to the district director with a claim on Form 843 for refund of such tax. A rectifier who has paid special tax at the higher rate, but actually rectifies less than 20,000 proof gallons of spirits or wines during the year, may file an amended Form 11 with the district director, pay the special tax as a rectifier of less than 20,000 proof gallons, and submit the stamp representing the special tax paid at the higher rate with a claim on Form 843 for refund of such tax.

(68A Stat. 791, 830, 72 Stat. 1338; 26 U.S.C. 6402, 6805, 5081)

§ 201.33 Exemption from rectifier's occupational tax.

Payment of the rectifier's occupational tax imposed by section 5081, I.R.C., is not required by reason of the operations, or the employment of processes, or the manufacture of products, described in § 201.29 as not requiring payment of the rectification tax imposed under section 5021, I.R.C., except as to those described in § 201.29 (c), (e), (h) (on other than bonded wine cellar premises), (k), (*l*), and (m).

(72 Stat. 1328, 1387; 26 U.S.C. 5025, 5391)

§ 201.34 Exemption from liquor dealer's occupational tax.

(a) *Exemption of proprietor.* No proprietor of a plant shall be required to pay special tax as a wholesale or retail dealer in liquors on account of the sale at his principal business office as designated in writing to the assistant regional commissioner, or at his plant, of spirits or wines which, at the time of sale, are stored at his plant or had been removed from such plant to a taxpaid storeroom the operations of which are integrated with the operations of such plant and which is contiguous or adjacent to, or in the immediate vicinity of, such plant. However, no such proprietor shall have more than one place of sale, as to each plant, that shall be exempt from special tax under this section.

(b) *Place of exemption.* Unless the exemption is claimed elsewhere by the proprietor, it will be presumed that the exemption is claimed at the plant where the spirits or wines are stored. If the proprietor wishes to be exempt from payment of special tax for sales at his principal business office rather than for sales at his plant, he shall notify the assistant regional commissioner of the region in which the plant is located of his intention. Such notice shall be in writing on letter size paper and shall be submitted in triplicate. On approval, two copies of the notice will be returned to the proprietor, one to be filed at the plant and the other to be filed at the principal office, and the original will be retained by the assistant regional commissioner. Where the exemption is claimed for a place other than the plant, special tax shall be paid at the plant if sales are made thereat.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 201.35 Still manufacturer's special tax.

Special occupational tax as a still manufacturer and a commodity tax for each still or condenser manufactured is imposed by section 5101, I.R.C., on certain persons who manufacture stills or condensers to be used in distilling. Provisions in respect of the occupational and commodity taxes imposed on manufacturers of stills or condensers are contained in Part 196 of this chapter.

(72 Stat. 1339; 26 U.S.C. 5101)

ASSESSMENTS

§ 201.36 Production not accounted for.

Where the assistant regional commissioner finds that a distiller has not accounted for all spirits produced by him, assessment shall be made for the tax on the difference between the quantity reported and the quantity found to have been actually produced.

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

§ 201.37 Spirits not removed from bond at end of bonding period.

Where the proprietor of a bonded warehouse fails to file application for the withdrawal of spirits and withdraw the spirits within the time prescribed by § 201.26, the assigned officer will cause the tax to be determined on the spirits and forward a report to the assistant regional commissioner in order that the tax may be assessed.

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

§ 201.38 Assessment in cases of spirits lost or destroyed in bond, or in cases of unauthorized removals.

Where spirits (including denatured spirits) in bond are lost or destroyed

(except spirits in respect of which the tax is not collectible by reason of the provisions of section 5008 (a) or (f), I.R.C.) and the proprietor or other person liable for the tax on the spirits fails to file a claim for remission as provided in § 201.43(a) or when such claim is denied, the tax thereon shall be assessed. In any case where spirits in bond, on which the tax has not been paid or determined as provided by this part, are removed from bonded premises other than as authorized by law, the tax shall be assessed. Tax shall also be assessed in the case of losses under circumstances described in section 5006(b), I.R.C., with respect to casks or packages of spirits deposited in storage in bond or spirits filled on bonded premises into casks or packages after entry and deposit, when the tax is not paid upon the demand of the assistant regional commissioner.

(72 Stat. 1320, 1323; 26 U.S.C. 5006, 5008)

WINE

§ 201.39 Tax.

A tax is imposed by section 5041, I.R.C., on wines (including imitation, substandard, or artificial wine, and compounds sold as wine) produced in or imported into the United States. Proprietors may, as provided in §§ 201.40, 201.41, and 201.42, become liable for wine taxes in connection with (a) the manufacture of wine products, (b) an increase in the volume of wine, or (c) a change in the taxable grade of wine.

(72 Stat. 1331; 26 U.S.C. 5041)

§ 201.40 Manufacture of wine products.

(a) *Vermouth.* Vermouth made on bottling premises is subject to the rectification tax, and the wine tax imposed by section 5041, I.R.C.

(b) *Carbonated and sparkling wine.* Wines carbonated on bottling premises by secondary fermentation (bulk or bottle process) or artificially carbonated on bottling premises with carbon dioxide are subject to the rectification tax and the wine tax imposed by section 5041, I.R.C., on sparkling wine or artificially carbonated wine, as the case may be.

(c) *Distinct products.* Where the rectifying, mixing, compounding, or blending of wine on bottling promises results in the manufacture of a distinct product, such as aperitif or effervescent wine, the rectification tax, and the wine tax at the rate imposed by section 5041, I.R.C., shall be paid.

(72 Stat. 1328, 1331; 26 U.S.C. 5021, 5041)

§ 201.41 Increasing volume of wine.

Where the volume of wine is increased by the addition of any material the resultant product is subject to the rectification tax on the entire quantity, and wine tax on the additional gallonage: *Provided,* That if the wine is so treated as to convert it into a distinct product other than wine and it is not sold as wine, no additional wine tax is due.

(72 Stat. 1328, 1338; 26 U.S.C. 5021, 5041)

§ 201.42 Increasing taxable grade of wine.

(a) *Blended wines.* Where the taxable grade of any wine is increased by blending with other wines, additional wine tax shall be paid, regardless of whether the blended wine is subject to the rectification tax or exempt from such tax. The additional wine tax due is the difference between the wine tax on the blended wine under its new taxable grade and the tax previously paid or determined on the wines used for such blending.

(b) *Compounded wines.* Except as provided in § 201.30, the product of any rectifying, mixing, or compounding of wine with distilled spirits is subject to the rectification tax imposed by section 5021, I.R.C., and where such processing results in an increase in the taxable grade of a product taxable as wine, additional wine tax shall be paid on the difference between the wine tax due on the product under its new taxable grade and the tax previously paid or determined on the wines used therein.

(72 Stat. 1328, 1331; 26 U.S.C. 5021, 5041)

CLAIMS

§ 201.43 Claims in respect of spirits lost or destroyed in bond.

(a) *Claims for remission.* All claims for remission of tax required by this part, relating to the destruction or loss of spirits (including denatured spirits) in bond, shall be filed with the assistant regional commissioner, and shall set forth the following:

(1) Identification (including serial numbers if any) and location of the container or containers from which the spirits (including denatured spirits) were lost, or removed for destruction;

(2) Quantity of spirits (including denatured spirits) lost or destroyed from each container, and the total quantity of spirits covered by the claim;

(3) Total amount of tax for which the claim is filed;

(4) Name, number, and address of the plant from which withdrawn without payment of tax or removed for transfer in bond (if claim involves spirits so withdrawn or removed) and date and purpose of such withdrawal or removal;

(5) Date of the loss or destruction (or, if not known, date of discovery), the cause or nature thereof, and all the facts relative thereto;

(6) Name of the carrier, where a loss in transit is involved;

(7) If lost by theft, facts establishing that the loss did not occur as the result of any negligence, connivance, collusion, or fraud on the part of the proprietor of the plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(8) In the case of a loss, by theft, whether the claimant is indemnified or recompensed in respect of the spirits lost and if so, the amount and nature of such indemnity or recompense and the actual value of the spirits, less the tax.

(b) *Claim for abatement, credit, or refund.* Claims for abatement of an assessment, or for credit or refund of tax which has been paid or determined, in the case of spirits (including denatured spirits) lost or destroyed in bond shall be filed with the assistant regional commissioner. The claims shall set forth the information called for in the case of claims for remission filed under paragraph (a) of this section and, in addition thereto, shall set forth (1) the date of assessment or payment (or of tax determination, if the tax has not been assessed or paid) of the tax with respect to which abatement, credit, or refund is claimed, and (2) the name, plant number, and the address of the plant where the tax was determined, paid, or assessed (or name and address and capacity of any other person who paid or was assessed the tax, if the tax was not paid by or assessed against a proprietor).

(c) *Supporting documents.* Claims referred to in paragraphs (a) and (b) of this section shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss or destruction, and in the case of such claims pertaining to spirits (including denatured spirits) lost while being transferred by carrier, by a copy of the bill of lading.

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

§ 201.44 Claims in respect of spirits returned to bonded premises.

Claims for credit or refund of tax relating to spirits which have been withdrawn from bonded premises on payment or determination of tax and which are returned thereto under section 5215, I.R.C., as provided in Subpart S of this part, shall be filed with the assistant regional commissioner, and shall set forth the following:

(a) Quantity of spirits so returned;

(b) Amount of tax for which the claim is filed;

(c) Name, number, and address of the plant from which the spirits were so withdrawn, the date of such withdrawal, and purpose for which withdrawn;

(d) Name, address, and plant number of the plant to which the spirits were returned, and the date of such return;

(e) A statement as to whether or not the spirits were returned in the same bulk container in which withdrawn from bonded premises before any processing thereof and before the removal of any spirits therefrom (other than samples for testing or analysis);

(f) The reason for such return and all facts relating thereto.

There shall be attached to such claim a copy of the approved application provided for in § 201.583, and a copy of the assigned officer's gauge report of returned spirits. Such claims shall be filed by the proprietor of the plant to which the spirits were returned and within six months of the date of the return, and the spirits on which refund or credit is claimed must not have been withdrawn from bonded premises more than six months prior to the date of return to bonded premises. If such claim is allowed, refund (without interest) will be made or credit (without interest) will be allowed.

(72 Stat. 1323, 1364; 26 U.S.C. 5008, 5215)

§ 201.45 Claims relating to spirits lost or destroyed after tax determinations.

(a) *Claims for losses after tax determination and prior to completion of physical removal from bonded premises.* Claims for abatement, credit, or refund

of tax under this part, relating to losses of spirits occurring on bonded premises after tax determination but prior to physical removal from such premises, shall be prepared and filed as provided in, and contain the information called for under, § 201.43(b) and be supported by documents as provided under § 201.43(c). Such claims shall further state whether the lot of spirits in which the loss occurred was being withdrawn for rectification or bottling, and if so, the name, number, and address of the bottling premises.

(b) *Claims relating to spirits withdrawn for rectification or bottling and voluntarily destroyed.* Claims for abatement, credit, or refund of tax under this part, in the case of spirits withdrawn on payment or determination of tax from bond to bottling premises for rectification or bottling and voluntarily destroyed under the provisions of Subpart R of this part, as unsuitable for the purpose for which intended to be used, shall be filed with the assistant regional commissioner by the proprietor of the bottling premises who withdrew the spirits. Such claims shall contain the information required under § 201.43(a) (1), (2), and (3), and in addition, shall state (1) the name, number, and address of plant from which withdrawn; (2) date of destruction, reason therefor, and all facts relative thereto; (3) the date of determination of the tax; (4) the date of payment of the tax (if claim is for refund or credit) or of assessment of the tax (if claim is for abatement); (5) the serial number of the approved application, Form 1577; and (6) whether the claim covers tax on spirits withdrawn from bond by the claimant on payment or determination of tax for removal to bottling premises for rectification or bottling, and whether the spirits covered by the claim were destroyed before bottling or casing or other packaging of such spirits for removal from his bottling premises.

(c) *Claims relating to losses of spirits, withdrawn for rectification or bottling, by reason of accident, flood, fire, or other disaster.* Claims for abatement, credit, or refund of tax under this part, relating to spirits withdrawn for rectification or bottling and lost due to accident, flood, fire, or other disaster, shall be filed with the assistant regional commissioner by the proprietor who withdrew the spirits. The claim shall contain the information required under § 201.43(a) (1), (2), (3), (5), and (6) and, in addition, shall state (1) the date of determination of the tax; (2) the date of payment of tax (if claim is for refund or credit) or of assessment of the tax (if claim is for abatement); (3) whether or not the claimant is indemnified or recompensed for the tax, and if so, the extent and nature of such indemnification or recompense; and (4) whether the claim covers tax on spirits withdrawn from bond by the claimant on payment or determination of tax for removal to bottling premises for rectification or bottling and whether the spirits covered by the claim were lost before bottling or casing or other packaging of such spirits for removal from his bottling premises. Supporting statements as provided in § 201.484 shall be submitted with such claims.

(d) *Claims for losses occurring in rectifying, packaging, bottling and casing operations.* Claims for credit or refund of tax under this part, relating to spirits lost by reason of, or incident to, authorized rectifying, packaging, bottling, or casing operations (including losses by leakage or evaporation occurring during removal from bond to the bottling premises and pending rectification or bottling) as provided for in Subpart O of this part, shall be filed with the assistant regional commissioner and shall set forth the following:

(1) A statement as to whether the claim covers tax on spirits withdrawn from bond by the claimant on payment or determination of tax for removal to bottling premises for rectification or bottling and whether the spirits covered by the claim were lost before bottling or casing or other packaging of such spirits for removal from his bottling premises;

(2) In the case of loss by reason of authorized rectifying, packaging, bottling, or casing operations as provided for in § 201.482, the period covered by the claim, and the quantity of spirits so lost not in excess of the limitation contained in § 201.485;

(3) In the case of loss in the manufacture of gin or vodka provided for in § 201.487 the period covered by the claim, the quantity of spirits so lost, and whether the loss occurred in the process of manufacture in a closed system approved by the assistant regional commissioner.

Claims described in this paragraph (d) shall be supported by Form 2611.

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

§ 201.46 Claims relating to samples taken for the United States.

Claims for refund of tax, relating to samples of spirits taken by internal revenue officers, after payment or determination of tax, as provided in § 201.83 shall be filed with the assistant regional commissioner, and shall set forth the following:

(a) Quantity of spirits taken as samples;

(b) Amount of tax for which the claim is filed;

(c) Name, number, and address of the plant from which the samples were taken;

(d) The date, or dates, of Form 1669 covering the removal of the samples.

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

§ 201.47 Execution of claims and supporting documents.

All claims filed under this part for abatement or refund shall be filed on Form 843. All claims filed under this part for credit or remission of tax shall be filed on Form 2635. Such claims for abatement, remission, credit, or refund shall (a) show the name, address, and capacity of the claimant, (b) be signed by the claimant or his duly authorized agent, and (c) be executed under the penalties of perjury as provided in § 201.104. Forms, supporting statements, and any other documents required by this part to be submitted with a claim shall be attached to such claim and shall be deemed to be a part thereof. The assistant regional commissioner may require the submission of additional evidence in support of any claim filed under this part when deemed necessary for proper action on the claim.

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

§ 201.48 Claims for credit of tax.

Claims for credit of tax, as provided in this part, may be filed after determination of the tax whether or not the tax has been paid. The claimant may not anticipate allowance of a credit or make an adjusting entry in a tax return pending action on the claim.

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

§ 201.49 Adjustments for credited tax.

When notification of allowance of credit is received from the assistant regional commissioner, including notification of credit for tax on spirits or wines exported with benefit of drawback as provided in Part 252 of this chapter, the claimant shall make an adjusting entry and explanatory statement (specifically identifying the notification of allowance of credit) in the next distilled spirits tax return (or returns) to the extent necessary to exhaust the credit.

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

Subpart D—Administrative and Miscellaneous Provisions

AUTHORITIES OF THE DIRECTOR

§ 201.61 Forms prescribed.

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

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

§ 201.62 Variations from requirements.

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

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

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

(c) Will not be contrary to any provisions of law. Variations from requirements when 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 proprietor thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where the proprietor

desires to employ such variation, he shall submit a written application so to do, in triplicate, to the assistant regional commissioner for transmittal to the Director. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved.

(72 Stat. 1353, 1395; 26 U.S.C. 5178, 5552)

§ 201.63 Pilot operations.

The Director may waive any regulatory provisions of chapter 51, I.R.C., and of the regulations in this part, for temporary pilot or experimental operations for the purpose of facilitating the development and testing of improved methods of governmental supervision (necessary for the protection of the revenue) over plants. For this purpose, the Director may, with the approval of the proprietor thereof, designate any plant for such operations. The provision of law and regulations waived and the period of time during which such waiver shall continue shall be stated in writing by the Director. The provisions of this section shall not be construed as authority to waive the filing of any bond or the payment of any tax provided for in chapter 51, I.R.C.

(72 Stat. 1395; 26 U.S.C. 5554)

§ 201.64 Experimental distilled spirits plant.

The Director may authorize the establishment and operation of experimental plants for specific and limited periods of time solely for experimentation in, or development of—

(a) Sources of materials from which spirits may be produced;

(b) Processes by which spirits may be produced or refined; or

(c) Industrial uses of spirits.

The Director may waive any provision of chapter 51, I.R.C. (other than section 5312, I.R.C.), and of this part (other than this section and § 201.65) to the extent he deems necessary to effectuate the purposes of section 5312(b), I.R.C., except that he may not waive the payment of any tax on spirits removed from such plant.

(72 Stat. 1375; 26 U.S.C. 5312)

§ 201.65 Application to establish experimental plants.

Any person desiring to establish an experimental plant shall make written application, in triplicate, to the Director, through the assistant regional commissioner, and obtain the Director's approval of the proposed establishment. The applicant shall file with such application a bond in such form and penal sum as required by the Director. Such application shall state the nature, extent, and purpose of the operations to be conducted and describe the processes and equipment, the location of the plant (including the proximity to other premises or operations subject to the provisions of chapter 51, I.R.C.) and the security measures to be provided. The Director may require the submission of such additional information as he deems necessary. The assistant regional commissioner shall not permit operations until he has found that the plant conforms to the specifications set forth in the application, as approved, and the applicant has complied with provisions of chapter 51, I.R.C., and this part not specifically waived by the Director.

(72 Stat. 1375; 26 U.S.C. 5312)

§ 201.66 Spirits produced in industrial processes.

Persons producing spirits in industrial processes (including spirits produced as a by-product in connection with chemical or other processes) are distillers and are required to qualify under the provisions of chapter 51, I.R.C., and this part. Where nonpotable chemical mixtures containing spirits are produced (a) for transfer to the bonded premises of a distilled spirits plant for completion of processing (distilling), or (b) as a by-product (which would require expensive and complex equipment for the recovery of spirits therefrom) (1) which is destroyed on the premises where produced, or (2) which contains the minimum quantity of spirits practicable with the process employed and will not be further processed for the purification or removal of the spirits and which the Director finds is as nonpotable as completely denatured alcohol and the recovery of spirits therefrom would be at least as difficult as the recovery of spirits from completely denatured alcohol, the Director may waive any provision of chapter 51, I.R.C., or this part, with respect to the production of such mixture, including any provision relating to qualification. Where the producer of such nonpotable mixtures desires to secure a waiver of any of such provisions he shall file an application therefor with the Director through the assistant regional commissioner. The application shall set out the name and address of the producer, the chemical composition and source of the nonpotable mixture, and the approximate percentages of the chemicals and of the spirits in the mixture, the method of operation proposed, and, if applicable, the bonded premises whereat the mixture will be processed, and such other information as the Director may require. If the Director finds that the waiver of the requirements, or any of them, will not jeopardize the revenue and will not unduly hinder supervision of the operations, he may approve the application under such terms and conditions as he deems advisable, and subject to the furnishing of any bond which he deems necessary.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.67 Other businesses.

The Director may authorize the carrying on of such other businesses (not specifically prohibited by section 5601(a)(6), I.R.C.) on premises of plants (except in the rooms or buildings on bonded premises authorized for use for the storage of spirits in casks, packages, cases, or similar portable containers) as he finds will not jeopardize the revenue, hinder effective administration of this part, or be contrary to law. Such authorization shall designate the premises (i.e., bonded, bottling, or general) on which such other business is authorized to be conducted.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.68 Recovery and reuse of denatured spirits in manufacturing processes.

The following persons are not, by reasons of the activities listed below, subject to the provisions of this part but they shall comply with the provisions of Part 211 of this chapter relating to the use and recovery of spirits or denatured spirits:

(a) Manufacturers who use denatured spirits, or articles or substances containing denatured spirits in a process wherein any part or all of the spirits, including denatured spirits, are recovered.

(b) Manufacturers who use denatured spirits in the production of chemicals which do not contain spirits but which are used on the permit premises in the manufacture of other chemicals resulting in spirits as a by-product.

(c) Manufacturers who use chemicals or substances which do not contain spirits or denatured spirits (but which were manufactured with specially denatured spirits) in a process resulting in spirits as a by-product.

(72 Stat. 1372; 26 U.S.C. 5273)

§ 201.69 Disaster exemptions.

The Director may, whenever he finds that it is necessary or desirable, by reason of disaster, temporarily exempt the proprietor of any plant from any provision of the internal revenue laws and this part relating to spirits, except those requiring the payment of tax on spirits, to the extent he may deem necessary or desirable.

(72 Stat. 1397; 26 U.S.C. 5562)

§ 201.70 Exemptions to meet the requirements of National defense.

The Director may temporarily exempt proprietors from any provision of the internal revenue laws or this part relating to spirits except those requiring payment of tax thereon whenever in his judgment it is expedient to do so to meet the requirements of the National defense.

(72 Stat. 1397; 26 U.S.C. 5561)

§ 201.71 Discontinuance of storage facilities by the Director.

When the Director finds that any facilities for the storage of spirits on bonded premises are unsafe or unfit for use, or the spirits contained therein are subject to great loss or wastage, he may require the discontinuance of the use of such facilities and require the spirits contained therein to be transferred to such other storage facilities as he may designate. Such transfer shall be made at such time and under such supervision as the Director may require and the expense of the transfer shall be paid by the owner or the warehouseman of the spirits. Whenever the owner of such spirits or the warehouseman fails to make such transfer within the time prescribed or to pay the just and proper expense of such transfer, as ascertained and determined by the Director, such spirits may be seized and sold in the same

manner as goods sold on distraint for taxes, and the proceeds of such sale shall be applied to the payment of the taxes due thereon and the cost and expense of such sale and removal, and the balance shall be paid over to the owner of such spirits.

(72 Stat. 1369; 26 U.S.C. 5236)

§ 201.72 Experimental or research operations by scientific institutions and colleges of learning.

(a) *General.* The Director may authorize any scientific university, college of learning, or institution of scientific research to produce, receive, blend, treat, test, and store spirits, without payment of tax, for experimental or research use but not for consumption (other than organoleptic tests) or sale, in such quantities as may be reasonably necessary for such purposes. The Director may waive any provision of chapter 51, I.R.C., (other than section 5312, I.R.C.), or this part (other than this section) to the extent he deems necessary to effectuate the purposes of section 5312(a), I.R.C., except he may not waive the payment of any tax on distilled spirits removed from any such university, college, or institution.

(b) *Qualification.* Any university, college, or institution desiring to conduct any of the experimental or research operations listed in the preceding paragraph shall make written application, in triplicate, to the Director, through the assistant regional commissioner, and obtain the Director's approval of the proposed operations. The applicant shall file with such application a bond in such form and penal sum as required by the Director. The application shall state the nature, extent, and purpose of the operations to be conducted and describe the processes and equipment, the location at which operations will be conducted (including identification of the building or buildings, or the portions thereof to be used), and the security measures to be provided. The Director may require such additional information as he deems necessary. Operations shall not be commenced until authorized by the Director.

(c) *Records.* Reports concerning the operations need not be submitted unless required by the Director, but records of the quantities of spirits produced, received, and used each day shall be made and retained for inspection by internal revenue officers.

(d) *Discontinuance of operations.* When operations authorized by the Director are discontinued, all remaining spirits shall be disposed of by destruction. Notice of the proposed destruction shall be given to the assistant regional commissioner at least 5 days in advance of the destruction. When these spirits have been destroyed notice of the discontinuance of operations shall be given to the assistant regional commissioner.

(72 Stat. 1375; 26 U.S.C. 5312)

AUTHORITIES OF THE ASSISTANT REGIONAL COMMISSIONER

§ 201.73 Other businesses.

Application to conduct at a plant (except in the rooms or buildings on bonded premises authorized for use for the storage of spirits in casks, packages, cases, or similar portable containers) a type of business other than that of a distiller, bonded warehouseman, rectifier, or bottler may be approved by the assistant regional commissioner if the Director has, as provided in § 201.67, authorized the carrying on of a business of the type proposed, unless the assistant regional commissioner finds that there are particular conditions in respect of the applicant's plant that would cause the carrying on of such business to be a danger to the revenue or a hindrance to the effective administration of this part.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.74 Removal of distilling material.

The assistant regional commissioner may, on receipt of an application therefor, authorize the removal from bonded premises of mash, wort, or wash—

(a) To plant premises, other than bonded premises, for use in such businesses as may be authorized under § 201.73;

(b) To other premises for use in processes of manufacture not involving the production of (1) vinegar by the vaporizing process, (2) spirits, or (3) alcoholic beverages; or

(c) For destruction;

if he deems that such removal and use, or method of destruction, will not constitute a jeopardy to the revenue. The proprietor shall record the quantity and alcoholic content of the mash, wort, or wash removed or destroyed. The person receiving any such mash, wort, or wash shall record the quantities (and alcoholic content) received and used or disposed of, and maintain such records on the premises where such material is used; reports of such operations need not be submitted unless required by the assistant regional commissioner. Operations authorized by this section shall be under such supervision as the assistant regional commissioner may direct.

(72 Stat. 1365; 26 U.S.C. 5222)

§ 201.75 Assignment of officers.

The assistant regional commissioner shall assign such number of internal revenue officers to plants as he deems necessary to maintain supervision of operations conducted on such premises.

(72 Stat. 1357, 1395; 26 U.S.C. 5202, 5553)

§ 201.76 Hours of operation.

Operations at a plant requiring direct supervision by an assigned officer shall not be conducted on Sunday unless specifically authorized by the assistant regional commissioner in each instance on the showing of an emergency. All operations requiring direct supervision shall be conducted during an eight-hour work day between 7:00 a.m. and 5:00 p.m. unless, pursuant to the proprietor's application specifying the reasons for requesting extension or change of hours of operation, the assistant regional commissioner authorizes the performance and supervision of such operations during other hours. The assistant regional commissioner, in administering this provision, shall not restrict such operation or function to a greater extent than did the provisions of internal revenue law and regulations on June 30, 1959.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.77 Allowance of claims.

The assistant regional commissioner is authorized to allow claims for remission, abatement, credit, and refund of tax, and for redemption of stamps, filed under the provisions of this part. The assistant regional commissioner is also authorized to allow credit, without claim, for tax on samples taken as provided in § 201.83 for use by the United States.

(68A Stat. 830, 72 Stat. 1323; 26 U.S.C. 6805, 5008)

§ 201.78 Installation of meters, tanks, and other apparatus.

The assistant regional commissioner is authorized to require the proprietor to install meters, tanks, pipes, or any other apparatus which the assistant regional commissioner deems advisable for the purpose of protecting the revenue. Any proprietor refusing or neglecting to install such apparatus when so required shall not be permitted to conduct business.

(72 Stat. 1395; 26 U.S.C. 5552)

§ 201.79 Approval of qualifying documents.

The assistant regional commissioner is authorized to approve, except as otherwise provided in this part, all qualifying documents required by this part.

(72 Stat. 1349, 1352, 1353, 1394; 26 U.S.C. 5171, 5172, 5173, 5174, 5551)

AUTHORITIES OF INTERNAL REVENUE OFFICERS

§ 201.80 Right of entry and examination.

Any internal revenue officer may at all times, as well by night as by day, enter any plant, or any other premises where distilled spirits are produced or rectified, or structure or place used in connection therewith for storage or other purposes; to make examination of the materials, equipment, and facilities thereon; and make such gauges and inventories as he deems necessary. Whenever any internal revenue officer, having demanded admittance, and having declared his name and office, is not admitted into such premises by the proprietor or other person having charge thereof, he may at all times, use such force as is necessary for him to gain entry to such premises.

(72 Stat. 1357; 26 U.S.C. 5203)

§ 201.81 Authority to break up ground or walls.

Any internal revenue officer, and any person acting in his aid, may break up the ground on any part of a plant, or any other premises where spirits are produced or rectified, or any ground adjoining or near to such plant or premises, or any wall or partition thereof, or belonging thereto, or other place, to search for any pipe, cock, private conveyance, or utensil; and, upon finding any such pipe or conveyance leading therefrom or thereto, to break up any ground, house, wall, or other place through or into which such pipe or other conveyance leads, and to break or cut away such pipe or other conveyance, and turn any

cock, or to examine whether such pipe or other conveyance conveys or conceals any spirits, mash, wort, or beer, or other liquor, from the sight or view of the officer, so as to prevent or hinder him from taking a true account thereof.

(72 Stat. 1357; 26 U.S.C. 5203)

§ 201.82 Detention of containers.

Any internal revenue officer may detain any container containing, or supposed to contain, spirits when he has reason to believe that the tax imposed by law on such spirits has not been paid or determined as required by law or this part, or that such container is being removed in violation of law or this part, and every such container may be held by him at a safe place until it shall be determined whether the property so detained is liable by law to be proceeded against for forfeiture; but such summary detention shall not continue in any case longer than 72 hours without process of law or intervention of the assistant regional commissioner, unless the person in possession of the container immediately prior to its detention, in consideration of the container being kept on his premises during detention, executes a waiver of the 72-hours limitation on detention of the container.

(72 Stat. 1375; 26 U.S.C. 5311)

§ 201.83 Samples for the United States.

Any internal revenue officer is authorized to take samples of spirits (including denatured spirits) for analysis, testing, or other determinations to ascertain whether the provisions of law and regulations are being complied with. The tax paid on such samples removed from the premises of a plant may be refunded or credited as provided in this part.

(72 Stat. 1323, 1356, 1357; 26 U.S.C. 5008, 5201, 5203)

§ 201.84 Gauging and measuring equipment.

All gauging and measuring equipment and means required by Part 186 of this chapter and this part to be furnished by the proprietor for the purpose of ascertaining the quantity, alcoholic content, gravity, and producing capacity of any materials, denaturants, mash, wort, or beer, or the quantity and alcoholic content of spirits (including denatured spirits), shall be maintained by the proprietor in accurate and readily usable condition. The assigned officer may disapprove the use of any such equipment or means if he finds it would be insufficiently accurate and the proprietor shall promptly provide accurate equipment or means in lieu of the disapproved facilities.

(72 Stat. 1320, 1358; 26 U.S.C. 5006, 5204)

ENTRY AND EXAMINATION OF PREMISES

§ 201.85 Premises to be kept accessible.

The proprietor shall furnish the assistant regional commissioner as many keys to such of the proprietor's locks on doors, gates, or other openings to and within the premises of the plant as the assistant regional commissioner may require for internal revenue officers to gain access to the premises and any structures thereon, and such premises shall always be kept accessible to any internal revenue officer having such keys.

(72 Stat. 1357; 26 U.S.C. 5203).

§ 201.86 Furnishing facilities and assistance.

On the demand of any internal revenue officer or agent, the proprietor shall furnish the necessary facilities and assistance to enable the officer or agent to gauge the spirits in any container or to examine any apparatus, equipment, containers, or materials on the plant premises. The proprietor shall also, on demand of such officer or agent, open all doors, and open for examination all containers not under the control of the internal revenue officer in charge.

(72 Stat. 1357; 26 U.S.C. 5203)

CUSTODY AND SUPERVISION

§ 201.87 Supervision of operations.

Where this part requires direct supervision of an operation, the proprietor may conduct such operation at any time the assigned officer is on the plant premises or the premises of an adjacent bonded wine cellar: *Provided,* That such officer has been informed of the operation and has not advised the proprietor that the operation must be deferred in order that it may be conducted in his immediate presence. Where this part requires general supervision of an operation, the assigned officer is not required to be present on the plant premises; however, operations requiring general supervision under this part shall not be performed after regular business hours unless the proprietor has given notice thereof in writing to the assigned officer.

(72 Stat. 1357; 26 U.S.C. 5202)

§ 201.88 Storage rooms or buildings.

Storage rooms or buildings provided on bonded premises for the storage of spirits in casks, packages, cases, or similar portable approved containers shall be in the joint custody of the assigned officer and the proprietor, shall be locked with Government locks, and shall not be unlocked or remain unlocked except when such officer is on the plant premises or the premises of an adjacent bonded wine cellar. Deposits of spirits in, or removals of spirits from, such room or building in such portable containers shall be under direct supervision of assigned officers. The proprietor shall, on request of an internal revenue officer, furnish the exact location of any cask, package, case, or similar portable approved container stored on bonded premises.

(72 Stat. 1357; 26 U.S.C. 5202)

§ 201.89 Proprietor's schedule of operations.

The proprietor of each plant qualified for the production or bonded storage of spirits shall furnish the assigned officer a written schedule of operations. The schedule shall be given at least one day in advance of the operations and shall show, for the period covered by the schedule, all activities related to such production and storage (including denaturation and bottling in bond) which the provisions of this part require to be conducted under supervision of an internal revenue officer.

(72 Stat. 1356, 1357; 26 U.S.C. 5201, 5202)

§ 201.90 Denaturation of spirits.

Denaturation of spirits shall be conducted under the direct supervision of an assigned officer, or be controlled by such other methods, which may include the use of meters or other devices affording equal protection to the revenue, as the Director may approve.

(72 Stat. 1357; 26 U.S.C. 5202)

GAUGING

§ 201.91 General.

The gauge of spirits shall be made by the proprietor unless required by this part to be made by an assigned officer. Such gauge shall be accomplished by determining the proof and quantity pursuant to the provisions of this part and Part 186 of this chapter. When spirits (including denatured spirits) or wines are to be volumetrically measured, such measure shall be made (a) in tanks, (b) in tank cars or tank trucks, if calibration charts of such tank cars or tank trucks are provided and such charts have been accurately prepared, and certified as accurate, by engineers or other persons qualified to calibrate such conveyances, or (c) by such meters or other devices or methods as are authorized by the Director or as are otherwise provided in this part.

(72 Stat. 1357, 1358, 1396; 26 U.S.C. 5202, 5204, 5559)

§ 201.92 Quantity determination of spirits in bond.

Where spirits in bond are gauged for determination of tax, or are filled into packages or gauged in packages, the quantity shall be determined by weight and proof. In all other instances where spirits are gauged in bond, or are gauged for transfer in bond or for withdrawal from bond free of tax or without payment of tax, unless a determination by weight (or by another method approved by the assistant regional commissioner) is required by this part, the quantity may be determined by volume.

(72 Stat. 1396; 26 U.S.C. 5559)

§ 201.93 Quantity determination of denatured spirits.

The quantity of denatured spirits shall be determined by volume or weight in accordance with the applicable provisions of this part and Parts 186 and 212 of this chapter.

(72 Stat. 1396; 26 U.S.C. 5559)

§ 201.94 Quantity determination of rectified products.

Where gauge is made to determine tax on rectified products, the quantity (wine gallons) shall be determined by volume or by weight and apparent proof (hydrometer indication, corrected to 60 degrees Fahrenheit), pursuant to the provisions of Part 186 of this chapter. Where it is impracticable to measure rectified products such as sparkling wines, rock and rye, and similar specialties in tanks, the assistant regional commissioner may, pursuant to written application of the

proprietor, authorize the volumetric measurement of such products on the basis of the number of filled bottles of each standard of fill corrected to volume to 60 degrees Fahrenheit. In such case, any rectification tax and any additional wine tax shall be determined after bottling.

(72 Stat. 1396; 26 U.S.C. 5559)

§ 201.95 Adjustment of proof.

(a) *Packages in bond.* The proof of spirits in bond (except spirits which are less than 100 degrees of proof) which are to be filled into packages, including consolidated packages, shall be adjusted to a whole degree prior to such packaging: *Provided,* That when the spirits are to be packaged in porous wooden packages and such spirits are not to be withdrawn from bond on determination of tax on the original gauge, the proof may be adjusted to within two-tenths of a whole degree. The proof of spirits withdrawn after tax determination on the basis of individual package gauge shall be determined to the nearest tenth and rounded to a whole degree in accordance with the provisions of Part 186 of this chapter.

(b) *Bulk spirits.* Except as provided in paragraph (a) of this section and subject to the applicable provisions of this chapter, the proof of bulk spirits stored on bonded premises, to be transferred in bond, or to be withdrawn from bond, may be adjusted to any desired proof, including tenths of a degree. The proof of such spirits to be withdrawn after tax determination shall be determined to the nearest tenth, which shall be used in determining the taxable gallons. The proof of spirits to be transferred in bond or withdrawn from bond in bulk conveyances or by pipeline free of tax or without payment of tax for an authorized purpose shall be determined to the nearest tenth and if not adjusted to a whole degree shall be rounded to a whole degree in accordance with the provisions of Part 186 of this chapter, and such whole degree shall be the proof of transfer or withdrawal and shall be used in determining the proof gallons. The withdrawal or transfer form shall be noted to show the actual proof of the spirits. Spirits in tanks shall be thoroughly agitated before the proof is determined.

(c) *Bottling in bond.* The proof of spirits to be bottled in bond shall be reduced to 100 degrees for domestic bottling. Spirits may be bottled in bond for export at 80 degrees of proof or more.

(d) *Bottling after tax determination.* The proof of spirits to be bottled or packaged after tax determination shall be adjusted to a whole degree prior to determination of the rectification tax, if any, and the filling of packages or bottles: *Provided,* That when such spirits are to be bottled and labeled in tenths of a degree of proof, the proof shall be adjusted to such tenths of a degree, and the fractional degree of proof shall be used in determining the rectification tax.

§ 201.96 Commercial gauging.

The assistant regional commissioner may, pursuant to application by the proprietor, permit the weighing and proofing of specific packages of spirits on bonded premises for purposes such as obtaining data on storage conditions or the results of special production procedures. Applications for permission to do such work shall contain sufficient information to enable the assistant regional commissioner to evaluate the merits of the request. When such applications are approved the proprietor shall in each instance, before beginning the operation, inform the assigned officer of the time and place where the work will be done.

GOVERNMENT LOCKS AND SEALS

§ 201.97 Government locks and seals.

The assistant regional commissioner shall supply all Government locks and seals to be used at plants. The keys to all Government locks shall remain at all times in the custody of an assigned officer, who will open and close all such locks. Government seals will be affixed by an assigned officer. The assigned officer may lock or require the sealing of any equipment (including tanks) on plant premises.

(72 Stat. 1353, 1357; 26 U.S.C. 5178, 5202)

§ 201.98 Preparation for Government locks and seals.

The proprietor shall equip for locking, or prepare for sealing, all buildings, rooms, and equipment on which Government locks or seals are required under this part. Such preparation shall include the furnishing of necessary wire, straps, and all covers and affixing of the same.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.99 Removal of Government locks and seals.

Government locks and seals shall not be removed without authorization of the assigned officer or the assistant regional commissioner except as provided in this part.

(72 Stat. 1357; 26 U.S.C. 5202)

SEALED CONVEYANCES FOR TRANSPORTING IN BOND

§ 201.100 Sealed conveyances.

A conveyance to be used as a sealed conveyance, shall be constructed in such a manner that all openings may be closed and secured by Government seals, or other devices approved by the Director, in order that access cannot be gained without showing evidence of tampering. The Government seals, or other approved devices for securing the conveyance, shall be attached as soon as the conveyance is loaded for shipment.

(72 Stat. 1360; 26 U.S.C. 5206)

CONVEYANCE OF SPIRITS ON PLANT PREMISES

§ 201.101 Taxpaid spirits on bonded premises.

Except in the case of—

(a) Spirits in the process of prompt removal from bonded premises on payment or determination of the tax; or

(b) Spirits which have been bottled in bond under section 5233, I.R.C., and which are returned to bonded premises for rebottling, relabeling, or restamping in accordance with the provisions of section 5233(d), I.R.C.; or

(c) Spirits returned to bonded premises in accordance with the provisions of section 5215, I.R.C.; or

(d) Spirits, held on bonded premises, on which the tax has become payable by operation of law, but on which the tax has not been paid;

no spirits on which the tax has been paid or determined shall be stored or allowed to remain on the bonded premises of a plant. Spirits on which the tax has been paid or determined may be conveyed within a plant across bonded premises, but such spirits shall not be stored or allowed to remain on the bonded premises and shall be kept separate and apart from spirits on which the tax has not been paid or determined.

(72 Stat. 1404; 26 U.S.C. 5612)

§ 201.102 Conveyance of untaxpaid spirits within a plant.

Spirits on which the tax has not been paid or determined may be conveyed (a) from the production facilities of a plant to the bonded warehouse facilities of such plant, (b) from the bonded warehouse facilities of a plant to the production facilities of such plant, or (c) between different portions of the bonded warehouse facilities of the same plant, across any other premises of such plant or (by uninterrupted transportation) over any public thoroughfare: *Provided,* That, (1) such spirits are not stored or allowed to remain on any premises of such plant other than bonded premises, (2) such spirits are kept completely separate and apart from spirits on which the tax has been paid or determined, (3) a description of the means and route of such conveyance and of the facilities between which such spirits will be conveyed has been submitted to and approved by the assistant regional commissioner, and (4) consent of surety on bond, Form 2601, has been furnished by the proprietor, on Form 1533, extending the terms of such bond to cover such conveyance of such spirits.

(72 Stat. 1356, 1398; 26 U.S.C. 5201, 5601)

§ 201.103 Spirits in Customs custody.

Spirits in Customs custody may be conveyed, when necessary, across distilled spirit plant premises: *Provided,* That (a) such spirits are not stored or allowed to remain on the premises of such plant, (b) such spirits are kept separate and apart from other spirits on such premises and are moved expeditiously, (c) a description of the means and route of conveyance of such spirits across the plant premises has been submitted to and approved by the assistant regional commissioner, and (d) consent of surety on bond, Form 2601, has been furnished by the proprietor, on Form 1533, extending the terms of such bond to cover such conveyance of such spirits.

PENALTIES OF PERJURY

§ 201.104 Execution under penalties of perjury.

When a return, form, or other document called for under this part is re-

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

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

Subpart E—Location and Use

§ 201.111 Restrictions as to location.

Plants shall not be located in any dwelling house, or in any shed, yard, or enclosure connected with any dwelling house, or on board any vessel or boat, or on premises where beer or wine is produced, or liquors of any description are retailed, or (except as provided in § 201.115) on premises where any other business is carried on.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.112 Bonded warehouses not on production premises.

A bonded warehouse, other than one established on bonded premises of a plant qualified for production of spirits, or one contiguous to a distillery operated by the bonded warehouseman, may be established only if the need therefor is clearly shown and the prospective needs of the warehouseman will be for the bonded storage of not less than 250,000 wine gallons of spirits: *Provided,* That where commercial bonded warehouse facilities are not available in an area and it is impractical to have a warehouse of such capacity, the Director may approve the establishment of a warehouse without regard to the minimum storage requirements. The application for registration to establish a warehouse under the provisions of this section shall be accompanied by a separate written application, in triplicate, setting forth the necessity for the establishment of the warehouse, showing the approximate quantity of spirits that will be received, stored, and withdrawn annually, the probable number of depositors of spirits, and the approximate number of persons to be served from the warehouse, together with any other data or documents indicating the prospective volume of business or need for establishment. The application for registration shall not be approved if the proposed location of the warehouse would constitute a jeopardy to the revenue, satisfactory evidence of the need for establishment of the warehouse has not been submitted, or the prospective volume of business would be insufficient to warrant the expense of supervision by internal revenue officers. The Director may limit the type of operation, such as, for bulk storage only, for package storage only, or for bulk storage and denaturing only, which may be conducted at a bonded warehouse which is to be established without regard to the minimum storage requirements. The proprietor of a bonded warehouse established for a limited type of operation shall not, in any manner, expand or change his operation to include any other type of operations until, pursuant to written application to make such change, he has obtained the approval of the Director.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.113 Taxpaid bottling facilities.

Facilities for the bottling or packaging of taxpaid spirits or taxpaid spirits and wines (other than on bottling premises qualified for rectification) may be established only by (a) the proprietor of a plant qualified for the production or bonded storage of spirits, or (b) a State or political subdivision thereof. Only one such bottling facility may be established by the proprietor in conjunction with each such plant.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.114 Facilities for bottling in bond.

Facilities for the bottling in bond of spirits may be established only in a separate room or building on bonded premises by a proprietor of a plant qualified under this part to store spirits on such bonded premises in casks, packages, cases, or similar portable approved containers. Notwithstanding the provisions of § 201.116, the bottling-in-bond facilities shall not be used for the storage of spirits.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.115 Use of premises.

No business or operation shall be conducted on the premises of a plant other than those authorized to be carried on or conducted by the notice of registration of such plant.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.116 Storage rooms or buildings on bonded premises.

Facilities for the storage on bonded premises of distilled spirits in casks, packages, cases, and/or similar portable approved containers shall be established in a room or building used exclusively for the storage, bottling, and/or packaging of spirits, and activities related thereto.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.117 Continuity of premises.

The continuity of the plant shall be unbroken except for separations by public waterways, thoroughfares, or carrier rights-of-way: *Provided,* That where there are other separations of the plant premises and all parts of the plant premises are in the same general location the Director may authorize the assistant regional commissioner to approve the registration of the plant if the assistant regional commissioner finds that the separated areas can be supervised economically and effectively, and the Director finds that the revenue will not be jeopardized thereby.

§ 201.118 Location of bonded and bottling premises.

Bottling premises shall not be located on the bonded premises of a plant. Where bonded premises and bottling premises are located in the same building, doors and other openings affording intercommunication between such premises shall be permitted only where the assistant regional commissioner finds that the revenue will not be jeopardized thereby. Such doors and other openings shall be equipped for locking.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.119 General plant premises.

General premises (i.e., other than bonded premises or bottling premises) may be included as a part of a plant when so described in the notice of registration. Such general premises may not be used for any of the operations required to be conducted on bonded or bottling premises. Business offices and service facilities may be included as a part of such general premises and such premises may be utilized for the conduct of such other business as may be authorized for such premises under the provisions of section 5178(b), I.R.C.

§ 201.120 Denaturing facilities.

Facilities for denaturing spirits may be established only on the bonded premises of a plant operated by a proprietor who is authorized to produce spirits, or by a controlled or wholly-owned subsidiary (as defined in § 201.206) of such a proprietor.

(72 Stat. 1369; 26 U.S.C. 5241)

Subpart F—Qualification of Distilled Spirits Plants

§ 201.131 General requirements for registration.

A person shall not engage in the business of a distiller, bonded warehouseman, rectifier, or bottler of distilled spirits, unless he has made application for and has received notice of registration of his plant with respect to such business as provided in this part. Application for registration shall be made on Form 2607 to the assistant regional commissioner. Each application shall be executed under penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the application or incorporated by reference shall be deemed to be a part thereof. The assistant regional commissioner may, in any instance where the outstanding notice of registration is inadequate or incorrect in any respect, require by registered or certified mail the filing of an application on Form 2607 to amend the notice of registration, specifying the respects in which amendment is required. Within 60 days after the receipt of such notice, the proprietor shall file such application.

(72 Stat. 1349; 26 U.S.C. 5171, 5172)

§ 201.132 Data for application for registration.

Application on Form 2607 shall be prepared in accordance with the headings on the form, and instructions thereon and issued in respect thereto, and shall include the following:

(a) Serial number and statement of purpose for which filed.

(b) Name and principal business address of the applicant, and the location of the plant if different from the business address.

(c) Statement of the type of business organization and of the persons interested in the business, supported by the items of information listed in § 201.148.

(d) Statement of the business or businesses to be conducted.

(e) List of applicant's operating and basic permits, and of the qualification

bonds (including those filed with the application) with the name of the surety or sureties for each bond.

(f) List of the offices, the incumbents of which are authorized by the articles of incorporation or the board of directors to act on behalf of the proprietor or to sign his name.

(g) Plat and plans (see §§ 201.154–201.159).

(h) Description of the plant (see § 201.149).

(i) List of major equipment (see § 201.147).

(j) As applicable, the following:

(1) With respect to the business of a distiller:

(i) Statement of maximum proof gallons that will be (*a*) produced during a period of 15 days and (*b*) in transit to the bonded premises. (Not required if the qualification bond is in the maximum sum.)

(ii) Statement of daily producing capacity in proof gallons.

(iii) Statement of process (see § 201.153).

(iv) Statement whether denaturing operations will be conducted.

(v) Statement of title to the bonded premises and interest in the equipment used for the production of spirits, accompanied where required by consent on Form 1602 (see §§ 201.151–201.152).

(2) With respect to the business of a bonded warehouseman.

(i) Statement of the maximum proof gallons that will be stored on, and in transit to, the bonded premises. (Not required if the qualification bond is in the maximum sum.)

(ii) Description of the system of storage, and statement of storage capacity (bulk, packages, and cases).

(iii) Statement whether denaturing and/or bottling-in-bond operations will be conducted.

(3) With respect to the business of a rectifier, a statement of the maximum tax the rectifier will be liable to pay under sections 5021 and 5022, I.R.C., in a 30-day period. (Not required if the qualification bond is in the maximum sum.)

(4) With respect to the business of bottling after tax determination, a statement of the name, address, and plant number of a plant qualified by the applicant for production or bonded warehousing. (Not required if the plant being registered is qualified for production, bonded warehousing, or rectification, or if the applicant is a State or political subdivision thereof.)

(5) With respect to any other business to be conducted on the plant premises, as provided by Subpart D of this part, a description of such business, a list of the buildings and/or equipment to be used, and a statement as to the relationship, if any, of such business to distilled spirits operations at the plant.

Where any of the information required by paragraph (c) or paragraph (g) of this section is on file with the assistant regional commissioner, such information, if accurate and complete, may, by incorporation by reference thereto by the applicant, be made a part of the application for registration. The applicant shall, when so required by the assistant regional commissioner, furnish as a part of his application for registration such additional information as may be necessary for the assistant regional commissioner to determine whether the application for registration should be approved.

(72 Stat. 1349; 26 U.S.C. 5171, 5172)

§ 201.133 Notice of registration.

The application for registration, when approved, shall constitute the notice of registration of the plant. A plant shall not be registered or reregistered under this subpart until the applicant has complied with all requirements of law and regulations relating to the qualification of the business or businesses in which the applicant intends to engage. A plant shall not be operated unless the proprietor has a valid notice of registration covering the businesses and operations to be conducted at such plant. In any instance where a bond is required to be given or a permit is required to be obtained with respect to a business or operation before notice of registration of the plant may be received with respect thereto, the notice of registration shall not be valid with respect to such business or operation in the event that such bond or permit is no longer in effect and an application for reregistration shall be filed and notice of registration again obtained before thereafter engaging in such business or operation at such plant.

(72 Stat. 1349; 26 U.S.C. 5171, 5172)

§ 201.134 Maintenance of registration file.

The proprietor shall maintain his registration file in looseleaf form in complete and current condition, readily available at the plant for inspection by internal revenue officers.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.135 Powers of attorney.

The proprietor shall execute and file with the assistant regional commissioner a Form 1534, in accordance with the instructions on the form, for every person authorized to sign or to act on behalf of the proprietor. (Not required for persons whose authority is furnished in the application for registration.)

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.136 Operating permits.

Except as provided in § 201.138, every person required to file an application for registration under § 201.131 shall make application for and obtain an operating permit before commencing any of the following operations:

(a) Distilling for industrial use.

(b) Bonded warehousing of spirits for industrial use.

(c) Denaturing spirits.

(d) Bonded warehousing of spirits (without bottling) for nonindustrial use.

(e) Bottling or packaging of spirits for industrial use.

(f) Any other distilling, warehousing, or bottling operation not required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203, 204). Application for such operating permit shall be made on Form 2603 to the assistant regional commissioner.

(72 Stat. 1349, 1370; 26 U.S.C. 5171, 5271)

§ 201.137 Data for application for operating permits.

Each application on Form 2603 shall be executed under the penalties of perjury, and all written statements, affidavits, and other documents submitted in support of the application shall be deemed to be a part thereof. Applications on Form 2603 shall be prepared in accordance with the headings on the form, and instructions thereon and issued in respect thereto, and shall include the following:

(a) Name and principal business address of the applicant.

(b) Plant address, if different from the business address.

(c) Description of the operation to be conducted for which an operating permit must be obtained.

(d) Statement of type of business organization and of the persons interested in the business, supported by the items of information listed in § 201.148.

(e) Trade names (see § 201.146).

(f) On specific request of the assistant regional commissioner, furnish a statement showing whether the applicant or any of the persons whose names and addresses are required to be furnished under the provisions of § 201.148(a)(8) and (c) has—(1) ever been convicted of a felony or misdemeanor under Federal or State law, (2) ever been arrested or charged with any violation of State or Federal law (convictions or arrests or charges for traffic violations need not be reported as to subparagraphs (1) and (2) of this paragraph, if such violations are not felonies), or (3) ever applied for, held, or been connected with a permit, issued under Federal law to manufacture, distribute, sell, or use spirits or products containing spirits, whether or not for beverage use, or held any financial interest in any business covered by any such permit, and, if so, give the number and classification of such permit, the period of operation thereunder, and state in detail whether such permit was ever suspended, revoked, annulled, or otherwise terminated.

Where any of the information required by paragraph (d) of this section is on file with the assistant regional commissioner, the applicant may, by incorporation by reference thereto, state that such information is made a part of the application for an operating permit. The applicant shall, when so required by the assistant regional commissioner, furnish as a part of his application for an operating permit such additional information as may be necessary for the assistant regional commissioner to determine whether the applicant is entitled to the permit.

(72 Stat. 1349, 1370; 26 U.S.C. 5171, 5271)

§ 201.138 Exceptions to operating permit requirements.

The provisions of § 201.136 shall not apply to any agency of a State or politi-

cal subdivision thereof, or to any officer or employee of any such agency acting for such agency.

(72 Stat. 1349, 1370; 26 U.S.C. 5171, 5271)

§ 201.139 Issuance of operating permits.

Only one operating permit will be issued for a plant. Such operating permit shall designate the businesses or operations permitted thereby (including limitations with respect thereto). All of the provisions of this part relating to the performance of the operations covered by the permit shall be deemed to be included in the provisions and conditions of the permit, the same as if set out therein.

(72 Stat. 1349, 1370; 26 U.S.C. 5171, 5271)

§ 201.140 Duration of permits.

Operating permits are continuing, unless automatically terminated by the terms thereof, suspended or revoked as provided in § 201.144, or voluntarily surrendered. The provisions of § 201.161 shall be deemed to be a part of the terms and conditions of all operating permits issued pursuant to this part.

(72 Stat. 1370; 26 U.S.C. 5271)

§ 201.141 Posting of permits.

Operating permits shall be kept posted available for inspection at the plant.

(72 Stat. 1349, 1370; 26 U.S.C. 5171, 5271)

§ 201.142 Denial of permit.

If, on examination of an application for an operating permit (or on the basis of inquiry or investigation with respect thereto) the assistant regional commissioner has reason to believe that—

(a) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder, and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade connections, not likely to maintain operations in compliance with chapter 51, I.R.C., or regulations issued thereunder; or

(b) The applicant has failed to disclose any material information required, or has made any false statement as to any material fact, in connection with his application; or

(c) The premises on which the applicant proposes to conduct the business are not adequate to protect the revenue;

the assistant regional commissioner may institute proceedings for the denial of the application in accordance with the procedures set forth in Part 200 of this chapter.

(72 Stat. 1370; 26 U.S.C. 5271)

§ 201.143 Correction of permits.

Where an error in an operating permit is discovered, the proprietor shall, on demand of the assistant regional commissioner, immediately return the permit for correction.

(72 Stat. 1370; 26 U.S.C. 5271)

§ 201.144 Suspension or revocation.

Whenever the assistant regional commissioner has reason to believe that any person holding an operating permit—

(a) Has not in good faith complied with the provisions of chapter 51, I.R.C., or regulations issued thereunder; or

(b) Has violated the conditions of such permit; or

(c) Has made any false statement as to any material fact in his application therefor; or

(d) Has failed to disclose any material information required to be furnished; or

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of any offense under Title 26, U.S.C., punishable as a felony or of any conspiracy to commit such offense; or

(f) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years;

the assistant regional commissioner may institute proceedings for the revocation or suspension of such permit in accordance with the procedures set forth in Part 200 of this chapter.

(72 Stat. 1370; 26 U.S.C. 5271)

§ 201.145 Rules of practice in permit proceedings.

The regulations in Part 200 of this chapter are made applicable to the procedure and practice in connection with the disapproval of any application for an operating permit required by this subpart, and in connection with the suspension and revocation of such permit.

(72 Stat. 1370; 26 U.S.C. 5271)

§ 201.146 Trade names.

Where a trade name is to be used in connection with the operations of a plant for which an operating permit is required, the proprietor shall list such trade name on Form 2603 (showing the business operation or operations in which such trade name will be used), and the offices where such name is registered, supported by copies of any certificate or other document filed or issued in respect to such name. Where any distilling, warehousing, or bottling operation is required to be covered by a basic permit under the Federal Alcohol Administration Act (49 Stat. 978; 27 U.S.C. 203, 204), regulations issued under such Act govern the approval and use of trade names in connection with such operations. Operations shall not be conducted under a trade name until the proprietor is in possession of an operating or basic permit covering the use of such name.

(72 Stat. 1370; 26 U.S.C. 5271)

§ 201.147 Major equipment.

The following items of major equipment, if on the plant premises, shall be described in the application for registration:

(a) Mash tubs and cookers (serial number and capacity).

(b) Fermenters (serial number and capacity).

(c) Tanks used in the production, storage, denaturation, rectification, bottling, and measurement of spirits and tanks used in the storage and the measurement of denatured spirits (designated use (or uses), serial number, capacity, and method of gauging or measurement).

(d) Permanently installed scales and other measuring equipment (including meters).

(e) Bottling lines (list separately as to use and serial number).

(f) Stills (serial number, kind, capacity, and intended use). (The capacity shall be stated as the estimated maximum proof gallons of spirits capable of being produced every 24 hours, or (for column stills) may be represented by a statement of the diameter of the base and number of plates.)

(g) Other items of fixed equipment used in the production, storage, rectification and/or bottling of spirits, if valued at $5,000 or more (description and use).

The description shall show, as to each item of equipment, the location thereof in the plant, and the premises (bonded or bottling) and the facility (production, storage, denaturation, or bottling on bonded premises, and rectification or bottling on bottling premises) in which it is to be used. Where any equipment is to be used in two or more facilities, it shall be identified as for multiple use, and its use in each facility shall be shown.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.148 Organizational documents.

The supporting information required by paragraph (c) of § 201.132, and paragraph (d) of § 201.137, includes, as applicable:

(a) *Corporate documents.* (1) Certified true copy of articles of incorporation and any amendments thereto.

(2) Certified true copy of the corporate charter or a certificate of corporate existence or incorporation.

(3) Certified true copy of certificate authorizing the corporation to operate in the State where the plant is located (if other than that in which incorporated).

(4) Certified extracts or digests of minutes of meetings of stockholders, showing election of directors.

(5) Certified true copy of bylaws.

(6) Certified extracts or digests of minutes of meetings of board of directors, showing election of officers.

(7) Certified extracts or digests of minutes of meetings of board of directors, authorizing certain individuals to sign for the corporation.

(8) Names and addresses of officers and directors.

(9) Statement showing the number of shares of each class of stock or other evidence of ownership, authorized and outstanding, the par value thereof, and the voting rights of the respective owners or holders.

(b) *Articles of partnership.* 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.

(c) *Statement of interest.* (1) names and addresses of the 10 persons having the largest ownership or other interest in each of the classes of stock in the corporation, or other legal entity, and the nature and amount of the stockholding or other interest of each, whether such interest appears in the name of the

interested party or in the name of another for him. If a corporation is wholly owned or controlled by another corporation, those persons of the parent corporation who meet the above standards are considered to be the persons interested in the business of the subsidiary, and the names thereof need be furnished to the assistant regional commissioner only at his request.

(2) In the case of an individual owner or partnership, name and address of every person interested in the plant, whether such interest appears in the name of the interested party or in the name of another for him.

(72 Stat. 1349, 1370; 26 U.S.C. 5172, 5271)

§ 201.149 Description of plant.

The application for registration shall include a description of each tract of land comprising the plant, clearly indicating the bonded premises, the bottling premises, and any other premises to be included as part of the plant. In the case of a plant producing spirits, where the premises subject to tax lien under section 5004(b), I.R.C., are not coextensive with the bonded premises, the tract of land on which any building containing any part of the bonded premises is situated shall also be described. The description of each tract of land subject to lien under section 5004(b), I.R.C., shall be by courses and distances, in feet and inches (or hundredths of feet), with the particularity required in conveyances of real estate. If any area (or areas) of the plant is to be alternated between bonded and bottling premises, as provided in § 201.175, each such area shall be described, and shall be identified by number or letter. The description of denaturing facilities (and equipment) shall show the manner of segregation of such facilities from other facilities which prevents contamination of undenatured spirits. Each building and outside tank shall be described (location, size, construction, arrangement, and means of protection and security), referring to each by its designated number or letter, and use. If a plant consists of a room or floor of a building, a description of the building in which the room or floor is situated and its location therein shall be given.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.150 Registry of stills.

The provisions of Part 196 of this chapter are applicable to stills located on plant premises. The listing of stills for distilling in the application for registration, and the approval of the application for registration, shall constitute registration of such stills.

(72 Stat. 1349, 1355; 26 U.S.C. 5172, 5179)

§ 201.151 Statement of title.

The application for registration shall include a statement setting forth the name and address of the owner in fee of the lot or tract of land subject to lien under section 5004(b)(1), I.R.C., the buildings thereon, and the equipment used for the production of spirits. If the applicant is not the owner in fee of such property, or if such property is encumbered by mortgage or other lien, the application for registration shall be accompanied by a consent on Form 1602, as provided in § 201.152, unless indemnity bond on Form 3A is filed, as provided in § 201.200.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.152 Consent on Form 1602.

Consents on Form 1602, where required by this subpart, shall be executed by the owner (if other than the proprietor) of property subject to lien under section 5004(b)(1), I.R.C., and by any mortgagee, judgment creditor, or other person having a lien on such property, duly acknowledging that the property may be used for the purpose of distilling spirits, subject to the provisions of law, and expressly stipulating that the lien of the United States, for taxes on distilled spirits produced thereon and penalties relating thereto, shall have priority of such mortgage, judgment, or other encumbrance, and that in the case of the forfeiture of such property, or any part thereof, the title to the same shall vest in the United States, discharged from such mortgage, judgment, or other encumbrance.

(72 Stat. 1349; 26 U.S.C. 5172, 5173)

§ 201.153 Statement of process.

The statement of process in the application for registration shall set forth a step-by-step description of the process employed to produce spirits, commencing with the treating, mashing, or fermenting of the raw materials or substances and continuing through each step of the distilling, redistilling, purifying and refining processes to the production gauge, and showing the kind and approximate quantity of each material or substance used in producing, purifying, or refining each type of spirits.

(72 Stat. 1349; 26 U.S.C. 5172)

PLAT AND PLANS

§ 201.154 General requirements.

The proprietor shall submit, as part of his application for registration, a plat of the premises and plans, in triplicate, as required by this subpart.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.155 Preparation.

Each plat and floor plan shall be drawn to a scale of not less than 1/100 inch per foot and shall show the cardinal points of the compass. Each sheet of the drawings shall—

(a) Bear a distinctive title;

(b) Be numbered in consecutive order, the first sheet being designated number 1; and

(c) Have a clear margin of not less than 1 inch on each side and have outside measurements of 15 by 20 inches: *Provided,* That the assistant regional commissioner may authorize the use of larger sheets if they can be satisfactorily filed.

Plats and plans shall be submitted on tracing cloth, sensitized linen, or blueprint paper, and may be original drawings, or, if clear and distinct, reproductions made by lithoprint, ditto, or ozalid processes. The director may approve other materials and methods which he finds are equally acceptable.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.156 Depiction of plant.

The plat shall show the boundaries of the plant, and delineate separately the portions thereof comprising the bonded premises, the bottling premises, and any other premises to be included as a part of the plant, in feet and inches (or hundredths of feet). The delineation of these premises shall agree with the description given in the application for registration. The plat shall show (a) all buildings on the plant premises, (b) all basic equipment (including tanks and stills) not located in buildings, and (c) all driveways, public thoroughfares, and railroad rights-of-way contiguous to, connecting, or separating the plant premises. Each building, enclosed area, and outside tank shall be identified. Each pipeline for the conveyance of spirits to and from the premises of the plant, and between bonded and bottling premises, shall be shown on the plat in blue, and each pipeline for the conveyance of denatured spirits to and from the premises of the plant shall be shown on the plat in green: *Provided,* That in lieu of such colors, the pipelines may be identified by symbols which permit ready identification of their uses. The purpose for which such pipelines are used and the points of origin and termination shall be indicated on the plat. Where premises on which spirits, wines, or beer are manufactured, stored, or sold are contiguous to a plant, the plat shall show the relative location of the plant and such contiguous premises, and all pipelines and other connections between them (public utility pipelines and similar connections excepted). The outline of such contiguous premises and of the plant shall be shown in contrasting colors. Where a plant consists of less than an entire building, the plat shall show the building, and the land on which such building is situated. Where a plant consists of, or includes, one or more floors or rooms of a building that is not wholly included in the plant, the floors or rooms so used shall be shown on a floor plan. Each floor plan shall show the location and dimensions of the floors or rooms, the means of ingress and egress, and, insofar as required on plats by this section, pipelines and contiguous premises. Where construction of floors or rooms is identical, a typical plan of such floors or rooms will be acceptable. Where the floor plan shows the entire plant and includes all the information required by a plat, such plan may be accepted in lieu of a plat.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.157 Flow diagrams.

Flow diagrams (plans) shall be submitted reflecting the production processes on bonded premises. The flow diagram shall show major equipment (identified as to use) in its relative operating sequence, with essential connecting pipelines (appropriately identified by color) and valves. The flow diagram shall include the entire closed distilling

system. Minor equipment (such as pumps, pressure regulators, rotometers) need not be shown. The direction of flow through the pipelines shall be indicated by arrows.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.158 Certificate of accuracy.

The plat and plans shall bear a certificate of accuracy in the lower right-hand corner of each sheet, signed by the proprietor, substantially as follows:

(Name of proprietor)

(Distilled spirits plant No.)

(Address)

Accuracy certified by:

(Name and capacity—for the proprietor)

Sheet No. ____, Date ____

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.159 Revised plats and plans.

Any revised plat or plan sheet shall bear the same number as the sheet superseded, but shall be given a new date. Any additional plat or plan sheet shall be given a new number in consecutive order, or shall be otherwise numbered and lettered in such manner as will permit the filing of the plat or plan in proper sequence.

(72 Stat. 1349; 26 U.S.C. 5172)

CHANGES AFTER ORIGINAL QUALIFICATION

§ 201.160 Application for amended registration.

Where there is a change with respect to the information shown in the notice of registration, the proprietor shall submit, within 10 days of such change (except as otherwise provided in this subpart), an application on Form 2607 for amended registration. Such application shall set forth, on sheets appropriately numbered or otherwise identified, the information necessary to make the notice of registration accurate and current. Where the change affects only pages or parts of pages of the notice of registration, such complete pages shall be submitted as will enable the replacement of the pages affected and maintenance of the file as provided in § 201.134.

(72 Stat. 1349; 26 U.S.C. 5171, 5172)

§ 201.161 Automatic termination of permits.

(a) *Permits not transferable.* Operating permits issued under this part shall not be transferred. In the event of the lease, sale, or other transfer of such a permit, or of the operations authorized thereby, the permit shall thereupon automatically terminate.

(b) *Corporations.* In the case of a corporation holding an operating permit under this part, if actual or legal control of the permittee corporation changes, directly or indirectly, whether by reason of change in stock ownership or control (in the permittee corporation or in any other corporation), by operation of law, or in any other manner, the permittee shall, within 10 days of such change, give written notice thereof, executed under the penalties of perjury, to the assistant regional commissioner; such permit may remain in effect with respect to the operation covered thereby until the expiration of 30 days after such change, whereupon such permit shall automatically terminate: *Provided,* That if within such 30-day period an application for a new permit covering such operation is made, then the outstanding operating permit may remain in effect with respect to the continuation of the operation covered thereby until final action is taken on such application. When such final action is taken, such outstanding operating permit shall thereupon automatically terminate.

(c) *Basic permits.* The termination of basic permits is governed by the provisions of 27 CFR Part 1.

(72 Stat. 1370; 26 U.S.C. 5271)

§ 201.162 Change in name of proprietor.

Where there is to be a change in the individual, firm, or corporate name, the proprietor shall file application to amend the registration and to amend the operating and/or basic permit; a new bond or consent of surety will not be required. In addition, he shall conform the sign to the provisions of § 201.235. Operations may not be conducted under the new name prior to approval of the amended registration and issuance of the amended permit.

(72 Stat. 1349, 1370; 26 U.S.C. 5172, 5271)

§ 201.163 Change of trade name.

Where there is to be a change in, or addition of, a trade name, the proprietor shall file application to amend his operating and/or basic permit; a new bond or consent of surety will not be required. Operations may not be conducted under the new trade name prior to issuance of the amended permit.

(72 Stat. 1370; 26 U.S.C. 5271)

§ 201.164 Change in proprietorship.

(a) *General.* Where there is a change in the proprietorship of a plant qualified under this part, the outgoing proprietor shall comply with the requirements of § 201.176, and the successor shall, before commencing operations, apply for and obtain the required permits, file the required bonds, and file application for and receive notice of registration of the plant in the same manner as a person qualifying as the proprietor of a new plant, except that he may adopt the plats and plans of the predecessor by incorporation by reference thereto on Form 2607. Spirits may be transferred from an outgoing proprietor of a plant to a successor in the manner provided in § 201.174.

(b) *Fiduciary.* If the successor to the proprietorship of a plant is an administrator, executor, receiver, trustee, assignee or other fiduciary, he shall comply with the provisions of paragraph (a) of this section except that he may, in lieu of filing a new bond, furnish consent of surety extending the terms of his predecessor's bond, and he may also incorporate by reference in his application for registration on Form 2607 any pertinent information contained in his predecessor's notice of registration. The fiduciary shall furnish a certified copy of the order of the court or other pertinent document showing his qualification as such fiduciary. The effective dates of the qualifying documents filed by the fiduciary shall be the effective date of the court order, or the date specified therein for him to assume control. If the fiduciary was not appointed by a court, the date of his assuming control shall coincide with the effective date of the qualifying documents filed by him.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.165 Adoption of plat and plans.

The adoption by a successor of the plat and plans of his predecessor shall be in the form of a certificate to be made a part of the application for registration, in which shall be set forth the identity of the plant and of the predecessor, a description (by sheet number and title) of each plat or plan sheet adopted, and a certification that the adopted plat and plans accurately depict the premises.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.166 Continuing partnerships.

Where, under the laws of the particular State, the partnership is not terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, such surviving partner may continue to operate the plant under the prior qualification of the partnership, provided a consent of surety, wherein the surety and the surviving partner agree to remain liable on the bond given on Form 2601, is filed. If such surviving partner acquires the business on completion of the settlement of the partnership, he shall qualify in his own name from the date of acquisition, as provided in § 201.164(a). The rule set forth in this section shall also apply where there is more than one surviving partner.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.167 Change in location.

Where there is a change in the location of the plant, the proprietor shall file applications to amend the registration of his plant and his operating and/or basic permit, new plat and plans, and either a new bond or a consent of surety on Form 1533. Operations of the plant may not be commenced at the new location prior to approval of the amended registration and issuance of the amended permit.

(72 Stat. 1349, 1370; 26 U.S.C. 5172, 5173, 5271)

§ 201.168 Changes in premises.

Where bonded premises, bottling premises, or any other premises included as a part of the plant are to be extended or curtailed, the proprietor shall file an application to amend the registration of his plant (including amended plat and plans). Facilities to be included by extension or to be excluded by curtailment shall not, prior to approval of the amended registration, be used for other than previously approved purposes.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.169 Change in operations.

Where the proprietor proposes to conduct a new business or operation involving spirits, he shall file applications to amend the registration of his plant and his operating and/or basic permit. If he desires to engage, on the plant premises, in a business, other than the business of a distiller, bonded warehouseman, rectifier, or bottler, he shall submit application to amend the registration of his plant to include the information required under § 201.132(j)(5). The additional operation or business may not be carried on prior to approval of the amended registration and (if required) issuance of the amended permit.

(72 Stat. 1349, 1370; 26 U.S.C. 5172, 5271)

§ 201.170 Change in process.

Where the proprietor desires to produce a new product or make a change in a production process, on bonded premises, which would affect the designation, or substantially affect the character of his product, he shall file an application to amend the registration of his plant to include the amended or new statement of process. The new or changed process may not be used prior to approval of the amended registration.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.171 Changes in construction and use of buildings and equipment.

Where a material change is to be made (a) in the buildings or facilities of a plant (other than extension or curtailment of premises covered by § 201.168), (b) in the use of any portion of a plant, or (c) with respect to plant equipment, which affects the accuracy of the notice of registration (including the plat and plans), the proprietor shall, before making such change, secure approval thereof, pursuant to a written application, in triplicate, submitted to the assistant regional commissioner through the assigned officer, if any. The application shall describe the proposed change specifically and in detail. The proprietor may be required to submit drawings, photographs, or diagrams of the proposed change. The change shall be made under the supervision of an internal revenue officer, if the assistant regional commissioner considers such supervision necessary. The change shall be reflected in the next amendment of the notice of registration (including the plat and plans), unless the assistant regional commissioner requires the immediate filing of an application for amendment. All changes not affecting the accuracy of the notice of registration (including plat and plans) may be made pursuant to a written application, in duplicate, filed with and approved by the assigned officer. The proprietor may make emergency repairs without prior notification to the assigned officer, but where such emergency repairs are made, the proprietor shall promptly notify such officer and file with him a report thereof in triplicate.

(72 Stat. 1349; 26 U.S.C. 5172)

§ 201.172 Change of title.

Where there is a change in the title to any property subject to lien under section 5004(b)(1), I.R.C., the proprietor shall, before continuing operations, file an application to amend the registration of his plant, and, where required by this part, a consent on Form 1602 or, in lieu thereof, an indemnity bond on Form 3A. In addition, the assistant regional commissioner may require the proprietor to file a consent of surety on Form 1533 or a new qualification bond on Form 2601.

(72 Stat. 1349; 26 U.S.C. 5172, 5173)

§ 201.173 Encumbrance.

Where any of the property subject to lien under section 5004(b)(1), I.R.C., becomes encumbered by any judgment, or other lien, the proprietor shall thereupon file (a) an application to amend the registration of his plant, (b) a consent on Form 1602 or an indemnity bond on Form 3A (if such bond in sufficient penal sum is not on file), and (c) consent of surety on Form 1533 or a new qualification bond: *Provided,* That where such property is to be voluntarily subjected to an encumbrance, the documents shall be filed and approved before the property is encumbered.

(72 Stat. 1349; 26 U.S.C. 5172, 5173)

OPERATIONS BY ALTERNATING PROPRIETORS

§ 201.174 Procedure for alternating proprietors.

(a) *General.* A plant, or any part thereof which is suitable for qualification as a separate plant, may be operated alternately by proprietors who have filed and received approval of the necessary bonds and applications for registration, and have otherwise qualified under the provisions of this subpart. Where operations by alternating proprietors are limited to parts of the plant, the notice of registration shall describe the areas or facilities, or combination thereof, which will be alternated, and shall be accompanied by special plats designating the parts of the plant which are to be alternated. A special plat shall be submitted for each arrangement, other than that reflected by the basic plat, under which the premises will be operated. Once such qualifying documents have been approved, and initial operations have been conducted thereunder, the plant, or parts thereof, may be alternated pursuant to approval by the assigned officer of the proprietors' applications on Form 2610. Any transfer of spirits from the outgoing proprietor to the incoming proprietor shall be indicated on Form 2610 filed by each proprietor. Operation of production facilities on bonded premises by an alternating proprietor shall be for one or more calendar days.

(b) *Production facilities.* Distilling materials and unfinished spirits in any production facilities to be alternated shall be processed to completion by the outgoing proprietor unless transferred to the incoming proprietor. All finished spirits shall be marked and removed by the outgoing proprietor in the name in which produced, before production gauge is made of any spirits by the incoming proprietor. Denatured spirits shall be removed from production facilities by the outgoing proprietor unless transferred to the incoming proprietor or retained in tanks under Government lock. Where denatured spirits are to be retained in tanks, the outgoing proprietor shall execute a consent of surety on Form 1533 to continue liability on the qualification bond for the tax on such spirits retained in the facilities, notwithstanding the change in proprietorship.

(c) *Bonded warehousing facilities.* Spirits contained in any bonded warehousing facility to be alternated shall be transferred to the incoming proprietor on Form 236 (accompanying forms not required). The outgoing proprietor shall execute a consent of surety on Form 1533 to continue in effect the qualification bond whenever operation of the facility is to be resumed by him following suspension of operations by an alternate proprietor.

(d) *Bottling premises.* Operations on bottling premises shall be completely finished and all spirits and wines removed from such premises prior to the change in proprietorship: *Provided,* That (1) spirits and wines on hand, including those in the process of rectification, may be transferred to the incoming proprietor, or (2) the spirits and wines may be retained, under lock, but in such case the outgoing proprietor shall (unless qualification bond is not required for the plant) execute a consent of surety on Form 1533 to continue the liability on the qualification bond for the tax on such spirits and wines retained on the premises notwithstanding the change in proprietorship. Products subject to tax under the provisions of sections 5021 and 5022, I.R.C. (including partially rectified products) which are being transferred to a successor shall be taxpaid by the outgoing proprietor.

(e) *Records.* Each proprietor shall maintain separate records and submit separate reports. In the case of spirits in bonded warehousing facilities, the deposit records for the outgoing proprietor shall be used for the incoming proprietor. All transfers of distilling materials, spirits, and wines shall be reflected in the records of each proprietor.

(72 Stat. 1340, 1370; 26 U.S.C. 5172, 5271)

ALTERNATE OPERATIONS

§ 201.175 Alternating bottling facilities between bonded and bottling premises.

Bottling facilities may be used either for the bottling in bond of spirits or for the rectification and bottling, or bottling, of taxpaid spirits where the proprietor has filed, and the assistant regional commissioner has approved, (a) an application for registration, Form 2607, to cover such operation, and (b) a special plat to designate the premises which are to be alternated. When areas of the bottling facilities are to be alternated, the proprietor shall file a drawing or diagram, in triplicate, clearly depicting all rooms, tanks, and spirits lines which are susceptible to alternation, in their relative operating sequence; all such rooms and equipment shall be individually identified by number or letter. Once such qualifying documents have been approved, the bottling facilities or parts thereof (identified by the numbers or letters shown on the drawing or diagram) may be alternated pursuant to

approval by the assigned officer of the proprietor's application on Form 2610, after all in-bond spirits, or taxpaid spirits and other ingredients used in rectifying processes (if any), as the case may be, are removed from the premises or part thereof to be alternated in opposite status.

(72 Stat. 1349; 26 U.S.C. 5172)

PERMANENT DISCONTINUANCE OF BUSINESS

§ 201.176 Notice of permanent discontinuance.

Where the proprietor permanently discontinues any or all of the businesses listed in his notice of registration, he shall, after completion of the operations, file a Form 2607 to cover such discontinuance. Form 2607 shall be accompanied (a) by all permits issued to the proprietor under this subpart covering the discontinued operations, and by his request that such permits be canceled; (b) by the proprietor's written statement disclosing, as applicable, whether (1) all spirits (including denatured spirits), indicia bottles, strip stamps, and other pertinent items have been lawfully disposed of, (2) any spirits (including denatured spirits), indicia bottles, or strip stamps are in transit to the premises, (3) all approved applications for transfer of spirits (including denatured spirits) to the premises have been secured and returned to the assistant regional commissioner for cancellation; and (c) by pertinent monthly reports covering the discontinued operations (each such report shall be marked "Final Report").

(72 Stat. 1349; 26 U.S.C. 5172, 5271)

Subpart G—Bonds and Consents of Surety

§ 201.191 General.

Every person intending to commence or to continue the business of a distiller, bonded warehouseman, or rectifier, shall file bond, Form 2601, as prescribed in this subpart, with the assistant regional commissioner, at the time of filing the original application for registration of his plant, and at such other times as are required by this part. Such bond shall be conditioned that he shall faithfully comply with all provisions of law and regulations relating to the duties and business of a distiller, bonded warehouseman, or rectifier, as the case may be (including the payment of taxes imposed by chapter 51, I.R.C.), and shall pay all penalties incurred or fines imposed on him for violation of any such provisions. The assistant regional commissioner may require, in connection with any bond on Form 2601, a statement, executed under the penalties of perjury, as to whether the principal or any person owing, controlling, or actively participating in the management of the business of the principal has been convicted of or has compromised any offense set forth in § 201.198(a) or has been convicted of any offense set forth in § 201.198(b). In the event the above statement contains an affirmative answer, the applicant shall submit a statement describing in detail the circumstances surrounding such conviction or compromise. Once every four years, and as provided in § 201.213, a new bond, Form 2601, shall be executed and filed in accordance with the provisions of this subpart. No person shall commence or continue the business of a distiller, bonded warehouseman, or rectifier, unless he has a valid bond, Form 2601 (and consent of surety, if necessary), as required in respect of such business by this part.

(72 Stat. 1349, 1394; 26 U.S.C. 5173, 5551)

§ 201.192 Additional condition of distiller's bond.

In addition to the requirements of § 201.191, the distiller's bond shall be conditioned that he shall not suffer the property, or any part thereof, subject to lien under section 5004(b)(1), I.R.C., to be encumbered by any lien during the time in which he shall carry on such business, except that this condition shall not apply during the term of an indemnity bond given under the provisions of § 201.200.

(72 Stat. 1349; 26 U.S.C. 5173)

§ 201.193 Additional conditions of bonded warehouseman's bond.

In addition to the requirements of § 201.191, the bonded warehouseman's bond shall be conditioned—

(a) On the withdrawal of spirits from storage on bonded premises within the time prescribed for the determination of tax under section 5006(a)(2), I.R.C., and

(b) On payment of the tax now or hereafter in force, except as otherwise provided by law, on all spirits (including denatured spirits) withdrawn from storage on bonded premises.

(72 Stat. 1349; 26 U.S.C. 5173)

§ 201.194 Corporate surety.

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

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

§ 201.195 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the principal may pledge and deposit, as surety for his bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR Part 225.

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

§ 201.196 Consents of surety.

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

§ 201.197 Authority to approve bonds and consents of surety.

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

§ 201.198 Disapproval of bonds or consents of surety.

The assistant regional commissioner may disapprove any bond or consent of surety submitted in respect to the business of a distiller, bonded warehouseman, or rectifier, if the principal or any person owning, controlling, or actively participating in the management of the business of the principal shall have been previously convicted, in a court of competent jurisdiction of—

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

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

Further, no bond of a distiller shall be approved unless the assistant regional commissioner is satisfied that the situation of the land and building which will constitute his bonded premises (as described in his application for registration, Form 2607) is not such as would enable the distiller to defraud the United States, and unless: (1) The distiller is the owner in fee, unencumbered by any mortgage, judgment, or other lien, of the lot or tract of land subject to lien under section 5004(b)(1), I.R.C.; or (2) the distiller files a consent, Form 1602, of the owner of the fee, and of any mortgagee, judgment creditor, or other person having a lien thereon, in accordance with the provisions of §§ 201.151 and 201.152; or (3) the distiller files an indemnity bond, Form 3A, in accordance with the provisions of § 201.200.

(72 Stat. 1349, 1394; 26 U.S.C. 5173, 5551)

§ 201.199 Appeal to Director.

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

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

§ 201.200 Indemnity bond, Form 3A.

A proprietor of a plant qualified for the production of spirits may furnish bond on Form 3A to stand in lieu of future liens imposed under section 5004(b)(1), I.R.C., and no lien shall attach to any lot or tract of land, distillery, building, or distilling apparatus by reason of distilling done during any period included within the term of any such bond. Where an indemnity bond has

been furnished on Form 3A in respect of a plant, the requirements of this part relating to the filing of consents on Forms 1602 and bonds on Forms 1617 are not applicable in respect to such plant.

(72 Stat. 1317, 1349; 26 U.S.C. 5004, 5173)

§ 201.201 Indemnity bond conditioned to stand in lieu of prior liens.

Where a lien is imposed on the distiller's property under section 5004(b)(1), I.R.C., or where any similar lien has been imposed under prior provisions of internal revenue law, the distiller may, pursuant to application to, and approval by, the assistant regional commissioner, file consent, Form 2602, to further condition the bond, Form 3A, furnished under the provisions of § 201.200, to stand in lieu of such lien or liens and to indemnify the United States for the payment of all taxes and penalties which otherwise could be asserted against such property by reason of such lien or liens. When a consent on Form 2602 has been accepted and approved by the assistant regional commissioner, such lien or liens shall be held to be extinguished. The assistant regional commissioner will not accept or approve such consent, Form 2602, if there is any pending litigation or outstanding assessment with respect to such taxes or penalties, or if he has knowledge of any circumstances indicating that such consent is tendered with intent to evade payment or defeat collection of any tax or penalty.

(72 Stat. 1317, 1349; 26 U.S.C. 5004, 5173)

§ 201.202 Indemnity bond in case of judicial sale.

Where any distillery is sold at judicial or other sale in favor of the United States, an indemnity bond on Form 3A, in lieu of consent on Form 1602, may be taken by the assistant regional commissioner, and the person giving such bond may be allowed to operate such distillery during the existence of the right of redemption from such sale, on complying with all the other provisions of law and of this part.

(72 Stat. 1349; 26 U.S.C. 5173)

§ 201.203 Indemnity bond for changes in buildings and equipment.

Where buildings on the bonded premises of a plant, or on premises which have been eliminated from the bonded premises, are to be demolished or altered in such a manner as to decrease the value of the property, and a lien for taxes exists on such property under section 5004(b)(1), I.R.C., or where distilling equipment or apparatus on which a lien exists under section 5004(b)(1), I.R.C., is to be removed permanently, without adding property that will become a fixture in law of an equal or greater value than the property to be demolished, altered, or removed, the proprietor shall file with the assistant regional commissioner an indemnity bond on Form 1617. Such bond shall be in a penal sum equal to the appraised value of the property to be demolished, altered, or removed, or equal to the excess in value of the property to be demolished, altered, or removed over the value of the property to be substituted therefor: *Provided,* That no indemnity bond Form 1617 will be required if such appraised value or difference in value, as the case may be, is less than $5,000: *And provided further,* That no indemnity bond on Form 1617 will be required to cover the removal of equipment from the bonded premises of one plant to the bonded premises of another plant, if the two premises are controlled by the same interests. The appraisal shall be at the expense of the proprietor unless waived by the assistant regional commissioner or unless made by internal revenue officers.

(72 Stat. 1317, 1349; 26 U.S.C. 5004, 5173)

§ 201.204 Combined operations bond-distilled spirits plant.

Any proprietor who would otherwise be required to give more than one of the bonds listed in § 201.211 (a), (b), and (c), shall, in lieu thereof (except as provided in §§ 201.205 and 201.206), give a single bond on Form 2601. Bonds given under this section shall contain the terms and conditions of the bonds in lieu of which they are given.

(72 Stat. 1349; 26 U.S.C. 5173)

§ 201.205 Combined operations bond-distilled spirits plant and adjacent bonded wine cellar.

Any person intending to commence or continue business as proprietor of a bonded wine cellar, under the provisions of Part 240 of this chapter, and of an adjacent plant qualified for the production of spirits shall, in lieu of such of the bonds listed in § 201.211 (a), (b), and (c), as would otherwise be required for his plant, and the bonded wine cellar bond required under the provisions of the first sentence of section 5354, I.R.C., give a single bond on Form 2601 to cover all such operations. Bonds given under this section shall contain the terms and conditions of the bonds in lieu of which they are given.

(72 Stat. 1349; 26 U.S.C. 5173)

§ 201.206 Blanket bond.

Any person (including, in the case of a corporation, controlled or wholly owned subsidiaries) operating more than one plant in a region may give a blanket bond on Form 2601 covering the operation of any two or more of such plants, and any bonded wine cellars which are adjacent to such plants and which otherwise could be covered by a combined operations bond. For the purpose of this section, a controlled subsidiary is a corporation where more than 50 percent of the voting shares is owned by the parent corporation. Bonds given under this section shall be in lieu of the bonds listed in § 201.211 (a), (b), (c), and (d), as the case may be, and shall contain the terms and conditions of such bonds. Where bond on Form 2601 covers the operations of more than one corporation, each corporation shall be shown as principal, and the bond shall be signed for each corporation.

(72 Stat. 1349; 26 U.S.C. 5173)

§ 201.207 Liability under combined operations and blanket bonds.

The total amount of any combined operations or blanket bond on Form 2601 shall be available for the satisfaction of any liability incurred under the terms or conditions of such bond.

(72 Stat. 1349; 26 U.S.C. 5173)

§ 201.208 Withdrawal bond, Form 2613; proprietor of bonded premises.

Where the proprietor of the bonded premises of a plant intends to withdraw spirits from bonded premises on determination, but before payment, of the tax, he shall, before making any such withdrawal, furnish a bond, Form 2613 (unless he furnishes a bond on Form 2615, as provided in § 201.210) to secure payment of the tax on all spirits so withdrawn.

(72 Stat. 1352; 26 U.S.C. 5174)

§ 201.209 Withdrawal bond, Form 2614; proprietor of bottling premises.

Where a proprietor of a plant authorized to rectify or bottle spirits intends to withdraw spirits from bonded premises on determination, but before payment, of the tax, for transfer to the bottling premises of such plant, he shall, before making any such withdrawal, furnish a bond on Form 2614 (unless he furnishes bond on Form 2615, as provided in § 201.210) to secure payment of the tax on all spirits so withdrawn.

(72 Stat. 1352; 26 U.S.C. 5174)

§ 201.210 Blanket withdrawal bond, Form 2615.

Any person who is the proprietor of a plant which includes both bonded premises and bottling premises, or who is the proprietor of more than one plant, within a region, qualified for bonded and/or bottling operations and who intends to withdraw spirits from bond on determination, but before payment, of the tax may, in lieu of furnishing two or more separate bonds on Form 2613 and/or Form 2614, as required by §§ 201.208 and/or 201.209, respectively, furnish a blanket withdrawal bond on Form 2615 containing the terms and conditions of the bonds in lieu of which it is given. The bond, if it covers more than one plant, shall show as to each plant covered by the bond the part of the total sum which represents the penal sum (computed in accordance with § 201.211) for each such plant. If the penal sum of the bond covering a plant, or the penal sum allocated to any plant (where the bond covers more than one plant), is in an amount less than the maximum prescribed in § 201.211, withdrawals to or from such plant shall not exceed the quantity permissible, as reflected by the penal sum in the bond for such plant. Such blanket withdrawal bond shall be conditioned that the total amount of the bond shall be available for satisfaction of any liability incurred under the terms and conditions of such bond.

(72 Stat. 1352; 26 U.S.C. 5174)

§ 201.211 Bonds and penal sums of bonds.

The bonds, and the penal sums thereof, required by this subpart, are as follows:

Bond	Penal sum		
	Basis	Minimum	Maximum
(a) Distiller's, Form 2601	The amount of tax on spirits produced in his distillery during a period of 15 days.	$5,000	$100,000
(b) Bonded Warehouseman's, Form 2601:			
(1) General	The amount of tax on spirits (including denatured spirits) stored on such premises and in transit thereto.	5,000	200,000
(2) Limited to storage of not over 500 wooden packages, and to a total of not over 50,000 proof gallons.	do	5,000	50,000
(3) Limited to storage of denatured spirits, denaturation of spirits, and storage of not to exceed 100,000 proof gallons of spirits prior to denaturation.	do	5,000	100,000
(c) Rectifier's, Form 2601	The amount of tax the rectifier will be liable to pay in a period of 30 days under sections 5021 and 5022, I.R.C.	1,000	100,000
(d) Combined Operations, Form 2601:			
(1) Distiller and bonded warehouseman	Sum of penal sums of bonds in lieu of which given.	10,000	200,000
(2) Distiller and rectifier	do	6,000	200,000
(3) Bonded warehouseman and rectifier	do	6,000	250,000
(4) Distiller, bonded warehouseman, and rectifier.	do	11,000	250,000
(5) Distiller and bonded wine cellar	do	6,000	150,000
(6) Distiller, bonded warehouseman, and bonded wine cellar.	do	11,000	250,000
(7) Distiller, rectifier, and bonded wine cellar.	do	7,000	250,000
(8) Distiller, bonded warehouseman, rectifier, and bonded wine cellar.	do	12,000	300,000

Bond	Penal sum
(e) Blanket bond, Form 2601	The penal sum shall be calculated in accordance with the following table:

Total penal sums as determined under (a), (b), (c), and (d).	Requirements for penal sum of blanket bond.
Not over $300,000	100 percent.
Over $300,000 but not over $600,000.	$300,000 plus 70 percent of excess over $300,000.
Over $600,000 but not over $1,000,000.	$510,000 plus 50 percent of excess over $600,000.
Over $1,000,000 but not over $2,000,000.	$710,000 plus 35 percent of excess over $1,000,000.
Over $2,000,000	$1,060,000 plus 25 percent of excess over $2,000,000.

Bond	Penal sum		
	Basis	Minimum	Maximum
(f) Indemnity, Form 3A	Appraised value of property		$300,000
(g) Indemnity, Form 1617	Decrease in value of property	$5,000	300,000
(h) Withdrawal bond, Form 2613	The amount of tax which, at any one time, is chargeable against such bond but has not been paid.	1,000	1,000,000
(i) Withdrawal bond, Form 2614	do	1,000	1,000,000
(j) Blanket withdrawal bond, Form 2615:			
(1) Bonded and bottling premises on same plant premises.	Sum of penal sums of bonds, Forms 2613 and 2614, in lieu of which given.	2,000	1,000,000
(2) Two or more plants in a region qualified for bonded and/or bottling operations.	Sum of the penal sums of all the bonds, Forms 2613 and/or 2614, in lieu of which given.	[1]	[2]

[1] Sum of the minimum penal sums required for each plant covered by the bond.
[2] Sum of the maximum penal sums required for each plant covered by the bond. (The maximum penal sum for one plant is $1,000,000.)

(68A Stat. 847, 72 Stat. 1349, 1352; 26 U.S.C. 7102, 5173, 5174, 5175)

§ 201.212 Strengthening bonds.

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

(72 Stat. 1349, 1352, 1394; 26 U.S.C. 5173, 5174, 5551)

New or Superseding Bonds

§ 201.213 General.

New bonds shall be required in case of insolvency or removal of any surety, and may, at the discretion of the assistant regional commissioner, be required in any other contingency affecting the validity or impairing the efficiency of such bond. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, shall execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. Where, under the provisions of § 201.220, the surety on any bond given under this subpart has filed an application to be relieved of liability under said bond and the principal desires or intends to continue the business or operations to which such bond relates, he shall, except as may be provided in § 201.215, file a valid superseding bond to be effective on or before the date specified in the surety's notice. New or superseding bonds shall show the current date of execution and the effective date.

(72 Stat. 1349, 1352, 1353, 1394; 26 U.S.C. 5173, 5174, 5175, 5176, 5551)

§ 201.214 New or superseding bond, Form 2601.

Where any bond on Form 2601 is not renewed, as required in § 201.191, or where a new or superseding bond, Form 2601, is not given as required in § 201.213, the principal shall discontinue forthwith the business to which such bond relates.

(72 Stat. 1349, 1352, 1353; 26 U.S.C. 5173, 5174, 5175, 5176)

§ 201.215 New or superseding bond, Form 3A.

Where a new or superseding bond, Form 3A, is not given as required in § 201.213, the principal shall discontinue forthwith the business of a distiller unless he is the owner in fee, unencumbered, of the property covered by the bond, or he files the consent of the owner or encumbrancer on Form 1602, as required in § 201.152.

(72 Stat. 1317, 1349, 1353; 26 U.S.C. 5004, 5173, 5176)

§ 201.216 New or superseding bonds, Forms 2613, 2614, and 2615.

Where a new or superseding bond, Form 2613, 2614, or 2615 is not given as required in § 201.213, the principal may not withdraw any distilled spirits from bonded premises (other than distilled spirits withdrawn under section 5214 or section 7510, I.R.C.) except on prior payment of tax.

(72 Stat. 1352, 1353; 26 U.S.C. 5174, 5176)

Termination of Bonds

§ 201.217 Termination of bond, Form 2601.

Bond, Form 2601, is a quadrennial bond and, therefore, on expiration of the four-year period for which it is given automatically terminates as to any spirits and/or wines which are produced, rectified, deposited, or in transit to the bonded premises or bonded wine cellar, as the case may be, wholly subsequent to such period. Such bonds may also be terminated as to future production, rectification, or deposits, as the case may be, prior to the expiration of the four-year period for which given (a) pursuant to application of the surety as provided in § 201.220, (b) on approval of a superseding bond, or (c) on discontinuance of business by the principal.

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

§ 201.218 Termination of indemnity bond, Form 3A.

Indemnity bonds (Form 3A) run for an indefinite period. Such bonds may be terminated as to liability for future oper-

ations of the distillery, (a) pursuant to application by the surety as provided in § 201.220, (b) on approval of a superseding bond, (c) on discontinuance of business by the principal, (d) on application of the distiller if he is the owner in fee, unencumbered, of the property covered by the bond, or (e) on application of the distiller if he files the consent of the owner or encumbrancer on Form 1602, as required in § 201.152.

(72 Stat. 1317, 1349, 1353; 26 U.S.C. 5004, 5173, 5176)

§ 201.219 Termination of withdrawal bonds, Forms 2613, 2614, and 2615.

Withdrawal bonds given on Forms 2613, 2614, and 2615 may be terminated as to liability for future withdrawals (a) pursuant to application of surety as provided in § 201.220, (b) on approval of a superseding bond, (c) on notification by the principal that he has discontinued withdrawals under the bond, or (d) on notification by the principal that he has discontinued business.

(72 Stat. 1352, 1353; 26 U.S.C. 5174, 5176)

§ 201.220 Application of surety for relief from bond.

A surety on any bond given on Form 3A, 2601, 2613, 2614, or 2615 may at any time in writing notify the principal and the assistant regional commissioner in whose office the bond is on file that he desires, after a date named, to be relieved of liability under said bond. Such date shall be not less than 10 days after the date the notice is received by the assistant regional commissioner in the case of bonds given on Forms 2613, 2614, and 2615, and not less than 90 days after the date the notice is received in the case of bonds given on Forms 3A and 2601. The surety shall also file with the assistant regional commissioner an acknowledgment or other proof of service on the principal. If such notice is not thereafter in writing withdrawn, the rights of the principal as supported by said bond shall be terminated on the date named in the notice, and the surety shall be relieved from liability to the extent set forth in § 201.221.

(72 Stat. 1349, 1352, 1353; 26 U.S.C. 5173, 5174, 5175, 5176)

§ 201.221 Relief of surety from bond.

(a) *Bond, Form 2601.* Where a bond, Form 2601, has automatically expired, as provided in § 201.217, or where the surety has filed application for relief from liability, as provided in § 201.220, and a new or superseding bond has been filed, the surety shall be relieved of future liability with respect to production, rectification, and deposits wholly subsequent to the effective date of the new or superseding bond. Notwithstanding such relief, the surety shall remain liable for the tax on all distilled spirits or wines produced or rectified, or for other liabilities incurred, during the term of the bond. Where a new or superseding bond is not filed the surety shall, in addition to the continuing liabilities above specified, remain liable under the bond for all spirits or wines on hand or in transit to the bonded premises or bonded wine cellar, as the case may be, on the date of expiration, or the date named in the notice, as the case may be, until all such spirits or wines have been lawfully disposed of, or a new bond has been filed by the principal covering the same.

(b) *Bond, Form 3A.* Where the surety on a bond given on Form 3A has applied for relief from liability under the provisions of § 201.220, the surety shall be relieved from liability for all spirits produced wholly subsequent to the date specified in the notice, or the effective date of a superseding bond, if one is given. Notwithstanding such relief, the surety shall remain liable for all distilled spirits produced while such bond was in force and effect and, if a consent on Form 2602 has been accepted, on all spirits produced on the premises prior to the effective date of the bond, until it is established to the satisfaction of the assistant regional commissioner that such spirits have been taxpaid or that the producer thereof has been relieved from liability for payment of such tax under the provisions of chapter 51, I.R.C.

(c) *Bond, Form 1617.* The surety on a bond given on Form 1617 shall be relieved from his liability when the bond has been canceled as provided for in § 201.223.

(d) *Bonds, Forms 2613, 2614, and 2615.* Where the surety on a bond given on Form 2613, 2614, or 2615 has filed application for relief from liability, as provided in § 201.220, the surety shall be relieved from liability for withdrawals made wholly subsequent to the date specified in the notice, or the effective date of a new bond, if one is given.

(72 Stat. 1317, 1349, 1352, 1353; 26 U.S.C. 5004, 5173, 5174, 5176)

§ 201.222 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 201.195, shall be released only in accordance with the provisions of 31 CFR Part 225. Such securities will not be released by the assistant regional commissioner until liability under the bond for which they were pledged has been terminated. When the assistant regional commissioner is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the assistant regional commissioner may extend the date of release for such additional length of time as he deems necessary.

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

§ 201.223 Cancellation of indemnity bond.

Any indemnity bond will be canceled by the assistant regional commissioner, on application by the principal or surety, if he determines that the liability for which such bond was given has ceased to exist. Liability under any bond on Form 1617, given under the provisions of this part or under any other prior provisions of law or regulations, will be deemed to have ceased to exist: (a) When a superseding bond is approved; (b) when the proprietor furnishes a consent, Form 2602, on an indemnity bond, Form 3A, as provided in § 201.201; or (c) when it is established to the satisfaction of the assistant regional commissioner that all spirits produced, while the property covering which the indemnity bond was filed formed a part of the distillery premises and equipment, have been taxpaid or that the producer thereof has been relieved from liability for payment of such tax under the provisions of chapter 51, I.R.C.

(72 Stat. 1317, 1349, 1353; 26 U.S.C. 5004, 5173, 5176)

Subpart H—Construction and Equipment

§ 201.231 Protection of premises.

(a) *Buildings.* The buildings in which spirits are held or stored shall be securely constructed of masonry, concrete, wood, metal, or other equally substantial material, and arranged, equipped, and protected to afford adequate security to the revenue and facilitate supervision and inspection by internal revenue officers. Except for doors or other openings approved by the assistant regional commissioner, separations between bonded premises and bottling premises shall be secure and unbroken.

(b) *Doors and windows.* Doors to rooms or buildings under the joint custody of the assigned officer and the proprietor shall be so installed and equipped as to prevent their removal and shall be rigidly secure when locked. Windows in such rooms or buildings shall be equipped with sash locks or comparable fasteners. If the location of such windows with respect to the ground, to a fire escape, roof, set back, or balcony, or to an adjacent or contiguous structure would permit ingress to such rooms or buildings or would otherwise, in the opinion of the assistant regional commissioner, create a jeopardy to security, the assistant regional commissioner shall require such windows to be of the detention type equipped with wire glass panes or to be protected by means of iron bars or shutters or other means affording equal protection to the revenue.

(c) *Other openings.* Skylights, monitors, penthouses, and similar roof openings in such rooms or buildings shall be treated as windows for security purposes. Ventilating or heating ducts, or sewerage or drainage openings which would permit ingress to such rooms or buildings, or would otherwise, in the opinion of the assistant regional commissioner, create a jeopardy to the revenue, shall be protected with secure metal grills or other means which the assistant regional commissioner considers to be equally effective.

(d) *Additional security.* Where the assistant regional commissioner finds the construction, arrangement, equipment, or protection inadequate, he shall require additional security to be provided (such as fences, floodlights, alarm systems, watchman services) or changes in construction, arrangement, or equipment to be made to the extent that it is necessary to assure him that the construction, arrangement, or equipment is adequate to protect the revenue.

§ 201.232 Emergency breaking of seals or locks.

Where persons or property are in imminent danger from fire, flood, or other disaster, or where emergency repairs to equipment are necessary and it is essential that such repairs be made without delay to prevent substantial loss, and it is impractical to first obtain authorization from the internal revenue officer, Government seals or locks may be removed, as necessary, by the proprietor, or by police or firemen (in the case of disaster). When such action is taken, the proprietor shall see that security measures are taken to prevent illegal removal of spirits and, as soon as practical, shall notify the internal revenue officer of the action taken, and shall submit to him, within 5 days, a written report, executed under the penalties of perjury, describing the emergency and the action.

§ 201.233 Means of ingress and egress.

The proprietor shall make provisions to assure that internal revenue officers have ready ingress to, and egress from, the plant at any time, and furnish, on request, evidence satisfactory to the assistant regional commissioner that such ingress and egress are assured.

(72 Stat. 1357; 26 U.S.C. 5203)

§ 201.234 Locking of storage rooms or buildings on bonded premises.

Where spirits are bottled or packaged, or stored in packages or in cases or in other portable containers on bonded premises, the proprietor shall provide a room or building for such bottling, packaging, or storage. Such room or building shall be constructed as provided in § 201.231, arranged and equipped so as to be suitable for the intended purpose, and shall be equipped for locking with Government locks. Any other building, room, or enclosure on bonded premises, not secured by Government lock, in which spirits (including denatured spirits) are held, shall be equipped for locking by the proprietor.

§ 201.235 Signs.

Each plant shall be identified by a sign placed conspicuously on the outside front or entrance thereof and exhibiting in readily legible and durable characters (a) the real name of the proprietor, (b) the plant number, and (c) the designation of the kind of business, or businesses (distiller, bonded warehouseman, rectifier, and/or bottler), in which engaged, except that in lieu of the foregoing designation, designations which have obtained public and commercial significance, such as industrial alcohol plant, registered distillery, or rectifying plant, as appropriate, may be used.

(72 Stat. 1355; 26 U.S.C. 5180)

§ 201.236 Identification of structures, areas, apparatus, and equipment.

Each room or enclosed area where spirits (including denatured spirits) or wines, distilling or fermenting materials, or containers are held, and each building, within the plant, shall be appropriately marked as to use. Each tank or receptacle for spirits (including denatured spirits) or wine shall be marked to show its serial number, capacity, and use. Where tanks or receptacles are used for multiple purposes, such uses shall be indicated. Each still shall be numbered and marked to show its use. All other major equipment used for processing or containing spirits (including denatured spirits) or wine, or distilling or fermenting material, and all other tanks, shall be identified as to use unless the intended use thereof is readily apparent.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.237 Required structures.

A structure suitable for the particular purpose intended and to the needs of revenue protection and effective supervision shall be provided where

(a) Spirits are

(1) Drawn into packages on bottling premises,

(2) Gauged in packages on bonded or bottling premises,

(3) Bottled after tax determination,

(4) Stored on bonded premises in tank cars or tank trucks; or

(b) Spirits are denatured in packages; or

(c) Spirits (including denatured spirits) or denaturing materials are weighed; or

(d) Spirits and wines are rectified.

§ 201.238 Government office.

The proprietor shall provide an office at the plant for the exclusive use of Government officers in performing supervisory and administrative duties and safeguarding Government records and property. Such office shall be adequately equipped with office furniture and a secure cabinet fitted for locking with a Government lock and with toilet and lavoratory facilities, shall be well lighted, ventilated, and heated, and shall be subject to the approval of the assistant regional commissioner. Where suitable facilities are otherwise available, the assistant regional commissioner may waive the requirements for a separate Government office.

§ 201.239 Loading facilities for bulk conveyances.

Where spirits (including denatured spirits) are to be received at or removed from a plant in bulk conveyances suitable facilities for such operations shall be provided.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.240 Closed distilling system.

The distilling system shall be continuous and closed at all points where potable or readily recoverable spirits are present, and shall be so designed, constructed, and connected as to prevent the unauthorized removal therefrom without detection, of such spirits and of distilling material and stillage from which spirits are readily recoverable. The security of the closed distilling system shall be maintained, and removal of spirits therefrom controlled, by Government locks or seals, or by such meters or other devices or methods affording comparable protection as may be approved by the Director. Processing equipment not susceptible of being locked or sealed (a) shall be located in a room or enclosure which shall be in the joint custody of the assigned officer and the proprietor, which room or enclosure shall be locked with a Government lock, and shall not be unlocked or remain unlocked except when such officer is on the plant premises, or (b) shall be otherwise equally protected in a manner approved by the Director. In addition, processing equipment not located within a room or building shall, unless the premises or general area containing such equipment is enclosed within a fence or wall which the assistant regional commissioner deems adequate to the protection of the revenue, be enclosed within a secure fence constructed as provided in § 201.243(b). The provisions of this section do not preclude the removal of spirits from the closed distilling system, pursuant to production gauge, and their deposit in bonded storage, by redesignation of the tank in which the production gauge is made as a storage tank, and the necessary locking or sealing of the tank to remove it from the closed system.

(72 Stat. 1353; 26 U.S.C. 5203)

§ 201.241 Bottling facilities on bonded premises.

Where the proprietor is authorized to bottle spirits in bond he shall provide a separate room or building of his bonded warehouse for such purpose. Such room or building shall be constructed as provided in § 201.231, arranged, and equipped so as to be suitable for the intended purpose. When authorized by the assistant regional commissioner, bottling-in-bond facilities, when not in use for bottling in bond, may be used for bottling alcohol before determination of tax.

(72 Stat. 1353, 1369; 26 U.S.C. 5178, 5235)

§ 201.242 Denaturing facilities.

Where the proprietor is authorized to denature spirits, he shall provide on his bonded premises, segregated facilities for use in his denaturing operations. These facilities shall include:

(a) A storage room or rooms, fitted for locking, for storing packages of denaturants, if denaturants are to be received in packages;

(b) Tanks and other suitable receptacles, fitted for locking, for storing denaturants, if denaturants are to be received in bulk quantities;

(c) Tanks, fitted for locking, for denaturing spirits, if spirits are to be denatured in tanks;

(d) Tanks for storing denatured spirits, if denatured spirits are to be removed in bulk conveyances or by pipelines; and

(e) Storage space in a room or building for storing packages of denatured spirits, if denatured spirits are to be removed in packages.

The proprietor shall also provide such meters and other equipment and apparatus as may be necessary to carry out proposed operations. Meters, equipment, and facilities used for handling or processing denaturing materials or denatured spirits shall not be used for spirits other than spirits to be denatured: *Provided,* That the assistant regional com-

missioner may authorize their use for other spirits when he determines that contamination of such other spirits will not take place.

(72 Stat. 1353; 26 U.S.C. 5178)

§ 201.243 Tanks.

(a) *General.* All tanks used as receptacles for spirits (including denatured spirits) or wines shall be located, constructed, and equipped so as to be suitable for the intended purpose and to permit ready examination. An accurate means of measuring the contents of each such tank shall be provided by the proprietor; in any case where such means of measuring is not a permanent fixture of the tank, the tank shall be equipped with a fixed device which will enable the approximate contents to be determined readily. Tanks used for determining the tax imposed by section 5001, I.R.C., shall be mounted on scales; and in addition thereto shall be provided with another suitable device for quickly and accurately determining the contents. The proprietor shall install walkways, landings, and stairways to afford safe access to all parts of tanks where the presence of an internal revenue officer is required. Tanks may be equipped with vents, flame arresters, foam devices, or other safety devices, if the construction is such to prevent abstraction of the spirits. The proprietor shall be responsible for accurate calibration of all tanks. Receiving tanks which are a part of the production facilities and bottling tanks which are a part of the storage facilities shall not be used until a certificate of approval, Form 244, has been attached thereto. Pursuant to tax determination, spirits in a tank may be removed from bonded premises, and received on bottling premises, in the tank in which they are contained, if (1) the bonded premises is curtailed and the bottling premises is extended, as necessary, in the manner provided by § 201.168, (2) the tank and/or all necessary connections thereto are locked or sealed in such manner as to prevent the mingling of spirits in bond with tax determined spirits, (3) the tank is properly redesignated, and (4) the structural separation of bonded and bottling premises required by § 201.231 is maintained.

(b) *Bonded premises.* All tanks for the storage of spirits on bonded premises shall be so equipped that the flow of spirits in and out of the tanks may be controlled by Government locks or seals or by such other devices or methods, equally protective of the revenue, as the Director may approve. All openings in such tanks shall be equipped for securing with Government locks or seals, or by such other means equally protective of the revenue, as the Director may authorize to prevent unauthorized removal of spirits or the addition of substances. All openings in tanks for denatured spirits shall be equipped for securing with locks or seals, or by such other means as the Director may authorize. Tanks which are not located within a room or building and which are used as receptacles for spirits shall, unless the bonded premises or the portion thereof containing such tanks is enclosed within a fence or wall which the Director deems adequate for protection of the revenue, be enclosed within a secure fence. The fence directly enclosing tanks shall be embedded in a concrete foundation, shall be at least 10 feet high, and shall have 3 rows of barbed wire superimposed on top or shall be constructed in such manner as the Director considers to be equally effective; the gate shall be fitted for locking.

(c) *Bottling premises.* All openings in storage, receiving, bottling, and package filling tanks on bottling premises shall be equipped for securing with locks or seals, or by such other devices or methods affording comparable protection as the Director may approve.

§ 201.244 Pipelines.

Pipelines for the conveyance of spirits, other than taxpaid spirits and denatured spirits, shall be of permanent character and constructed, connected, arranged, and secured to afford adequate protection to the revenue and to permit ready examination. Where a pipeline connection must be flexible, a hose may be used if connected and secured so as to protect the revenue. Detachable fittings on pipelines for the conveyance of spirits, other than taxpaid spirits or denatured spirits, shall be secured by welding, brazing, or other equally effective methods, or prepared for securing with Government locks or seals. Pipelines may be installed for the conveyance of distilling materials, air, water, and chemicals. Pipelines for the conveyance of air, water, or chemicals may be permanently connected to tanks used as receptacles for spirits on bonded premises if such pipelines are equipped with a control valve which may be locked with a Government lock and also are equipped, at the point of entry to the tanks, with check valves or other equally effective devices or methods which will prevent abstraction of spirits from the tanks.

§ 201.245 Identification of pipelines.

Pipelines for the conveyance of spirits shall be painted blue and pipelines conveying denaturants or denatured spirits shall be painted green: *Provided,* That prescribed colors may be applied in bands or strips of sufficient width as will provide ready identification. Other methods of identification may be approved by the Director. Regardless of the method employed, the colors blue and green may not be used in the plant to paint any other pipelines. The assistant regional commissioner may require additional marking and identification of any pipeline for spirits, denatured spirits, or denaturants and the marking and identification of other pipelines in the plant.

§ 201.246 Measuring devices and proofing instruments.

The proprietor shall provide the necessary measuring tanks, weighing tanks, scales, and meters or other measuring devices which have been approved by the Director, for weighing or measuring materials, spirits (including denatured spirits), and denaturants. Where scales or weighing tanks are provided, the proprietor must furnish the internal revenue officer with a set of ten 50-pound cast-iron test weights, certified as to accuracy by the National Bureau of Standards or State departments of weights and measures as conforming to class "C" requirements of the National Bureau of Standards. Where test weights are furnished they shall be under the custody of the assigned officer when not in use. The proprietor shall provide, for his own use, accurate hydrometers, thermometers, and other necessary equipment for determining proof.

§ 201.247 Beams or dials of scales.

Beams or dials of scales used to weigh packages of spirits (including denatured spirits) must indicate weight in half-pound graduation: *Provided,* That scales used to weigh packages or cases designed to hold 10 wine gallons or less shall indicate weight in ounces or in hundredths of a pound. Beams or dials of tank scales used to weigh spirits (including denatured spirits) must have minimum graduations not greater than the following:

Quantity to be weighed	*Minimum graduations*
Not exceeding 2,000 pounds	½ pound.
Between 2,000 and 6,000 pounds	1 pound.
Between 6,000 and 20,000 pounds	2 pounds.
Between 20,000 and 50,000 pounds.	5 pounds.
Over 50,000 pounds	10 pounds.

Except in the case of scales having a capacity of 2,000 pounds or less, not less than 20 percent of the total capacity of the weighing tank scale may be entered into the tank for gauging for determination of tax: *Provided,* That the weighing of lesser quantities for determination of tax may be authorized by the assistant regional commissioner where the beam of the scale is calibrated in ½ pound or 1 pound graduations and it is found by actual test that the scales break accurately at each graduation: *Provided further,* That lots of spirits weighing 1,000 pounds or less shall be weighed on scales having ½ pound graduations. If molasses or other liquids are used as distilling material, suitable weighing or measuring tanks shall be provided for determining the quantity of such liquids.

(72 Stat. 1320, 1358, 1391, 1395; 26 U.S.C. 5006, 5024, 5505, 5552)

§ 201.248 Testing of scales.

(a) *Package scales.* Proprietors, under the supervision of the assigned officer, shall balance scales before weighing either empty or filled packages or other portable containers and shall, not less than once each month, test the accuracy of such scales at each fifty pound graduation by means of the test weights provided under § 201.246.

(b) *Tank scales not over 500 gallons.* Proprietors, under the supervision of the assigned officer, shall, at intervals of not more than six months, test tank scales used for weighing spirits (including denatured spirits) in lots of not over 500 gallons. Such a test shall be conducted by carefully balancing the beam and then placing the test weights provided under § 201.246 on the scale one at a time and checking the weight registered on the beam of the scale. After the first 500 pounds, which shall be checked by each 50 pound increase, the test weights

shall then be removed without disturbing the beam and the weighing tank shall be filled with spirits or water to the same weight, whereupon the test weights shall again be placed on the scale, the spirits or water being retained in the tank, and the weight registered on the beam shall be checked. This operation shall then be continued until the scale has been checked in 500 pound steps at all weights for which the scale is used.

(c) *Tank scales over 500 gallons.* Proprietors shall have scales used for weighing lots of spirits (including denatured spirits) of 500 gallons or more tested, and their accuracy certified, by State, county, or city departments of weights and measures or by a responsible scale company at intervals of not more than 6 months. Proprietors, under the supervision of the assigned officer, shall also check, at least once a month, the gallonage represented to be in a scale against the gallonage indicated by volumetric determination of the contents of the tank. Such volumetric determination shall be made in accordance wih the provisions of Part 186 of this chapter. Unless the volumetric check is within 0.5 percent of the quantity shown to be in the tank, the proprietor shall take appropriate steps to have the accuracy of the scale verified. When the assigned officer determines that the condition of a tank scale of large capacity indicates the necessity therefore, he shall require the proprietor to test the scale in the manner prescribed for a smaller capacity scale in paragraph (b) of this section, except that the test may be commenced when the tank contains considerable quantities of liquid.

(72 Stat. 1358; 26 U.S.C. 5204)

§ 201.249 Sampling devices.

At each place in the production system where samples of unfinished spirits are to be regularly removed for testing, the proprietor shall install a mechanical device which will (a) permit such samples to be obtained without supervision, (b) accurately record or reflect the total quantities of spirits removed, and (c) prevent access to the closed system without detection. Sampling devices may be installed at other locations in the plant with the approval of the assistant regional commissioner.

Subpart I—Production

§ 201.261 Notice by proprietor.

(a) *Commencement of operations.* The proprietor shall, before commencing production operations or resuming production operations after having given notice of suspension, file notice on Form 2610 with the assigned officer (assistant regional commissioner if no officer is assigned to the plant), specifying the date on which he desires to commence or resume operations for the production of spirits. The notice shall be filed in accordance with the instructions on the form, and sufficiently in advance to afford the assistant regional commissioner an opportunity to make arrangements for supervision of the operations. The assigned officer, if the plant is otherwise qualified under this part to produce spirits, shall approve the notice and the proprietor may not commence or resume operations until the time specified in the notice.

(b) *Suspension of operations.* Any proprietor desiring to suspend production operations for a period of 30 days or more shall file notice on Form 2610 with the assigned officer (assistant regional commissioner if no officer is available), specifying the date on which he will suspend operations. The notice shall be filed in accordance with instructions on the form and (where no officer is available) shall be filed sufficiently in advance to afford the assistant regional commissioner an opportunity to detail an officer to the plant. In case of an accident which makes it apparent that operations cannot be conducted for 30 days or more, the proprietor shall give immediate notice of suspension on Form 2610.

(72 Stat. 1364; 26 U.S.C. 5221)

§ 201.262 Receipt of materials.

The quantities of fermenting and distilling materials (including nonpotable chemical mixtures containing spirits produced in accordance with § 201.66), and of spirits (including denatured spirits) for redistillation, received on the distillery premises shall be determined by the proprietor, and reported as provided in subpart U. Fermented material (except apple cider exempt from tax under section 5042(a)(1), I.R.C.) to be used in the production of spirits must be produced on the bonded premises where used or must be received on such premises from (a) a bonded wine cellar, in the case of wine, or (b) a contiguous brewery where produced, in the case of beer. Spirits received on production facilities for redistillation must be stored under Government lock and seal until used. Where such spirits are received in packages, they must be stored in a building, as required by § 201.234, or transferred to locked tanks.

(72 Stat. 1356, 1365; 26 U.S.C. 5201, 5222, 5223)

§ 201.263 Use of materials in production of spirits.

The proprietor may produce spirits in the production facilities from any suitable material in accordance with statements of process in his notice of registration. The distillation or processing of nonpotable chemical mixtures received pursuant to application as provided in § 201.66 shall be deemed to be the original or continuous distillation or original and continuous processing of the spirits in such mixtures and to constitute the production of spirits. Materials from which alcohol will not be produced may be used in production processes only if the use of such materials is described in approved statements of process.

(72 Stat. 1349, 1353; 26 U.S.C. 5172, 5178)

§ 201.264 Removal of fermenting material.

Material received for use as fermenting material may be used on bonded premises for other purposes or may be removed from the bonded premises if prior written notice of the proprietor's intention is given to the assigned officer. A record of such use or removal shall be kept, as provided in subpart U.

(72 Stat. 1356, 1361; 26 U.S.C. 5201, 5207)

§ 201.265 Removal or destruction of distilling material.

Distilling material shall not be removed from the production facilities before being distilled, except where such removal is for a purpose other than the production of spirits and is authorized by the assistant regional commissioner, as provided in § 201.74. The residue of distilling material not introduced into the production system may be removed from the premises on the giving of written notice to the assigned officer, if the liquid is expressed from the material before removal and such liquid is not received at any distilled spirits plant or bonded wine cellar. Residue of beer used as distilling material may be returned to the producing brewery. Distilling material produced and wine and beer received for use as distilling material may be destroyed on the giving of written notice to the assigned officer.

(72 Stat. 1323, 1365, 1381; 26 U.S.C. 5008, 5222, 5370)

§ 201.266 Distillation processes.

The process of distillation in the production facilities shall be such that the spirits pass through continuous, closed stills, pipes and vessels from the first still where entry into the system would constitute a jeopardy to the revenue until the process of production is completed. The distiller may, in the course of manufacture, carry his product through as many distilling operations as he may desire, provided the process is closed and continuous. Distilling processes are deemed to be continuous where the spirits are carried through the various steps of production as expeditiously as plant operation will permit. The collection of unfinished spirits for the purpose of redistillation is not deemed to be a break in the continuity of the distilling process. Where spirits are percolated through oak chips or otherwise treated, the temporary retention of the spirits in tanks pending such treatment is permissible. Spirits may be held, prior to the production gauge, only for so long as is reasonably necessary to complete the process of production.

(72 Stat. 1328, 1338, 1353, 1362, 1365; 26 U.S.C. 5025, 5082, 5178, 5211, 5222)

§ 201.267 Treatment during production.

Spirits may, in the production facilities in the course of original and continuous distillation or other original and continuous processing, be purified or refined through, or by use of, any material which will not remain incorporated in the finished product, and juniper berries and other natural aromatics may be used in the distillation of gin. Spirits may be percolated through or treated with oak chips which have not been treated with any chemical. The introduction of any materials or substances into the tanks during other than the hours of direct supervision established under § 201.76 must be accomplished by mechanical devices which effectively pre-

vent the removal of spirits. Materials used in treatment of spirits, and which do not remain in the spirits, shall be destroyed or so treated as to preclude the extraction of potable spirits therefrom.

(72 Stat. 1328, 1338, 1356; 26 U.S.C. 5025, 5082, 5201)

§ 201.268 Addition of caramel to rum or commercial brandy and addition of oak chips to spirits.

Caramel possessing no material sweetening properties may be added to rum or commercial brandy on bonded premises prior to production gauge. If desired, the caramel may first be disolved in hot water or in a small quantity of brandy or rum, as the case may be, drawn from the system for this purpose. The addition shall be in the immediate presence of the assigned officer, unless the assistant regional commissioner has approved the addition by means of mechanical devices as provided in § 201.267. Oak chips which have not been treated with any chemical may be added to packages prior to or after production gauge; in such case notation to that effect shall be made on the gauge form.

(72 Stat. 1328; 26 U.S.C. 5025)

§ 201.269 Production gauge.

All spirits shall be gauged (by measuring and proofing) within a reasonable time after production is completed. Except as otherwise specifically provided in this section, quantities may be determined by volume or by weight, or, when approved by the Director, by meter or other device or by other method, which accurately determines the quantities. Where tax is to be determined on the basis of the production gauge, the determination shall be by weight in a tank, except where the spirits are drawn from the production system into barrels, drums, or similar portable containers the determination may be by weight in such containers. Where the spirits are drawn from the production system into barrels, drums, or similar portable containers, and the tax is not to be determined on the basis of the production gauge, such gauge may be made (a) by an individual gauge of each container, (b) by deducting the sum of the tares of the containers from the sum of the gross weights of the containers, and converting the resultant net weight into proof gallons, or (c) by weight in a tank. Form 2630 shall show for each barrel, drum, or similar portable container—the serial number, tare, proof, gross weight, and tax gallons—except that where the gauge is made under paragraph (b) or (c) of this section the average tax gallons of the containers may be shown, if the containers are of the same rated capacity, as prescribed by the specifications of the manufacturer, and have been filled to capacity. The production gauge shall be made by the assigned officer where spirits are to be withdrawn in approved containers other than metal packages from the production facilities on determination of tax, or where, pursuant to the proprietor's request to the assigned officer, spirits are to be drawn into bulk conveyances or wooden packages for withdrawal at a later date on determination of tax on the basis of the production gauge. In all other instances, the production gauge shall be made by the proprietor under the direct supervision of the assigned officer: *Provided,* That where the production gauge is made by the proprietor by means of meters or devices (comparable in accuracy and security to meters), approved by the Director, which enable the assigned officer to verify the accuracy of the gauge, such gauge shall be made under such supervision as the Director may require. Reports of production gauge shall be made on Form 2629 (accompanied by Form 2630 for barrels, drums, or similar portable containers) where the spirits are to be entered for deposit in storage facilities on the same plant premises. Each Form 2630 shall show the real name of the producer, and, if the spirits are produced under a trade name, shall also show the trade name under which produced; a separate Form 2630 shall be prepared for each name under which spirits are produced. If the spirits are to be transferred in bond to another plant premises or are to be withdrawn from bond, as authorized by this part, the report of production gauge shall be made on the form required by this part to cover the transaction. Where caramel is added, the brandy or rum in the tank shall be thoroughly agitated and the proof thereof then determined for the purpose of any withdrawal therefrom. Form 2629 (and Form 2630, if any) shall be marked "Withdraw on Original Gauge" if the spirits are to be drawn into bulk conveyances or wooden packages, and are to be withdrawn on determination of tax on this gauge at a later date.

(72 Stat. 1357, 1358, 1362; 26 U.S.C. 5202, 5204, 5211)

§ 201.270 Identification of spirits.

At the time of production gauge, containers of spirits shall be identified by the proprietor in accordance with Subpart P of this part. When the proprietor desires to enter spirits into bonded storage for subsequent packaging in wooden packages, he may identify such spirits with the specific designation to which they would be entitled if drawn into wooden packages, followed by the word "Designate", for example, "Bourbon Whisky Designate."

(72 Stat. 1356, 1360; 26 U.S.C. 5201, 5206)

§ 201.271 Entry.

Pursuant to the production gauge, the proprietor shall make appropriate entry for (a) deposit of the spirits in storage on bonded premises, (b) withdrawal of the spirits on determination of tax, (c) withdrawal of the spirits free of tax, (d) withdrawal of the spirits without payment of tax, (e) transfer of the spirits for redistillation, or (f) immediate denaturation of the spirits. Entry for deposit in storage on the same plant premises shall be made on Form 2629, accompanied by Form 2630 if the spirits are filled into packages. When spirits are entered for deposit in storage on another plant premises or are entered for withdrawal or redistillation, the provisions of Subpart L of this part shall be followed, and when spirits are entered for immediate denaturation, the provisions of Subpart M of this part shall be followed. The date of original entry is the date of production gauge.

(72 Stat. 1362; 26 U.S.C. 5211)

§ 201.272 Receipts for redistillation.

The proprietor of production facilities may receive and redistill spirits (including denatured spirits), which: (a) Have not been removed from bond; (b) have been withdrawn from bond in bulk containers on payment or determination of tax, and are eligible for return to bond as provided in Subpart S of this part; (c) have been withdrawn from bond free of tax or without payment of tax, and are eligible for return to bond as provided in subpart S; or (d) have been abandoned to the United States and sold to the proprietor without the payment of internal revenue tax thereon. The proprietor of production facilities may also receive and redistill recovered denatured spirits and recovered articles containing denatured spirits returned under the provisions of § 201.584.

(72 Stat. 1364, 1365, 1370; 26 U.S.C. 5215, 5223, 5243)

§ 201.273 Redistillation.

Spirits shall not be redistilled in production facilities at a proof lower than that prescribed for the class and type at which such spirits were originally produced, unless the redistilled spirits are to be used in wine production, to be used in the manufacture of gin or vodka, or to be designated as alcohol. Different kinds or types of spirits must be redistilled separately, or with distilling material of the same kind or type as that from which the spirits were originally produced: *Provided,* That such restriction shall not apply when (a) brandy is redistilled into "spirits-fruit" or "neutral spirits-fruit" (not for use in wine production), (b) whisky is redistilled into "spirits-grain" or "neutral spirits-grain" (c) spirits originally distilled from different kinds of material are redistilled into "spirits-mixed" or "neutral spirits-mixed", or (d) the spirits are redistilled into alcohol. All spirits redistilled on bonded premises subsequent to production gauge shall be treated the same as if such spirits had been originally produced by the redistiller and all provisions of this part and Chapter 51, I.R.C. (including liability for tax attaching to spirits at the time of production) applicable to the original production of spirits shall be applicable thereto, except that spirits recovered by redistillation of denatured spirits may not be withdrawn from bonded premises except for industrial use or after denaturation thereof. Nothing in this section shall be construed as affecting any provision of this chapter or of 27 CFR Part 5 relating to the labeling of distilled spirits. The manufacture of vodka in the production facilities of the plant by processing neutral spirits subsequent to production gauge shall be deemed to be redistillation of such spirits.

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

§ 201.274 Losses in production processes.

The distiller shall report any unusual loss of distilling material or spirits in the production facilities to the assigned officer, or to the assistant regional commissioner if the assigned officer is not available at the premises, as soon as practical after discovery of the loss. The assistant regional commissioner may require the distiller to submit proof as to the cause of such loss and, where deemed necessary, to file a claim for remission of tax, as provided in subpart C. In every case where it appears that the loss was by theft, the burden shall be on the proprietor to establish to the satisfaction of the assistant regional commissioner that such theft did not occur as a result of connivance, collusion, fraud, or negligence on his part or on the part of any of his employees or agents.

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

§ 201.275 Distillates containing extraneous substances.

(a) *Production facilities.* Distillates containing substantial quantities of fusel oil, aldehydes, or other extraneous substances may be removed from the distilling system prior to the production gauge for addition to fermenting or distilling material at the distillery where produced. Distillates removed from the distilling system under the provisions of this paragraph shall not be removed from the production facilities and shall be added promptly to the fermenting or distilling material. If the distillates contain less than one-half of one percent of fusel oil, or less than one-tenth of one percent of aldehydes, the removal and use of the distillates shall be made pursuant to a written application filed with, and approved by, the assistant regional commissioner, and pursuant to such conditions as the assistant regional commissioner may require to assure that the distillates will be properly used and accounted for. Applications under this paragraph will not be approved if the removal and use of distillates would require additional hours of direct supervision.

(b) *Bonded wine cellar.* Distillates containing aldehydes may be removed, without payment of tax, to an adjacent bonded wine cellar for use therein for fermentation of wine to be used as distilling material at the distillery from which the distillates were removed: *Provided,* That the assistant regional commissioner finds pursuant to a written application that such removal and use will not jeopardize the revenue and will not require additional hours of direct supervision. The gauge and removal of distillates to an adjacent bonded wine cellar shall be in accordance with the applicable provisions of subpart L relating to withdrawal of wine spirits for use in wine production and the receipt and use of such distillates at an adjacent winery shall be in accordance with the provisions of Part 240 of this chapter. If such distillates contain less than one-tenth of one percent of aldehydes, the removal shall be subject to such additional conditions relating to gauging, recordkeeping, manner of removal from the distilling system and from the distillery, or use as the assistant regional commissioner shall require to assure that such distillates will be properly used and accounted for.

(c) *Test.* Prior to removal of distillates from the distilling system under the provisions of this section, the distillates shall be tested by the proprietor, under the general supervision of the assigned officer, to determine the fusel oil or aldehyde content, as applicable, and a report, in writing, of such test shall be given to the assigned officer.

(72 Stat. 1356, 1365, 1382; 26 U.S.C. 5201, 5202, 5373)

§ 201.276 Removal of water.

Water may be drawn into barrels or other containers (except porous wooden packages in which spirits were previously contained) for removal from the distillery; the containers shall be appropriately identified. Water may be transferred by pipeline to contiguous premises operated under this part.

(72 Stat. 1356; 26 U.S.C. 5201)

CHEMICAL BYPRODUCTS

§ 201.277 Deposit in tanks.

If, in the production of spirits, chemical byproducts (for example, fusel oil, butyl alcohol, acetone, and ether) are produced and collected, each chemical byproduct shall be deposited in separate tanks in the production facilities so that the quantity produced may be determined: *Provided,* That the Director may approve other methods for determining the quantities of chemical byproducts produced.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.278 Spirits content of chemicals produced.

All chemicals produced, including chemical byproducts of the spirits production system, shall be substantially free of spirits before being transferred to storage tanks or removed from the production facilities. Except as authorized by the Director, the spirits content of such chemicals shall not exceed 10 percent by volume. Testing of chemicals for spirits content will be conducted by the proprietor under the general supervision of the assigned officer. The report of each test shall be given in writing to the assigned officer. Tests will be in accordance with methods approved by the Director.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.279 Disposition of chemicals.

Chemical byproducts of the spirits production system may be removed from the plant premises by pipeline or in such containers as the proprietor may desire. The quantities of such chemicals removed from the plant premises shall be determined by the proprietor. Packages of such chemicals shall be appropriately marked by the proprietor to show the nature of the contents. Chemical byproducts may be removed from the production facilities only pursuant to a written application approved by the assigned officer.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.280 Wash water.

Water used in washing chemicals to remove spirits therefrom may be run into a wash tank or a distilling material tank in the production facilities, or it may be run to a sewer or otherwise destroyed on the premises.

(72 Stat. 1323, 1356; 26 U.S.C. 5008, 5201)

INVENTORIES

§ 201.281 Inventories.

Each proprietor of production facilities shall take an actual physical inventory of the spirits and denatured spirits in tanks and other vessels in such facilities at the close of each month. The inventory shall differentiate between spirits and denatured spirits.

(72 Stat. 1356; 26 U.S.C. 5201)

Subpart J—Storage in Bond

§ 201.291 Receipt and storage of spirits.

(a) *Deposit.* All spirits (including denatured spirits) entered for deposit in storage after production as provided in subpart I shall be deposited in storage facilities on the bonded premises designated in the entry for deposit. Spirits withdrawn from customs custody without payment of tax under the provisions of this part shall be received on the bonded premises to which so withdrawn and (unless to be immediately redistilled) shall be deposited in the storage facilities on such premises. Spirits (including denatured spirits) transferred in bond as provided in subpart L or returned to bonded premises as provided in Subpart S of this part shall be deposited in the storage facilities on the bonded premises.

(b) *Tanks.* If spirits (including denatured spirits) are being deposited in a partially filled tank in the storage facilities on bonded premises, simultaneous withdrawals may not be made therefrom unless the flow of spirits both into and out of the tank is being measured by meters or other devices approved by the Director which permits a determination of the quantity being deposited and the quantity being removed. Proprietors shall prepare Form 2629 to cover the transfer of spirits of less than 190 degrees of proof from one tank to another tank on bonded premises.

(c) *Storage.* Spirits (including denatured spirits) may be stored in the storage facilities on bonded premises in any container into which spirits (including denatured spirits) may be filled on bonded premises. Containers used for such storage shall be so stored that they can be readily inspected by internal revenue officers, and cases in such storage shall be so stacked that they can be readily inventoried. Tanks and other containers (except containers to which § 201.88 is applicable) for the storage of spirits on bonded premises shall be kept securely closed, and the flow of spirits into and out of such tanks or other containers shall be controlled by Government locks or seals, or by a meter or other device approved by the Director which permits a determination of the quantity being deposited or of the quantity being removed, as the case may be. The provisions of § 201.88 are applicable in

respect to storage of spirits on bonded premises in portable containers.

(72 Stat. 1356, 1357, 1362, 1366, 1398; 26 U.S.C. 5201, 5202, 5211, 5212, 5231, 5232, 5601)

§ 201.292 Quick-aging of spirits, addition of oak chips to spirits, and addition of caramel to brandy and rum.

Spirits may be quick-aged by heating during storage on approval by the assistant regional commissioner of the proprietor's written description of the process to be used. Oak chips which have not been treated with any chemical may be added to packages either prior to or after filling; if added prior to gauge for withdrawal from bonded premises notation shall be made on the deposit form. Caramel possessing no material sweetening properties may be added to rum or commercial brandy in packages or tanks. All such operations in storage facilities on bonded premises shall be pursuant to an application to, and under the direct supervision of, the assigned officer.

(72 Stat. 1328, 1356, 1357; 26 U.S.C. 5025, 5201, 5202)

REPAIRING, FILLING, AND CHANGING PACKAGES

§ 201.293 Repairing packages.

Facilities for repairing packages of spirits must be so arranged and the work so performed that supervision by the assigned officer can be performed expeditiously, and that theft, unnecessary loss or wastage, and unauthorized mingling of spirits will be prevented.

(72 Stat. 1356, 1357; 26 U.S.C. 5201, 5202)

§ 201.294 Filling of packages from tanks.

Spirits (including denatured spirits) may be drawn into packages from tanks in the storage facilities on bonded premises. The spirits in the tank shall be gauged prior to the filling of packages, and when only a portion of the contents of the tank is packaged, the spirits remaining in the tank on completion of packaging shall again be gauged. The provisions of § 201.269 regarding the taking of production gauge of packages and preparation of gauge reports shall be applicable to the gauging of packages of spirits filled under this section. Except in the case of spirits of 190 degrees or more of proof, the date of original entry for deposit and proof of distillation shall be noted on the gauge report.

(72 Stat. 1356, 1357; 26 U.S.C. 5201, 5202)

§ 201.295 Change of packages.

Denatured spirits on bonded premises may be transferred to another package without prior approval by the assigned officer. Spirits in the storage facilities on bonded premises may be transferred from one package to another on written application to, and approval of, the assigned officer. Except in the case of spirits of 190 degrees or more of proof, each new package shall contain spirits from only one package. Packages shall be marked and branded as provided in Subpart P of this part. The proprietor shall note the record covering the deposit of the spirits in bond to show the new tare, gross weight, and tax gallons of each new package; in addition, he shall furnish the assigned officer a report, in writing, of each package change and the new elements of gauge. The provisions of this section do not apply where spirits are packaged subsequent to mingling.

(72 Stat. 1356, 1357; 26 U.S.C. 5201, 5202)

MINGLING AND CONSOLIDATION OF SPIRITS

§ 201.296 Mingling of spirits distilled at 190 degrees or more of proof and mingling of denatured spirits.

Spirits distilled at 190 degrees or more of proof, whether or not subsequently reduced, may be mingled on bonded premises. Denatured spirits produced under the same formula may also be mingled on bonded premises.

(72 Stat. 1328, 1367; 26 U.S.C. 5025, 5234)

§ 201.297 Mingling of homogeneous spirits.

Spirits which are homogeneous may be mingled on bonded premises for immediate withdrawal or for further storage in bond in tanks or packages. Spirits distilled at less than 190 degrees of proof are presumed to be homogeneous if—

(a) They were produced

(1) From the same class of materials,

(2) At approximately the same proof, and

(3) By the same proprietor (under his own or any trade name) at the same distillery, and

(b) In the case of spirits which have been stored in wooden packages so as to be in contact with the wood, they were stored in the same kind of cooperage under approximately the same conditions, and they differ in periods of such storage,

(1) Not more than 18 months in the case of spirits so stored in bond more than 8 years,

(2) Not more than 12 months in the case of spirits so stored in bond more than 4 years and not more than 8 years,

(3) Not more than 6 months in the case of spirits so stored in bond more than 2 years and not more than 4 years,

(4) Not more than 60 days in the case of spirits so stored in bond more than than 1 year and not more than 2 years, or

(5) Not more than 30 days in the case of spirits so stored in bond not more than 1 year; and

(c) They do not differ in kind under the standards of identity prescribed in 27 CFR Part 5.

The age of the youngest lot of spirits to be included in any mixture mingled under this section will determine the permissible variation in periods of storage. Spirits mingled under this section consisting of different distilling seasons and years may not be bottled in bond; mingled spirits which were originally produced and warehoused under different names may not be bottled in bond unless the name on the packages of such mingled spirits is the producer's real name; and mingled spirits stored in tanks may not be bottled in bond unless the season of consolidation and of bottling are identical. Where the mingled spirits are to be packaged, such packaging shall be conducted under the provisions of § 201.294; if so desired, the spirits may be returned to the packages from which they were dumped for mingling, or as many of such packages as are necessary.

(72 Stat. 1328, 1367; 26 U.S.C. 5025, 5234)

§ 201.298 Mingling of heterogeneous spirits for immediate removal to bottling premises.

Heterogeneous spirits may be mingled in bulk gauging tanks on bonded premises for determination of the tax imposed by section 5001, I.R.C., if such spirits are to be immediately removed to bottling premises for use exclusively in taxable rectification or in rectification under section 5025(f), I.R.C. The quantity of each component comprising the mixture shall be determined by the proprietor in order to provide a statement of composition. When the mingled spirits are transferred to bottling premises (whether on the same or another plant premises), the proprietor shall forward to the proprietor of the bottling premises such information regarding the composition of the mingled spirits as is necessary for determining the proper use of the spirits and the labeling of the finished product. The proprietor of the bonded premises shall note on the withdrawal form, Form 179, that the spirits are for use only in taxable rectification, or, if applicable, are eligible for rectification under section 5025(f), I.R.C.

(72 Stat. 1328, 1367; 26 U.S.C. 5025, 5234)

§ 201.299 Mingling for denaturation or removal for tax-free purposes.

Any spirits on bonded premises may be mingled if they are eligible to be denatured, and are to be immediately denatured, in accordance with the provisions of Part 212 of this chapter, or are eligible to be removed from bond for an authorized tax-free purpose, and are to be immediately removed from bond for such purpose, as provided in Subpart L of this part.

(72 Stat. 1328, 1367; 26 U.S.C. 5025, 5234)

§ 201.300 Mingling for redistillation.

Spirits (including denatured spirits) may be mingled on bonded premises for immediate redistillation at the same plant or at another plant in accordance with the provisions of §§ 201.272 and 201.273.

(72 Stat. 1328, 1367; 26 U.S.C. 5025, 5234)

§ 201.301 Mingling to consolidate packages under section 5234(a)(2), I.R.C.

Within 8 years of the date of original entry for deposit, and with the prior approval of the assigned officer, packages of spirits of the same kind, distilled by the same proprietor (under his own or any trade name), at the same distillery, and which have been stored in internal revenue bond in the same kind of cooperage for not less than 4 years (or 2 years in the case of rum or brandy) may be dumped and mingled in a tank in the storage facilities on bonded premises. Such mingled spirits shall be immediately repackaged, for further storage in bond, in as many as necessary of the packages from which dumped. Where

spirits produced in different distilling seasons are mingled under this section, the mingled spirits shall consist of not less than 10 percent of spirits of each such season. Once the spirits are dumped and mingled, they shall be promptly drawn into packages in the manner provided in § 201.294. If draining the tank would result in a remnant package, the proprietor may determine and record the quantity of spirits remaining in the tank and treat such spirits as a part of the succeeding lot to be mingled in that tank or he may fill, gauge, and mark a remnant package: *Provided,* That if the components of the spirits in the tank are not eligible for mingling, pursuant to this section, with the components of the succeeding lot, or if consolidation operations are discontinued, the spirits remaining must be drawn into a remnant package. No spirits mingled under the provisions of this section shall again be mingled under such provisions until at least 1 year has elapsed since the last prior mingling.

(72 Stat. 1328, 1367; 26 U.S.C. 5025, 5234)

§ 201.302 Application for mingling packages of spirits.

Before dumping packages of spirits on bonded premises for mingling (except heterogeneous spirits covered in § 201.298 and spirits of 190 degrees or more of proof) the proprietor shall file with the assigned officer an application therefor on Form 2323 and receive his approval thereof. The proprietor shall attach to Form 2323 a list (one copy) of the serial numbers of the packages. When packages of spirits of 190 degrees or more of proof are to be mingled the proprietor shall so notify the assigned officer and make appropriate entries in his records reflecting the mingling. Each package of spirits to be mingled under this subpart shall be carefully examined by the proprietor, and if any package bears evidence of loss due to theft or unauthorized voluntary destruction, or loss in excess of normal storage losses, such package shall not be dumped until released by the assigned officer; Form 2323 shall be amended when necessary. Packages shall not be dumped until the assigned officer has given his approval therefor.

(72 Stat. 1367; 26 U.S.C. 5234)

§ 201.303 Determining date of original entry.

Where spirits are mingled in accordance with the provisions of § 201.301, the date of original entry for the entire lot shall be the date of original entry of the youngest spirits mingled. Where packages of spirits are mingled as provided in § 201.297 or are blended as provided in § 201.307, the date of original entry of the oldest spirits mingled shall be the date of original entry for the entire lot; however, the appropriate deposit and withdrawal forms shall show the date of original entry of the oldest and the youngest spirits in the lot. Where mingled spirits are contained in tanks, each lot (except spirits of 190 degrees or more of proof) so mingled shall retain its date of original entry for the purpose of determining the period of storage in bond. Withdrawals from a storage tank on bonded premises containing more than one lot of spirits (except spirits of 190 degrees or more of proof) shall be accounted for by lots on the basis that the lot with the earliest date of original entry will be the first lot withdrawn.

(72 Stat. 1320, 1367; 26 U.S.C. 5006, 5234)

§ 201.304 Mingled spirits held in tanks.

Where spirits are mingled in a tank on bonded premises for storage therein the proprietor shall gauge the spirits in the tank under the direct supervision of an assigned officer and report the gauge on Form 2323. Mingled spirits in tanks may be drawn into packages in accordance with § 201.294, or may be transferred in bond or withdrawn from bond in accordance with this subpart and subpart L. The date of original entry (except as to spirits of 190 degrees or more of proof) shall be noted on the gauge report. Eligible spirits may be added to mingled spirits already on deposit in a tank on such premises.

(72 Stat. 1367; 26 U.S.C. 5234)

§ 201.305 Withdrawal or transfer in bond of mingled spirits.

Spirits mingled under the provisions of §§ 201.296, 201.297, and 201.301 may be transferred in bond, or withdrawn from bond for any purpose for which the spirits could have been withdrawn before mingling. Transfer and withdrawal forms, except as to spirits mingled under § 201.296, shall be noted to show the date of mingling under this subpart and the date of original entry for the spirits after mingling.

(72 Stat. 1362, 1367; 26 U.S.C. 5212, 5234)

§ 201.306 Rinsing of packages and disposition of rinse water.

When spirits in wooden packages are dumped for mingling or consolidation of spirits on bonded premises, the packages and the char and wood chips therein, if any, shall be thoroughly rinsed unless the packages are to be immediately refilled. Packages to be so refilled may be rinsed. Char and wood chips not returned to packages shall, under the direct supervision of the assigned officer, be burned or treated in such manner as to preclude the abstraction of potable spirits. Rinse water not used in reducing the proof of the same spirits may be used in reducing the next lot of spirits homogeneous with the rinsings, or may be promptly mingled with heterogeneous spirits for tax determination under § 201.298; if not so disposed of the rinsings shall be immediately destroyed or redistilled. Rinse water to be redistilled shall be gauged by the proprietor who shall make a report of such gauge on Form 2629. On delivery of a copy of such Form 2629 to the assigned officer, the proprietor shall transfer the rinse water to the production facilities.

(72 Stat. 1356, 1365, 1367; 26 U.S.C. 5201, 5223, 5234)

Blending of Beverage Rums or Brandies

§ 201.307 Permissible blending.

Fruit brandies distilled from the same kind of fruit at not more than 170 degrees of proof may, for the sole purpose of perfecting such brandies according to commercial standards, be mixed or blended with each other, or with any mixture or blend of such fruit brandies on bonded premises. Rums may, for the sole purpose of perfecting them according to commercial standards, be mixed or blended with each other, or with any mixture or blend of rums on bonded premises. Before blending such rums or brandies, the proprietor shall file an application on Form 1685 and receive approval thereof. Brandies or rums mixed or blended in accordance with this subpart may be packaged, stored, transported, transferred in bond, withdrawn free of tax, withdrawn without payment of tax, withdrawn on payment or determination of tax, or be otherwise disposed of, in the same manner as brandies or rums not mixed or blended. If brandy or rum, mixed or blended in accordance with this subpart is transferred in bond, Form 236 and Form 2630 (if any) shall show such fact and whether the brandy or rum is subject to tax imposed by section 5023, I.R.C.

(72 Stat. 1367; 26 U.S.C. 5234)

§ 201.308 Blending procedure.

On approval of Form 1685, the proprietor shall dump the brandy or rum to be blended, gauge the contents of the blending tank, gauge the packages (if the spirits are repackaged), and complete Form 1685. The proprietor shall record the gauge of packages (if any) on Form 2630 and the tank gauge on Form 1685 and deliver a copy of the completed Form 1685 and of each Form 2630 (if any) to the assigned officer.

(72 Stat. 1367; 26 U.S.C. 5234)

Losses in Bond

§ 201.309 Allowable losses.

Tax shall not be collected (or, if paid, such tax shall be refunded) in respect of spirits (including denatured spirits) lost or destroyed while in bond, except that such tax shall be collected in the case of—

(a) Theft, unless the assistant regional commissioner finds that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them. The abatement, remission, credit, or refund of taxes on spirits lost by theft shall only be allowed the extent that the claimant is not indemnified against or recompensed for such tax.

(b) Voluntary destruction unless such destruction is carried out as provided in Subpart R of this part.

In every case where it appears that the loss was by theft, the burden shall be on the proprietor of the distilled spirits plant or other person responsible for the distilled spirits tax to establish to the

satisfaction of the assistant regional commissioner that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them. Claims in respect of losses allowable under this section shall be filed in accordance with the applicable provisions of Subpart C of this part.

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

§ 201.310 Taxable losses.

(a) *Original quantity.* Where there is evidence satisfactory to the assistant regional commissioner that any loss of spirits (including denatured spirits) from any package deposited in storage in internal revenue bond is due to theft (except where the assistant regional commissioner has made the finding provided for in § 201.309(a)) or is due to unauthorized voluntary destruction, the assistant regional commissioner may require the immediate taxpayment of such package on the basis of the original quantity of spirits entered for deposit in storage in such package, except where the extent of any loss from causes other than theft or unauthorized voluntary destruction can be established by the proprietor to the satisfaction of the assistant regional commissioner, he may credit the tax on the loss so established against the tax on the original quantity.

(b) *Alternative method.* Where there is evidence satisfactory to the assistant regional commissioner that there has been access, other than as authorized by law, to the contents of packages stored on bonded premises, and the extent of such access is such as to evidence a lack of due diligence or a failure to employ necessary and effective controls on the part of the proprietor, the assistant regional commissioner may (in lieu of the procedure prescribed in paragraph (a) of this section) assess an amount equal to the tax on 5 proof gallons of spirits on each of the total number of such packages as determined by him.

(c) *Applicability to packages filled after entry.* The provisions of this section shall apply to spirits (including denatured spirits) which are filled into casks or packages, as authorized by law, after entry and deposit in storage in internal revenue bond, whether by recasking, filling from storage tanks, consolidation of packages, or otherwise; and the quantity filled into such casks or packages shall be deemed to be the original quantity for the purpose of this section, in the case of loss from such casks or packages.

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

§ 201.311 Losses in bond.

Where a container of spirits (including denatured spirits) in bond sustains a loss in excess of normal storage or transit losses or as a result of theft or unauthorized voluntary destruction, the loss shall be determined at the time of discovery. When it appears that any container in bond has sustained a loss resulting from theft or unauthorized voluntary destruction, such loss or indication thereof shall be reported promptly by the proprietor to the assigned officer. A record of each container sustaining such loss showing the quantity lost and the apparent cause of the loss shall be made by the proprietor. Unusual losses from obvious cause other than theft or unauthorized voluntary destruction occurring or discovered at the time of withdrawal from bond or transfer in bond shall be noted on the appropriate withdrawal or transfer form. When a loss appears to be due to theft or unauthorized voluntary destruction, the assigned officer shall place a detainer on the container unless the loss is determined at the time of a gauge for withdrawal from bond and the proprietor acknowledges liability and elects to pay the tax on such loss. Where it is found that the contents of a container have been tampered with, or where a material deficiency is found without evidence of loss by leakage or casualty, or where deterioration in proof not accountable by variation in gauge is disclosed, the assigned officer shall detain the package. In any case in which spirits (including denatured spirits) are lost or destroyed in bond, whether by theft or otherwise, the assistant regional commissioner may require the proprietor or other person liable for the tax to file a claim for relief from the tax in accordance with the applicable provisions of Subpart C of this part. Losses of spirits (including denatured spirits) sustained from the tanks and bulk conveyances in bonded warehouses shall be determined by the proprietor each time a tank or bulk conveyance is emptied and on the basis of a physical inventory at the close of each month. When the quantity lost from all the storage tanks and bulk conveyances in bonded warehouses exceeds 1 percent of the total quantity contained in the tanks and bulk conveyances during the month, or where any loss from storage tanks or bulk conveyances is due to illegal withdrawal, the loss shall be taxpaid unless a claim for remission is filed in accordance with the provisions of § 201.43 and is allowed by the assistant regional commissioner. If at any time any package recorded as deposited in the bonded warehouse can not be located or otherwise lawfully accounted for, such fact shall be immediately reported to the assigned officer and a claim with respect thereto shall be filed under the provisions of § 201.43.

(72 Stat. 1323, 1375; 26 U.S.C. 5008, 5311)

SPIRITS IMPORTED INTO THE UNITED STATES

§ 201.312 Importation of spirits.

The proprietor may withdraw from customs custody, without payment of the internal revenue tax imposed on imported spirits by section 5001, I.R.C., imported spirits of 185 degrees or more of proof, which lack the taste, aroma, and characteristics generally attributed to whisky, brandy, or rum, or similar beverage spirits and transfer such spirits to his bonded premises, for nonbeverage use. Spirits of any proof, imported specifically for any purpose incident to the requirements of national defense, may also be transferred from customs custody to the bonded premises of a distilled spirits plant without payment of such tax. A proprietor intending to receive imported spirits from customs custody shall obtain an approved application, Form 2609, in the same manner as for the receipt of spirits in bond from another bonded premises. Imported spirits transferred to bonded premises, as provided in this section, may be redistilled or denatured and may, with or without redistillation or denaturation, be withdrawn for any purpose authorized by chapter 51, I.R.C., in the same manner as domestic spirits. Imported spirits shall be kept separate at the bonded premises and shall not be mixed with domestic spirits or with imported spirits which may be subject to a different rate of additional tax: *Provided,* That imported spirits may be mingled with domestic spirits or with any other imported spirits if the mingled spirits are to be immediately denatured. If imported spirits are transferred in bond as provided in Subpart L of this part, Form 236 shall indicate that the spirits are imported and shall show the rates of duties specified by the customs officer at time of release from customs custody; each container shall be marked, in addition to the other required marks, with the word "Imported."

(72 Stat. 1366; 26 U.S.C. 5232)

PERIOD OF STORAGE IN BOND

§ 201.313 Expiration of bonding period.

The bonding period defined in § 201.26 expires at the close of business on the twentieth anniversary of the day next preceding the date of original entry for deposit of the spirits in storage in internal revenue bond. Each June and December the proprietor shall determine whether the 20-year period of storage on any spirits in storage in bond (other than denatured spirits or spirits of 190 degrees or more of proof) will expire during the next season and, if any such spirits are in storage, render a written report to the assigned officer of the results of his determination. The proprietor's report shall include a full identification of the spirits and show the date of expiration of the bonding period for each container (or lot of such spirits). Before such date of expiration, the proprietor shall file an application for taxpayment or other authorized disposition of such spirits. The proprietor shall, pursuant to such application, withdraw such spirits from storage on the bonded premises before the expiration of such 20-year period.

(72 Stat. 1320, 1349, 1361; 26 U.S.C. 5006, 5173, 5207)

Subpart K—Bottling on Bonded Premises

§ 201.321 General.

(a) *Bottling in bond.* Proprietors who have established facilities on bonded premises for bottling in bond as provided in this part and who have otherwise complied with the requirements of this part for the carrying on of bottling in bond operations may conduct such operations in such facilities pursuant to the provisions of this subpart. Spirits stored on bonded premises which have been duly entered for bottling in bond, as provided in § 201.322, shall be dumped, gauged,

bottled, stamped, and cased by the proprietor, as provided by law and in this part, under direct supervision of an assigned officer. Spirits, other than gin and vodka, shall not be bottled in bond until they have remained in bond for at least 4 years in wooden containers wherein the spirits have been in contact with the wood surface. Gin and vodka shall not be bottled in bond, except for export, until they have remained in bond for at least 4 years in wooden containers coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface. Gin or vodka may be bottled in bond for export at any time during storage in bond regardless of the types of containers in which they were stored. Spirits entered into bonded storage for subsequent packaging in wooden packages, as provided in § 201.270, may not be bottled in bond unless the spirits are drawn into such packages in the same season in which produced.

(b) *Bottling of alcohol.* Alcohol of 190 degrees or more of proof for industrial purposes may be bottled, stamped, labeled, and cased on bonded premises, prior to withdrawal from bond, as provided in this subpart.

(72 Stat. 1366, 1369; 26 U.S.C. 5233, 5235)

BOTTLING IN BOND

§ 201.322 Entry and gauge.

Proprietors shall make entry for withdrawal of spirits for bottling in bond on Form 1515. A separate Form 1515 shall be executed for each lot of spirits to be so bottled. Before dumping packages of spirits, the proprietor shall notify the assigned officer and shall give him a suitable list (one copy) of the serial numbers of the packages to be dumped. Each package shall be carefully examined by the proprietor, and if any package bears evidence of loss due to theft or unauthorized voluntary destruction, or loss in excess of normal storage losses, such package shall not be dumped until released by the assigned officer; Form 1515 will be amended when necessary. The proprietor shall dump packages promptly after the assigned officer has given his approval therefor on Form 1515; however, no more spirits shall be dumped at any time than can be bottled expeditiously. After dumping the packages, the proprietor shall gauge the spirits and make a report of such gauge on Form 1515. Such gauge shall be made by weight and proof unless the assistant regional commissioner approves another method of gauging. The spirits shall be gauged either in the storage portion of the bonded warehouse or in the bottling-in-bond facilities; spirits may be transferred to such facilities by pipeline. The Form 1515 will then be resubmitted to the assigned officer for the release of the spirits.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.323 Bottling requirements.

When entry of spirits for bottling in bond has been made, the proprietor may mingle for bottling spirits of the same kind, differing only in proof, produced in the same distilling season by the same distiller at the same distillery. The mingling of such spirits other than as authorized in this section, or the addition or subtraction of any substance or material (except as provided in this subpart) or the application of any method or process to alter or change in any way the original condition or character of the product (except as authorized in § 201.324) is prohibited.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.324 Filtering and stabilizing.

After entry for withdrawal of spirits for bottling in bond the proprietor may in the bottling-in-bond facilities (a) remove foreign substances or other extraneous insoluble materials with or without the use of filter aids, and (b) effect minor changes in the soluble color or soluble solids solely by filtration, chill proofing, or other physical treatments (which do not involve the addition of any substance which will remain incorporated in the finished product) as may be necessary or desirable to produce a stable product, provided such changes do not result in the removal of more than 10 percent of the soluble solids or soluble color of the spirits so treated (including the extration of not more than 10 percent of any class of the natural congeners incident to such changes). Any treatment of such spirits other than as provided for in this section which alters or changes the original character or composition of the spirits will constitute taxable rectification.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.325 Rinsing of barrels.

When spirits in wooden packages (except packages treated so as to preclude contact of the spirits with the wood surface) are dumped for bottling in bond, the packages and the char and wood chips therein, if any, shall be thoroughly rinsed by the proprietor. The rinse water so obtained may be (a) used for reducing the proof of the spirits removed from such packages, (b) destroyed under the supervision of the assigned officer, (c) collected for transfer to the production facilities for redistillation as provided in § 201.306, or (d) collected for mingling with heterogeneous spirits as provided in § 201.298. Char and wood chips contained in or dumped from such packages shall, under the direct supervision of the assigned officer, be burned or treated in such manner as to preclude the abstraction of potable spirits.

(72 Stat. 1356, 1366; 26 U.S.C. 5201, 5233)

§ 201.326 Reduction in proof.

The proof of spirits to be bottled in bond shall, by the addition of pure water only, be reduced to 100 degrees for spirits for domestic use. Spirits may be bottled in bond for export at 80 degrees of proof or more. Adjusting the proof to a tenth of a degree, either above or below the whole degree, will not be permitted; except that where spirits are to be bottled for export and labeled in tenths of a degree (such as 86.8°), the proof shall be adjusted to such tenth of a degree. When part of a lot of spirits dumped for domestic use is to be bottled for export, such spirits may be further reduced in proof, and filtered if necessary.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.327 Bottling.

Spirits may be bottled in bond only from approved bottling tanks. The proprietor shall determine the quantity and proof of the spirits deposited in each bottling tank and make entry thereof on Form 1515, and shall then attach a copy of Form 1515 to the bottling tank. Where two or more bottling tanks are used for one lot of spirits, Form 1515 shall be attached to one tank and the other tanks shall be marked to bear a reference to the tank to which the Form 1515 is attached. Where two or more lots of spirits are to be bottled at the same time, the bottling shall be conducted in such manner as to prevent any mingling of the different lots. Where part of a lot of spirits is to be bottled for export and the proof of such spirits is further reduced, the proprietor shall determine the quantity and proof of the spirits after such further reduction and make entry thereof on Form 1515. No spirits shall be bottled in bond until the assigned officer has noted on Form 1515 that he has verified the quantity and proof of the spirits and has released the spirits for bottling at the specified proof. Bottling tanks and pipelines shall be so equipped that the flow of spirits through the tanks may be controlled by Government locks. Tanks containing spirits deposited for bottling in bond, or the rooms or building in which such tanks are located, shall be locked at all times except when bottling-in-bond operations, or activities related thereto, are being conducted as provided in this part and the assigned officer is on the premises. Where bottling facilities are alternated as provided in § 201.175, operations shall be conducted in such manner as to prevent the mingling of tax determined spirits and spirits in bond.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.328 Liquor bottles.

The proprietor shall comply with the provisions of Part 175 of this chapter respecting the use of liquor bottles when bottling spirits in bond. Spirits may be bottled in bond for domestic purposes in the following sized bottles and no others: 1 gallon, ½ gallon, 1 quart, ⅘ quart, 1 pint, ½ pint, ⅛ pint, 1/10 pint, and, in the case of brandy, 1/16 pint. Spirits may be bottled in bond for export in bottles of any size less than five gallons. Liquor bottles may be used, but need not be used, in bottling spirits in bond for exportation.

(72 Stat. 1360, 1366, 1374; 26 U.S.C. 5206, 5233, 5301)

§ 201.329 Label requirements.

(a) *Certificate of label approval or exemption.* Proprietors are required by 27 CFR Part 5 to obtain approval of labels, or exemption from label approval, for any label to be used on bottles or spirits bottled in bond for domestic use and shall exhibit evidence of label approval, or of exemption from label approval, on request of the assigned officer.

Labels covered by a certificate of exemption from label approval to be affixed to bottles in which spirits are packaged for sale and which are subject to the provisions of Part 175 of this chapter shall conform to the provisions of such part.

(b) *Caution notice.* Each bottle of spirits bottled in bond under section 5233, I.R.C., (except for export) shall have affixed thereto a caution notice (clearly legible) reading as follows:

This bottle has been filled and stamped under the provisions of sections 5205 and 5233, Internal Revenue Code. Any person who shall reuse the stamp affixed to this bottle or remove the contents of this bottle without so breaking the stamp affixed thereto as to prevent reuse, or who shall sell this bottle, or reuse it for distilled spirits, will be liable to the penalties prescribed by law.

Bottles containing spirits bottled for export may have affixed thereto such caution notice.

(72 Stat. 1366, 1374; 26 U.S.C. 5233, 5301)

§ 201.330 Labels to agree with contents of tanks and bottles.

The proprietor shall before bottling in bond a lot of spirits attach a copy of the (approved or exempted) label he proposes to use for such bottling, which shall agree with the spirits in the tank, to the Form 1515 to be attached to the tank. Labels affixed to bottles shall be identical with the label on Form 1515 attached to the tank from which the bottles were filled. If the assigned officer finds that the label and spirits do not agree in every respect, he shall not permit the spirits to be bottled until the proprietor submits to him a proper label correctly describing the spirits to be bottled, or, if the spirits are labeled with labels which do not agree with the spirits in every respect, he shall cause the proprietor to relabel the spirits with a proper label.

(72 Stat. 1366, 1374; 26 U.S.C. 5233, 5301)

§ 201.331 Labeling of spirits bottled for export.

All bottles containing spirits bottled in bond for export shall have securely affixed thereto a label showing the following:

(a) Kind of spirits;

(b) Name of distiller, as provided in § 201.332, and plant number in which produced;

(c) Proof of the spirits;

(d) Net contents, unless the markings on the bottle indicate such contents;

(e) A statement that the spirits were bottled in bond for export; and

(f) The plant number where bottled, unless the markings on the bottle indicate such number.

The bottler may place on the label any additional information, including his name or trade name, that he may desire if it is not inconsistent with the required information. The label information may be stated in the language of the country to which the spirits are to be exported provided the assigned officer is furnished an English translation of the information. The net contents and proof may be stated in the units of measurement of the foreign country provided the assigned officer is furnished a statement of the equivalent United States units.

(72 Stat. 1360, 1366, 1374; 26 U.S.C. 5206, 5233, 5301)

§ 201.332 Trade-marks and distiller's name.

The label of spirits bottled in bond which contains the trade-mark or special name, or an additional label (equally conspicuous) shall bear the real name of the actual bona fide distiller or the trade name under which the distiller produced and warehoused the spirits, and the plant (or registered distillery) number in which produced; and the plant number in which bottled. The label may also bear the name or trade name of the bottler.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.333 Tests of bottled spirits.

The assigned officer supervising the bottling-in-bond facilities shall, at irregular intervals during the process of bottling, test and examine the spirits to determine (a) whether the label in use is identical with the label attached to Form 1515, and properly describes the spirits; (b) whether the bottled spirits agree in proof with the data on the label; and (c) whether the quantity agrees with the data on the label, stamp, or bottle. If the contents do not agree as to quantity (except for such variations in measuring as may occur in filling conducted in compliance with good commercial practice and there is substantially as much overfill as underfill for each lot of spirits bottled) or as to proof (subject to a normal drop in proof occurring during bottling operations, but not to exceed three-tenths of a degree) with the respective data on the label, stamp, or bottle, the assigned officer will withhold release of the bottled spirits and require the proprietor to rebottle, recondition or relabel the spirits in such manner that the label will correctly describe the contents.

§ 201.334 Strip stamps.

The proprietor shall affix to each bottle of spirits bottled in bond a domestic or export strip stamp, as appropriate. Such stamps shall be procured, overprinted, affixed, and accounted for as provided in Subpart Q of this part.

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

§ 201.335 Marks and brands on cases.

Each case of spirits filled in the bottling-in-bond facilities shall be marked as prescribed by Subpart P of this part before removal from such facilities.

§ 201.336 Removal of spirits bottled.

When spirits are bottled in bond the filled bottles, with labels and strip stamps properly affixed, shall be placed in cases, and the cases then sealed, after which such cases shall be promptly removed from the bottling-in-bond facilities to the storage portion of the bonded warehouse, or (after constructive return to storage) transferred in bond or withdrawn from bond, pursuant to subpart L. The proprietor shall report all spirits bottled in bond on Form 1620. The tax on spirits withdrawn for export with benefit of drawback at less than 100 degrees of proof shall be determined on a wine gallon basis. The removal to storage of cases temporarily sealed, pending affixing of brand labels or State stamps, may be authorized by the assigned officer. Such temporarily sealed cases may be transferred in bond to other premises. Where the mandatory information required under 27 CFR Part 5 appears on the brand label rather than a separate label, the brand label shall be affixed at the time of bottling. Brand labels or State stamps (if to be affixed before withdrawal from bond) shall be affixed to the bottles in the bottling-in-bond facilities: *Provided,* That the assigned officer may authorize the affixing of such labels or stamps in the storage portion of a bonded warehouse where the need therefor is established, if space and facilities for such activities are available and the necessary supervision can be provided without the assignment of an additional internal revenue officer. Spirits in cases temporarily sealed shall be kept apart from other spirits in the warehouse.

(72 Stat. 1360, 1366; 26 U.S.C. 5206, 5233)

§ 201.337 Salvaged spirits.

Spirits salvaged from filtering or bottling operation in the bottling-in-bond facilities may be added, under the direct supervision of the assigned officer, to a tank in such facilities containing the same or another lot of spirits of the same kind, produced by the same distiller, at the same distillery during the same distilling season. Such spirits shall be reported on Form 1515 covering the lot to which they are added, unless they are returned to the lot from which they were salvaged.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.338 Marking and disposition of remnant cases.

Where there is less than a case of bottled spirits remaining from a lot of spirits bottled, either for domestic use or for exportation, the remnant will be placed in a case and such case will be given the serial number of the last full case containing spirits in the same lot, followed by the letter "R", thus: "100–R": *Provided,* That where spirits, of the same kind and proof, produced by the same distiller at the same distillery during the same distilling season as the remnant, are to be bottled on the same or following business day, and are eligible for inclusion in the remnant case, such remnant case may be given the next serial number and held in the bottling-in-bond facilities, and the case filled with such spirits. Such remnant case, if not held in the bottling-in-bond facilities, shall be removed with other cases to storage and taxpaid for domestic consumption, or returned to the bottling-in-bond facilities when the next lot of spirits to be bottled is of the same kind, produced by the same distiller, at the same distillery during the same distilling season, and (a) the bottles used for filling a complete case, if of the same proof and otherwise eligible, or (b) the contents dumped into the bottling tank and

mingled with such other spirits for bottling. Remnant cases of spirits bottled for export shall not be marked to show the date of withdrawal and the names of the ports. In any instance when a remnant case is removed or returned to the bottling-in-bond facilities for use as provided in this section, appropriate notation will be made on Forms 1515 showing the disposition of such remnant.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.339 Domestic use of spirits bottled for export.

Where export cases (full or remnant) of spirits bottled in bond are to be used for domestic purposes the spirits shall have been filled into bottles conforming with the provisions of § 201.328 and shall be properly relabeled. Where export remnants (if eligible) are to be used for filling a case of spirits bottled in bond for domestic consumption, or where full cases are to be converted to domestic use as bottled-in-bond spirits (if eligible) the export strip stamps shall be replaced by domestic bottled-in-bond stamps. In addition export cases or remnants may be converted to domestic use, if the spirits (if eligible) are rebottled under the provisions of § 201.346, or if the spirits are tax determined and removed to bottling premises in the same or contiguous plant premises for rebottling, relabeling, or restamping, as the case may be. The rebottling, relabeling, and restamping operations on bonded premises will be under the direct supervision of the assigned officer. Cases must be marked and branded as required by Subpart P of this part.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.340 Remnant cases of spirits bottled in bond returned to bottling-in-bond facilities.

Remnant cases of spirits returned to the bottling-in-bond facilities for use in filling a complete case or dumping into a bottling tank shall be included in the application, Form 1515, covering the withdrawal of bulk containers for bottling.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.341 Losses or gains in bottling.

The loss or gain for each lot of spirits bottled in bond shall be entered by the proprietor on Form 1515. Where there is a loss or gain of 2 percent or more of the quantity of spirits deposited in the bottling tank, the proprietor shall determine the cause of the discrepancy and submit a report to the assigned officer. Losses or gains disclosed shall be recorded in accordance with Subpart U of this part.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.342 Use of trade name.

Before a proprietor may bottle or label bottled-in-bond spirits under a trade name, he shall secure approval of such name in the manner prescribed by Subpart F of this part. When any such trade name is to be used, it shall be entered in the appropriate space on Form 1515.

(72 Stat. 1366; 26 U.S.C. 5233)

ALCOHOL

§ 201.343 General.

(a) *Bottled alcohol.* Alcohol of 190 degrees or more of proof may be bottled and cased in the bonded warehouse under the direct supervision of the assigned officer. Alcohol may be bottled in containers of 1 gallon or less, or in bottles complying with the provisions of § 201.504; however, the proprietor is required to comply with the provisions of Part 175 of this chapter where applicable. The proprietor shall prepare Form 1515 for alcohol to be bottled in the bonded warehouse. The heading of Form 1515 shall be prominently marked with the word "Alcohol", and the form shall be further modified to show only the size of bottles, the number of cases filled, and the disposition of such cases; on completion of the bottling of the lot, Form 1515 shall be noted to show the quantity withdrawn from the tank and shall be delivered to the assigned officer. Form 1620 shall be prepared by the proprietor for each lot of alcohol bottled.

(b) *Encased containers.* Containers of alcohol, authorized under § 201.504, which are enclosed in and attached to individual cartons, as provided in § 201.505, shall be filled and recorded as provided in paragraph (a) of this section, but the filled containers are not considered to be bottled alcohol, and are not subject to the provisions of §§ 201.344 and 201.345 relating to stamps, labels, and marks. The cartons or cases shall be marked in the manner provided in §§ 201.505 and 201.529.

(72 Stat. 1357, 1369; 26 U.S.C. 5202, 5235)

§ 201.344 Stamps and labels.

The proprietor shall affix to each bottle of alcohol filled by him an alcohol strip stamp which shall be procured and affixed as provided in Subpart Q of this part. All bottles of alcohol shall have securely affixed thereto a label showing (a) alcohol and (b) the name, address, and plant number of the bottler. In addition, bottled alcohol to be withdrawn on tax determination shall be labeled in accordance with the provisions of Part 175 of this chapter or 27 CFR Part 5, as applicable.

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

§ 201.345 Marks and brands on cases.

Each case of bottled alcohol shall bear the marks and brands prescribed therefor by Subpart P of this part.

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

REBOTTLING, RELABELING, OR RESTAMPING

§ 201.346 Bottled-in-bond spirits.

Bottled-in-bond spirits which (a) have not been withdrawn from bond, (b) have been returned to bond as provided by § 201.586, or (c) have been withdrawn taxpaid, may, on approval of a written application to the assigned officer, be rebottled, relabeled, or restamped in a bonded warehouse. Taxpaid bottled-in-bond spirits returned to a bonded warehouse for rebottling, relabeling, or restamping, shall be kept separate from other spirits, and shall not again be subject to tax under section 5001(a)(1), I.R.C. When taxpaid spirits have been rebottled, relabeled, or restamped, they shall be removed from the bonded warehouse immediately on completion of the operation. The rebottling, relabeling, or restamping shall be accomplished expeditiously, but shall be done at such time and in such manner as will not require additional supervision. Rebottling operations shall be conducted under direct supervision in the bottling-in-bond facilities, separate from any other bottling operations. The assigned officer may authorize relabeling or restamping operations to be conducted in the storage portion of the warehouse. The rebottling, relabeling, or restamping of spirits shall be conducted in such manner as to prevent any mingling of a lot of reconditioned spirits with any other spirits, either in the filling of bottles or in the filling of cases.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.347 Alcohol.

The provisions of this subpart relating to the rebottling, relabeling, or restamping of bottled-in-bond spirits shall apply, insofar as applicable, to the rebottling, relabeling, or restamping of alcohol bottled under this subpart.

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

§ 201.348 Application.

Application to rebottle, relabel, or restamp bottled-in-bond spirits shall be filed in duplicate and state specifically (a) the reason for the rebottling, relabeling, or restamping, (b) the serial numbers of the cases, (c) the name and plant or registry number of the producing distiller, (d) the season and year of production, (e) the name and plant or registry number of the premises where the spirits were bottled, (f) the season and year of original bottling, (g) whether the spirits have been withdrawn from bond, and (h) the portion of the bonded warehouse where the operations will be conducted. If the spirits were originally bottled by a person other than the applicant, the application shall be accompanied by written authorization from such person consenting to the rebottling or relabeling.

(72 Stat. 1366; 26 U.S.C. 5233)

§ 201.349 Stamp, bottle, and label requirements.

The strip stamps on bottles of spirits to be rebottled shall be destroyed at the time of dumping the bottles, and new strip stamps, overprinted with exactly the same data as the original stamps, in regard to the name of the producer, and the seasons and years of production and bottling, shall be affixed to the bottles in which the spirits are rebottled. Liquor bottles used for rebottling shall comply with the provisions of § 201.328. Where spirits are relabeled, the proprietor shall comply with §§ 201.329 and 201.330. Bottled-in-bond spirits which have been rebottled, relabeled, or restamped shall be returned to original cases, or placed in new cases. Such cases shall be marked in accordance with Subpart P of this part; rebottled spirits shall show the plant number of the rebottler.

§ 201.350 Filtering and stabilizing.

Proprietors dumping spirits for rebottling may filter or stabilize such spirits under the provisions of § 201.324.

§ 201.351 Domestic spirits for exportation.

Pursuant to the provisions of this subpart spirits bottled in bond for domestic use may be rebottled, relabeled, or restamped for exportation (as the case may be) in compliance with the requirements for spirits bottled in bond for exportation. Such spirits, if rebottled, may be reduced to not less than 80 degrees of proof as provided in § 201.326. Spirits rebottled, relabeled, or restamped under the provisions of this section, may be withdrawn (a) without payment of tax for exportation, or (b) taxpaid (unless previously taxpaid) and withdrawn for exportation with benefit of drawback, as provided in Subpart L, of this part, except that spirits in the latter category shall be rebottled unless originally bottled on the same bonded premises and have not been removed from the premises.

(72 Stat. 1362, 1366; 26 U.S.C. 5214, 5233)

§ 201.352 Records and reports.

Form 1515, appropriately modified, shall be prepared by the proprietor to cover the rebottling, relabeling, or restamping of bottled-in-bond spirits. Spirits which have not been withdrawn from bond or which have been returned to bond as provided by § 201.586 shall be accounted for in the same manner as spirits originally entered for bottling in bond. Form 1515 covering taxpaid bottled-in-bond spirits returned to a bonded warehouse for rebottling, relabeling, or restamping shall be clearly and prominently marked to show that the spirits are taxpaid, and shall identify each lot of spirits, showing the quantity returned, losses in rebottling, and the quantity removed. Such spirits shall not be included in any warehouse records or reports required by Subpart U of this part.

Subpart L—Transfers and Withdrawals

GENERAL

§ 201.361 Authority to withdraw.

Spirits (including denatured spirits) shall be removed from bonded premises only as provided in this subpart. Spirits entered into bonded storage for subsequent packaging in wooden packages, as provided in § 201.270, which have not been drawn into such packages at the time of withdrawal from bond shall be redesignated to conform to the classes and types set out in Subpart P of this part and in 27 CFR Part 5.

(72 Stat. 1356, 1362; 26 U.S.C. 5201, 5212, 5213, 5214)

§ 201.362 Examination of containers.

Each container or case of spirits (including denatured spirits) to be removed from bonded premises, or to be dumped on bonded premises, shall be carefully examined by the proprietor, and if any container or case bears evidence of loss of spirits (including denatured spirits) due to theft or unauthorized voluntary destruction, or loss in excess of normal storage losses, such container or case shall not be removed or dumped until released by the assigned officer.

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

§ 201.363 Withdrawal of spirits on original gauge.

Spirits may be withdrawn from bonded premises for any lawful purpose on the original gauge: *Provided,* That in the case of spirits in bulk conveyances or wooden packages so withdrawn on determination of tax, the original gauge must have been made by an internal revenue officer. Where the original gauge was made by an internal revenue officer the spirits shall be withdrawn on such gauge unless permission for a gauge at time of withdrawal is obtained from the assistant regional commissioner. When spirits in wooden packages, which are to be withdrawn on determination of tax on the original gauge, are transferred in bond, the proprietor shall note "Withdraw on original gauge" and show the details of the original gauge on all copies of Form 2630.

(72 Stat. 1357, 1358; 26 U.S.C. 5202, 5204)

§ 201.364 Determination of tare.

When packages are to be individually gauged for withdrawal from bonded premises, actual tare shall be determined: *Provided,* That average tare may be taken when authorized under Part 186 of this chapter and approved by the assigned officer. When average tare is to be taken, the proprietor shall so indicate on Form 2630 and shall show the percentage (not less than 20 percent, and never less than 2 packages) of the packages to be used for the determination. Actual or average tare shall be determined in accordance with Part 186 of this chapter.

(72 Stat. 1358; 26 U.S.C. 5204)

TRANSFER BETWEEN BONDED PREMISES

§ 201.365 Authorized transfers.

Pursuant to approval of an application therefor as provided in § 201.366; spirits (including denatured spirits) may be transferred in bond between bonded premises in bulk conveyances, or by pipeline, or in any container into which spirits may be filled on bonded premises.

(72 Stat. 1362; 26 U.S.C. 5212)

§ 201.366 Application to receive spirits in bond.

When a proprietor desires to have spirits or denatured spirits transferred to him in bond he shall make application for such transfer on Form 2609 to the assigned officer. Application to receive such spirits by transfer in bond shall not be approved unless the applicant's bond, Form 2601, is in the maximum penal sum, or, if in less than the maximum penal sum, is sufficient to cover the tax on the spirits (including denatured spirits) to be transferred in addition to all other liabilities chargeable against such bond, nor shall any application for receipt of spirits (including denatured spirits) in bulk conveyances be approved unless the applicant has provided suitable facilities as provided by § 201.239. The applicant shall deliver one of the approved copies of the application to the consignor proprietor.

(72 Stat. 1318, 1362; 26 U.S.C. 5005, 5212)

§ 201.367 Termination of application.

A proprietor may terminate an approved application, Form 2609, at any time by (a) giving written notice to the assigned officer at the consignor premises, (b) retrieving the consignor's copy, and (c) returning this copy, together with his own, to the assigned officer for cancellation.

(72 Stat. 1318; 26 U.S.C. 5005)

§ 201.368 Consignor premises.

(a) *General.* Form 236 shall be prepared by the consignor proprietor to cover the transfer of spirits or denatured spirits in bond pursuant to an approved application on Form 2609. A Form 236 shall not cover more than one conveyance. When spirits in packages are to be transferred, the consignor shall also prepare Form 2630 and when spirits in cases or in encased containers are to be transferred, he shall prepare Form 1620. Each Form 1620 and Form 2630 shall show the real name of the producer and, if the spirits were produced under a trade name, shall also show the trade name under which produced; a separate Form 1620 or Form 2630 shall be prepared for each name under which spirits were produced. Spirits or denatured spirits shall not be removed from the bonded premises until Form 236 (with Form 2630 or 1620, if required) has been submitted to the assigned officer and his approval received for the release of the spirits or denatured spirits. In the case of pipeline transfers, the assigned officer shall not unlock the pipeline until he has approved Form 236.

(b) *Packages.* When spirits are to be transferred in bond in packages, the consignor proprietor shall weigh each package, except (1) when the transfer is to be made in a sealed conveyance, (2) when the individual packages have been securely sealed by the proprietor, in a manner satisfactory to the assigned officer, or (3) when this requirement has been waived by the assistant regional commissioner on a finding that, because of the location of the premises, the transfer can be made under the observation of the assigned officers, and there will be no jeopardy to the revenue. The proprietor shall load the packages into the conveyance and prepare the conveyance for sealing, if it is to be sealed. The details of the last gauge for each package shall be recorded on Form 2630. If the tax gallon content for any package to be transferred has been determined by an average, as provided in § 201.269, such average tax gallon content shall be recorded as the quantity of spirits transfered for such package. When packages are weighed at the time of shipment, the shipping weight shall be shown in lieu of the last official gross weight of the package: *Provided,* That in the case of packages to be withdrawn on original gauge, the shipping weight shall be shown in addition to the details of the original gauge.

(c) *Bulk conveyances and pipelines.* When spirits are to be transferred in bond in bulk conveyances or by pipelines, the consignor shall gauge the spirits under the direct supervision of the assigned officer and record the gauge on Form 236. Bulk conveyances of spirits shall be prepared by the proprietor for sealing.

(72 Stat. 1362; 26 U.S.C. 5212)

§ 201.369 Consignee premises.

(a) *General.* When spirits or denatured spirits are received by transfer in bond the consignee proprietor shall notify the assigned officer who shall deliver the appropriate Form 236, and Form 2630 or Form 1620, if any, to the consignee. The assigned officer shall examine each sealed conveyance to determine whether the seals are intact and if so he shall authorize the proprietor to remove the seals. The proprietor shall examine all containers, and any container bearing evidence of loss in transit or of loss due to theft shall be held until released by the assigned officer. Spirits after examination (and, if held, after release by the assigned officer) shall be deposited in the warehouse immediately, or, if the spirits are to be redistilled, they shall be deposited in the production facilities immediately. After execution on the transfer forms of his receipt of the shipment, the consignee shall return the form or forms to the assigned officer. Losses from packages shall be determined and reported on Form 2630 or, in the case of losses from bulk conveyances, on Form 236, by the assigned officer, with a notation as to the apparent cause thereof.

(b) *Packages.* When spirits are received in packages, the consignee proprietor shall weigh each package and record the weights on Form 2630, except (1) when the transfer is made in a sealed conveyance and the seals are intact on arrival, (2) when the individual packages have been sealed by the consignor proprietor and are intact on arrival, or (3) when this requirement has been waived by the assistant regional commissioner. All packages in a sealed conveyance on which the seals are not intact, on arrival, and all packages not intact on receipt, shall be segregated, after weighing, and held until released by the assigned officer. When denatured spirits are received in packages, the consignee proprietor shall prepare Form 1467, appropriately modified, to record their deposit on bonded premises; a separate sheet shall be used for each formula.

(c) *Bulk conveyances and pipelines.* When spirits are received in bulk conveyances or by pipeline, the consignee shall gauge the spirits under the direct supervision of the assigned officer and record the gauge on Form 236.

(72 Stat. 1362; 26 U.S.C. 5212)

REMOVAL OF SPIRITS TO PRODUCTION FACILITIES

§ 201.370 Removal of spirits from storage for redistillation.

A proprietor intending to remove spirits (including denatured spirits) from storage to production facilities on the same bonded premises for redistillation, in accordance with the provisions of §§ 201.273 and 201.274, shall prepare Form 2629 to cover such removal. Each lot of spirits (except bottled spirits) shall be gauged by the proprietor under the direct supervision of the assigned officer. Such gauge may be made either in the storage or the production facilities and shall be reported on Form 2629. If packages or cases of spirits are to be dumped, the proprietor shall give the assigned officer a list (one copy) of the serial numbers of the packages or cases to be dumped. The packages or cases shall be examined by the proprietor, and if any package, or case bears evidence of loss due to theft or unauthorized destruction, or loss in excess of normal storage losses, such package or case shall not be dumped until released by the assigned officer; Form 2629 shall be amended when necessary. Packages or cases shall not be dumped until the assigned officer has given his approval therefor. Before removing the spirits from storage, Form 2629 shall be submitted to the assigned officer for his approval.

DETERMINATION AND PAYMENT OF TAX

§ 201.371 Application.

Spirits to be withdrawn from bonded premises on determination of the tax thereon shall be in such containers or cases as are prescribed in this part. The proprietor of the bottling premises to which the spirits are to be removed, or the proprietor of the bonded premises from which the spirits are to be withdrawn, shall make application on Form 179 for tax determination and withdrawal. Where spirits are to be withdrawn on determination of tax, the tax thereon shall be paid before removal of the spirits from the bonded premises unless the proprietor making application for the withdrawal has furnished bond on Form 2613, 2614, or 2615 to secure payment of tax. Where the spirits are to be withdrawn by the proprietor of bottling premises from bonded premises not on the same plant premises, he shall, on execution of his portion of the application on Form 179, deliver one copy to the assigned officer at the bottling premises and forward the remaining copies of the form to the proprietor of the bonded premises. On completion of the application the proprietor of the bonded premises shall deliver all copies of the application to the assigned officer at his premises. Where spirits in packages are to be gauged in bulk gauging tanks, the proprietor of the bonded premises shall attach to Form 179 a list (one copy) of the serial numbers of the packages. Where the spirits are to be withdrawn by a proprietor of bottling premises, from bonded premises not on the same plant premises, and his bond on Form 2614 or Form 2615 is less than the maximum penal sum, he shall maintain an account of his bond and he shall charge the bond with the amount of liability he accepts at the time he executes Form 179, and shall credit the bond for the same amount at the time he files his return and remittance to cover the payment of tax on the spirits covered by such Form 179: *Provided,* That where the tax is less than the amount shown on Form 179 as charged against his bond, he may, at time of receipt of Form 179 from the proprietor of bonded premises, credit the bond account for the amount of the difference between the amount charged and the amount of tax determined, and credit the bond account for the remainder of the amount at the time he files his return and remittance. Where an alternating proprietor has been authorized pursuant to § 201.174 to commence operations of bottling facilities at a specified future time, he may apply for the withdrawal of spirits from bond on Form 179 in anticipation of such commencement of operations, but spirits so applied for will not be eligible for loss allowance unless such spirits are withdrawn directly from bond and unless such spirits are received on his bottling premises during the time he is authorized to operate such premises.

(72 Stat. 1362; 26 U.S.C. 5213)

§ 201.372 Proprietor's statement.

Where tax is to be paid pursuant to a return on Form 2522, the proprietor making application for the withdrawal shall execute on all copies of Form 179 a statement in which he (a) agrees to pay, in accordance with law and this part, the amount of tax shown on the form, or to be shown thereon, and (b) certifies, under the penalties of perjury, that he is not in default in any payment of tax chargeable against his bond, Form 2613, 2614, or 2615, and that the penal sum of such bond (1) is the maximum penal sum or (2) is sufficient to cover such amount in addition to all other amounts chargeable against such bond. Where a proprietor of bottling premises is to be the taxpayer and the spirits are to be withdrawn from bonded premises not on the same plant premises as his bottling premises, such statement shall be executed by him when he initiates Form 179. In all other instances such statement shall be executed by the taxpayer after gauge and calculation of the amount of tax due but before release of the spirits by the assigned officer. The full amount of tax determined shall be included for payment in a tax return, Form 2522, filed as provided in § 201.383. Nothing in this part shall be construed as precluding an adjustment after taxpayment, pursuant to law and regulations, of any overpayment or underpayment of tax.

§ 201.373 Packages.

When spirits in packages are to be withdrawn from bonded premises on determination of tax on the basis of individual package gauge, each package shall be gauged unless the tax is to be determined on the original gauge. When the packages are to be withdrawn on the original gauge the proprietor shall prepare Form 2630 and deliver the form to the assigned officer with Form 179. If spirits in wooded packages are to be gauged for tax determination, the proprietor shall complete only the heading of Form 2630 and insert the serial number and entry tare of each package before delivery of the form, and Form 179, to the assigned officer for gauge of the

packages by such officer. The proprietor shall gauge (under the direct supervision of an assigned officer), and report on Form 2630, metal packages to be tax determined on other than the original gauge and deliver such form, and Form 179, to the assigned officer. Spirits in wooden packages filled from storage tanks for tax determination shall be gauged and reported on Form 2630 by an assigned officer on receipt of Form 179; metal packages so filled shall be gauged (under the direct supervision of an assigned officer) and reported on Form 2630 by the proprietor, and the proprietor shall deliver Form 2630 to such officer with Form 179. In the case of spirits distilled at less than 190 degrees of proof, the date of original entry, and the proof of distillation shall be shown on Form 2630. In the case of spirits mingled pursuant to section 5234(a)(1)(C), I.R.C., (homogeneous spirits) the dates of original entry of the oldest and the youngest spirits in the mingled spirits shall be shown. On completion of gauge (if any) and computation of tax, the assigned officer will return Form 179 and Form 2630 to the proprietor.

(72 Stat. 1358, 1362; 26 U.S.C. 5204, 5213)

§ 201.374 Gauge tank.

Each tank of spirits to be tax determined shall gauged (by weighing and proofings) by an assigned officer, and the gauge recorded on Form 179. When mingled spirits are transferred to bottling premises (either on the same or another plant premises) such information as to the kinds, quantities (as determined by the proprietor), and ages of the spirits included therein as is necessary to permit further processing (as required) and proper labeling thereof, shall accompany the spirits. When a tank is mounted on scales and a proprietor desires to determine tax on a portion of the contents of such tank, the difference between the quantity (ascertained by gauge) in the tank immediately before the removal of the spirits and the quantity (ascertained by gauge) in the tank immediately after the removel shall be the quantity to be taxpaid and considered withdrawn; however, none of the spirits may be removed from bonded premises before the tax determination is complete. On completion of the gauge and computation of the tax, the assigned officer will return Form 179 to the proprietor. Spirits in gauge tanks may, after tax determination and before release under § 201.385, be reduced in proof to any desired proof by the proprietor under the direct supervision of the assigned officer, if the proprietor so requests on Form 179; the proof of the spirits after reduction shall be shown on Form 179.

(72 Stat. 1320, 1358, 1362; 26 U.S.C. 5006, 5204, 5213)

§ 201.375 Blended beverage brandies or rums.

When brandies or rums blended in accordance with the provisions of section 5234(c), I.R.C., are to be withdrawn on determination of tax, any additional tax provided by section 5023, I.R.C., shall be entered by the assigned officer on Form 179 and, if the tax is not prepaid on Form 2521, shall be included in the appropriate tax return on Form 2522 by the proprietor who made application for the withdrawal of the spirits.

§ 201.376 Imported spirits.

When imported spirits (transferred to bonded premises pursuant to section 5232, I.R.C., or similar provisions of prior law) are withdrawn for beverage purposes, there shall be paid, in addition to the internal revenue tax imposed by section 5001, I.R.C., a tax equal to the duty which would have been paid had the spirits been imported for beverage purposes, less the duty already paid thereon. The additional tax shall be referred to as "additional tax—less duty", and shall be paid at the time and in the manner that the basic internal revenue tax is paid. The total quantity in proof gallons (or wine gallons if below proof) withdrawn shall be the basis of computing the tax at the rates indicated. The amount of the "additional tax—less duty" shall be stated separately and identified as such on Form 179.

(72 Stat. 1314; 26 U.S.C. 5001)

§ 201.377 Rinsings.

If the proprietor elects to rinse packages at the time of tax determination, he may use water of any temperature for such purpose. If the tax determined spirits are returned to the rinsed packages, the temperature of the water used for rinsing shall be marked on each such package. Rinse water not added to the same spirits may be added to the next lot of spirits to be tax determined which are homogeneous therewith, or such rinse water may be mingled with heterogeneous spirits for tax determination under § 201.298; if not so disposed of, the rinsings shall be destroyed or redistilled. Char and wood chips not returned to packages shall be disposed of as provided in § 201.306.

§ 201.378 Withdrawal procedure; bonded premises.

The spirits to be taxpaid shall be inspected or gauged and the amount of tax found due shall be entered on Form 179 by the assigned officer. The proprietor shall then, unless withdrawal is to be pursuant to application on Form 179 made by a proprietor of bottling premises which are not a part of the plant premises from which the spirits are to be withdrawn, either execute the statement provided for in § 201.372 or prepare a tax prepayment form, Form 2521. Where the withdrawal is to be pursuant to application on Form 179 made by a proprietor of bottling premises which are not a part of the plant premises from which the spirits are to be withdrawn, the proprietor of bonded premises shall prepare a tax prepayment form if the proprietor of such bottling premises has not executed on Form 179 the agreement to pay the tax. In any event, the proprietor shall, before returning the Form 179 to the assigned officer, assign to and enter on each such form a release number. The release numbers shall be assigned in serial order, starting with "1" for the first such form each calendar year. The proprietor will give all copies of Form 179, accompanying reports of gauge (if any), and Form 2521 (if any) to the assigned officer, except that where, pursuant to § 201.383, the return on Form 2521 is required to be filed with the district director, the processing of Form 2521 and the release of spirits shall be in accordance with § 201.385.

§ 201.379 Form 2632, Daily Report of Withdrawals After Tax Determination.

The proprietor of bonded premises shall furnish the assigned officer a report on Form 2632, as provided in § 201.632 (c), for each day on which withdrawals of spirits on determination of tax are made.

§ 201.380 Methods of taxpayment.

The tax on spirits shall be paid pursuant to a return on Form 2521 or on Form 2522, filed as provided in § 201.383. Remittance for the tax in full shall accompany the return and may be in any form which the district director is authorized to accept under the provisions of § 301.6311–1 of this chapter and which is acceptable to him: *Provided,* That where a check or money order tendered in payment for taxes is not paid on presentment, or where the taxpayer is otherwise in default in payment, any remittance made during the period of such default, and until the assistant regional commissioner finds that the revenue will not be jeopardized by the acceptance of a personal check (if acceptable to the district director), shall be in cash or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or a money order, as provided in § 301.6311–1 of this chapter. Checks and money orders shall be made payable to "Internal Revenue Service".

(68A Stat. 777, 72 Stat. 1335; 26 U.S.C. 6311, 5061)

§ 201.381 Returns for prepaid taxes.

The tax on distilled spirits shall be paid pursuant to a return on Form 2521 in all cases where such tax is required to be paid before the spirits are withdrawn from bond. A single return on Form 2521 may cover one or more transactions.

§ 201.382 Taxes to be collected by returns for semimonthly periods.

The tax on spirits to be paid after withdrawal from bond on determination of tax shall be paid pursuant to a return on Form 2522. The periods to be covered by returns on Form 2522 shall be semimonthly; such periods to run from the 9th day through the 23d day of each month and from the 24th day of one month through the 8th day of the next succeeding month. A return, Form 2522, shall be executed and filed to cover each return period notwithstanding that no tax is due for payment for such period. The proprietor of each bonded premises shall include, for payment, on his return on Form 2522 the full amount of

distilled spirits tax determined in respect of all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid and spirits withdrawn on determination of tax by proprietors of bottling premises). When spirits are withdrawn by the proprietor of bottling premises from internal revenue bond on determination of tax, the tax shall be paid by such proprietor by return on Form 2522 for the period in which falls the date of receipt of the spirits at his premises or the 21st day after the date of the internal revenue officers' certificate of tax determination on the withdrawal form, whichever date occurs first. Spirits must be conveyed without delay to the bottling premises and taken into such premises promptly on arrival. For the purposes of this section, spirits shall be deemed to be received when they arrive at the bottling premises. The proprietor shall show on his return the release numbers of Form 179 covered by the return, and, in the case of proprietors of bottling premises, shall also show the plant from which the spirits were withdrawn.

§ 201.383 Filing of returns and payment of distilled spirits tax.

(a) *Payment pursuant to semimonthly return, Form 2522.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, he shall, except as otherwise provided in this paragraph, file a tax return covering such spirits on Form 2522, with remittance, not later than the 3d business day next succeeding the last day of the return period. Where the proprietor of bottling premises has withdrawn distilled spirits from bond on determination and before payment of the tax, he shall, except as otherwise provided in this paragraph, file a tax return covering such spirits on Form 2522, with remittance, not later than the 3d business day next succeeding the last day of the return period in which he is required to report such withdrawal. Returns on Form 2522 and remittances of proprietors of bonded premises and bottling premises for the last complete return period (i.e., the semimonthly period ending June 23) in each fiscal year, shall be filed not later than the 2d business day next succeeding the last day of the return period. The proprietor shall, not later than 2 p.m. on the date that such tax return is required to be filed, file such return, with remittance, with an internal revenue officer designated by the assistant regional commissioner for transmittal to the district director: *Provided,* That where the assistant regional commissioner finds that it is not practical for an internal revenue officer to receive the return and remittance, he may, by written notice, require the proprietor to file his return with remittance directly with the office of the district director: *Provided further,* That where the remittance is in cash, the return and remittance shall be filed directly with the office of the district director. Where the return and remittance are delivered by United States mail to the office of the district director, the date of the official postmark of the United States Post Office stamped on the cover in which the return and remittance were mailed shall be deemed to be the date of delivery: *Provided,* That where the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the proprietor: *Provided further,* That where the return is sent by registered mail the date of registry, or where the return is sent by certified mail, the date of the postmark or the sender's receipt, shall be treated as the postmark date of the return and remittance. Where a taxpayer has defaulted in any payment of tax under this paragraph, during the period of such default and until the assistant regional commissioner finds that the revenue will not be jeopardized by payment of tax pursuant to this paragraph, tax shall be paid by such proprietor in accordance with the provisions of paragraph (b) of this section.

(b) *Payment pursuant to Form 2521.* If the proprietor who has made application on Form 179 for tax determination and withdrawal of spirits does not have on file an approved withdrawal bond, or if such bond is in an insufficient penal sum, or if there is default by him in any payment of tax under this part, spirits shall not be released from bonded premises before the proprietor of the bonded premises has paid the tax thereon. To so pay the tax the proprietor of the bonded premises shall file a tax prepayment return, Form 2521, with remittance. Form 2521 and remittance shall be filed with the internal revenue officer designated by the assistant regional commissioner, for transmittal to the district director: *Provided,* That where the remittance is in cash, the return and remittance shall be filed directly with the office of the district director.

§ 201.384 Filling packages from gauging tanks after determination of tax.

Spirits drawn into packages from bulk gauging tanks after tax determination shall be gauged by the proprietor, who shall report such gauge on Form 2630. On receipt of Form 2630 from the proprietor, the assigned officer shall issue a distilled spirits stamp for each package. In addition to the marks required by Subpart P of this part, the packages shall be marked to show that they are consolidated packages, the plant number of the premises at which filled, the kind of cooperage in which the spirits were stored and the number of months the youngest spirits in the lot were stored in such cooperage, the date of tax determination, and the serial number of the distilled spirits stamp.

(72 Stat. 1362; 26 U.S.C. 5213)

§ 201.385 Release of spirits.

No spirits shall be removed from bonded premises, except as otherwise provided by law, unless the tax thereon has been determined. If the Form 179, and Form 2521 (if required) with remittance, are in order and cover the full amount of the tax on the spirits to be withdrawn, the assigned officer shall execute his certificate of tax determination. The assigned officer shall not execute his certificate of tax determination where a proprietor of bottling premises, whose bond on Form 2614 or 2615 is not in the maximum penal sum, has assumed liability for the tax on the spirits, and the tax is greater than the amount shown on Form 179 as charged against his bond. Where Form 2521 has been filed with the district director, as required by § 201.383(b), the certificate regarding tax determination shall not be executed before the assigned officer has received a receipted copy of the return from the district director. On execution of the certificate of tax determination, the assigned officer shall issue a distilled spirits stamp for each package or bulk conveyance of spirits to be removed from bonded premises. Distilled spirits stamps shall be affixed, canceled, and protected in the manner provided in Subpart Q of this part. When the distilled spirits stamps have been affixed by the proprietor to the containers and the containers have been properly marked, the assigned officer shall release the spirits. When spirits are to be removed by pipeline, the appropriate Form 179, after execution of the certificate of tax determination, shall be attached to the gauge tank before the spirits are released by the assigned officer. Bottled-in-bond spirits which are to be withdrawn from bonded premises on determination of tax may be so withdrawn subsequent to bottling, without being returned to the storage portion of the bonded warehouse, if the proprietor executes Forms 179 in advance of withdrawal to cover a specific quantity of such spirits, and also executes, in advance of withdrawal, the statement required by § 201.372. In such case the assigned officer shall execute the certificate of tax determination only if he is satisfied that adequate means and methods are provided for accurately ascertaining the quantities of spirits to be so withdrawn at time of bottling and that the Form 179 is otherwise in order. On completion of the withdrawal covered by Form 179, the proprietor shall complete the forms, identifying the cases and showing the actual quantity of spirits so withdrawn; such information shall be verified by the assigned officer. When any spirits have been removed from the bonded premises as provided in this section, the assigned officer shall execute the statement of removal on Form 179 and distribute the copies of the form in accordance with the instructions thereon.

WITHDRAWAL OF SPIRITS WITHOUT PAYMENT OF TAX

§ 201.386 Authorized withdrawals without payment of tax.

Spirits may be withdrawn from bonded premises, without payment of tax, for—

(a) Export, as authorized under section 5214(a)(4), I.R.C.;

(b) Transfer to customs manufacturing bonded warehouses, as authorized under 5522(a), I.R.C.;

(c) Transfer to foreign-trade zones, as authorized under 19 U.S.C. 81c;

(d) Supplies for certain vessels and aircraft, as authorized under 19 U.S.C. 1309;

(e) Use in wine production, as authorized under section 5373, I.R.C.; or

(f) Transfer to any university, college of learning, or institution of scientific research for experimental or research use, as authorized under section 5312(a), I.R.C.

The withdrawal of spirits as provided in paragraphs (a) through (d) of this section shall be in accordance with the regulations in Part 252 of this chapter.

(72 Stat. 1362, 1375, 1382, 1393; 26 U.S.C. 5214, 5312, 5373, 5522)

§ 201.387 Withdrawals of spirits for use in wine production.

Wine spirits withdrawn without payment of tax for use in wine production may be removed in approved containers for shipment to a bonded wine cellar on receipt of an approved application, Form 257, submitted by the proprietor of the bonded wine cellar in accordance with the provisions of Part 240 of this chapter. Each package of wine spirits (unless withdrawn on the original gauge) and each lot of wine spirits transferred by pipeline or by bulk conveyance shall be gauged by the proprietor under the direct supervision of the assigned officer: *Provided,* That spirits transferred by pipeline may be so gauged on the bonded wine cellar premises. Form 2629 shall be prepared by the consignor to cover each removal of wine spirits pursuant to an approved Form 257. When wine spirits in packages are to be removed, the consignor shall also prepare Form 2630, and when wine spirits in cases are to be removed, he shall also prepare Form 1620. Bulk conveyances shall be prepared by the proprietor for sealing and each such conveyance shall bear a label, dated and signed by the proprietor, showing the intended use of the wine spirits and the name and plant number of the consignor and the name and registry number of the consignee. When the gauge (if any) has been completed, and the containers have been marked, and appropriate entries have been made on the gauge report by the assigned officer, he shall release the spirits.

(72 Stat. 1362, 1382; 26 U.S.C. 5214, 5373)

§ 201.388 Withdrawal of spirits without payment of tax for experimental or research use.

Any scientific university, college of learning, or institution of scientific research (which has qualified under the provisions of § 201.72 to withdraw spirits from a bonded premises) desiring to withdraw a specific lot of spirits for experimental or research use shall file application therefor on Form 257 with the assistant regional commissioner of the region in which the applicant's premises are located. The procedure prescribed in § 201.387, insofar as applicable, shall be followed in removing the spirits from the bonded premises.

(72 Stat. 1375; 26 U.S.C. 5312)

WITHDRAWAL OF SPIRITS FREE OF TAX

§ 201.389 Authorized withdrawals free of tax.

Pursuant to the regulations in this chapter, spirits may be withdrawn from bonded premises, free of tax—

(a) On receipt of a valid permit, issued under Part 213 of this chapter, to procure spirits for nonbeverage purposes and not for resale or use in the manufacture of any product for sale, as provided in section 5214(a)(3), I.R.C.;

(b) On receipt of a valid permit, issued under Part 213 of this chapter, to procure spirits by and for the use of the United States or any governmental agency thereof, any State, any political subdivision of a State, or the District of Columbia, for nonbeverage purposes as provided in section 5214(a)(2), I.R.C.;

(c) On receipt of a valid permit, issued under this part, to procure spirits by and for the use of the United States, under the provisions of section 7510, I.R.C., for purposes other than as provided in paragraph (b) and section 5214(a)(2), I.R.C.;

(d) After being specially denatured—

(1) On receipt of a valid permit to procure such spirits, issued under Part 211 of this chapter;

(2) For export;

(e) After being completely denatured, for any lawful purpose.

(68A Stat. 900; 72 Stat. 1362; 26 U.S.C. 7510, 5214)

§ 201.390 Withdrawal of spirits free of tax.

Spirits withdrawn free of tax under § 201.389 (a), (b) and (c) shall be withdrawn in approved containers and shipped to the consignee designated in the permit. The proprietor shall submit an application for each withdrawal on Form 2633 to the assigned officer. Unless the spirits are in cases or are to be withdrawn on the original gauge, the proprietor shall gauge each container under the direct supervision of the assigned officer. The proprietor shall prepare notice of shipment on Form 1473 and distribute the form in accordance with the instructions thereon. If the assigned officer finds that the withdrawal papers, and the shipment, conform to regulations, he shall release the spirits.

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

§ 201.391 Permits for withdrawal of spirits by the United States.

Where the United States or a governmental agency thereof intends to procure spirits free of tax for nonbeverage purposes, application for a permit shall be filed on Form 1444 under the provisions of Part 213 of this chapter. Where the United States or a governmental agency thereof intends to procure spirits free of tax for other purposes, application for a permit shall be filed on Form 1444 under the provisions of this part. The application shall be signed by the head of the department, independent bureau, or agency to which such spirits are to be shipped, or by some person duly authorized by such head of a department, independent bureau, or agency, and forwarded to the Director. Evidence of authority to sign for the head of a department, independent bureau, or agency shall be furnished to the Director. If the Director finds the application in order, he will issue a permit to the applicant. At the time the spirits are to be procured, the permit on Form 1444 and a purchase order shall be submitted by the governmental agency to the proprietor. At the time of shipment, the consignor shall record the shipment on the permit and return it to the governmental agency unless he has been authorized by such agency to retain the permit for the purpose of making future shipments. On receipt of a shipment of spirits, the representative of the governmental agency receiving the same shall execute the certificate of receipt on both copies of Form 1473 received from the plant proprietor, after noting thereon any loss or deficiency in the shipment, and shall forward one copy to the assistant regional commissioner of the region in which the plant proprietor is located and retain the other copy for his files. Every appropriate precaution shall be taken by the agency to insure that the spirits so procured will be used only for governmental purposes. When no more spirits will be procured under a permit, the governmental agency shall return it to the Director for cancellation.

(68A Stat. 900; 26 U.S.C. 7510)

§ 201.392 Disposition of excess spirits.

Any excess spirits in the possession of a Governmental agency shall be disposed of to another agency of the United States holding a permit, returned to a plant on approval of the assistant regional commissioner of the region in which the plant is located, or disposed of otherwise as may be authorized by the Director. In no case may such spirits be disposed of to the general public, or otherwise than as provided in this section.

(68A Stat. 900; 26 U.S.C. 7510)

§ 201.393 Removal of denatured spirits.

(a) *Specially denatured spirits.* Specially denatured spirits withdrawn free of tax under § 201.389(d) shall be shipped in approved containers to the consignee designated in the permit. If such spirits are for export or for transfer to a foreign-trade zone, they shall be withdrawn under the applicable provisions of Part 252 of this chapter. If such spirits are for shipment to a qualified user or a bonded dealer, the proprietor shall prepare notice of shipment on Form 1473 and distribute the copies of the form in accordance with the instructions thereon.

(b) *Completely denatured alcohol.* No permit, application, or notice is required for removal of completely denatured alcohol from bonded premises. The proprietor is required to keep a record of such removals, as prescribed in Subpart U of this part.

§ 201.394 Reconsignment in transit.

Where, prior to arrival at the consignee's premises, spirits (including specially denatured spirits) withdrawn free of tax under § 201.389, are found to be unsuitable for the purpose for which intended,

were shipped in error, or, for any other bona fide reason, are not accepted by the consignee or by a carrier, they may be reconsigned by the proprietor making the shipment on notification to the proprietor's assistant regional commissioner of the reconsignment. Such reconsignment may be made to himself or to another proprietor for return to bonded premises under the provisions of § 201.585, or to another person holding an industrial use permit authorizing receipt or use of such spirits or specially denatured spirits. In case of reconsignment to bonded premises, the provisions of § 201.585 relating to consents of surety in respect of return of spirits (including denatured spirits) withdrawn free of tax shall be applicable. Notice of cancellation of the Form 1473 covering the shipment to the original consignee shall be given by the proprietor to each person receiving a copy of such form. Where reconsignment is to another person as provided in this section, a new Form 1473 shall be prepared and the word "Reconsignment" placed thereon. The entry on the permit covering the original withdrawal shall be voided.

Subpart M—Denaturation

§ 201.401 General.

Proprietors who have established denaturing facilities on bonded premises as provided in this part, and who have otherwise complied with the requirements of this part for the carrying on of denaturing operations, may conduct such operations in such facilities pursuant to the provisions of this part. Proprietors shall not conduct denaturing operations except as provided in this part.

(72 Stat. 1353, 1369; 26 U.S.C. 5178, 5241)

§ 201.402 Formulas.

Such spirits as are authorized under Part 212 of this chapter to be denatured, may be denatured in accordance with formulas prescribed in that part. Denaturing material shall be added to, and thoroughly mixed (and dissolved if necessary) with the spirits to be denatured.

(72 Stat. 1369; 26 U.S.C. 5242)

§ 201.403 Receipt and storage of denaturing materials.

Denaturants shall be placed in a denaturing material storeroom, or in a denaturing material storage tank, or in other approved receptacles as provided in § 201.242, and secured with Government locks or seals: *Provided,* That the proprietor may retain denaturants under his own lock pending completion of the statement prescribed in § 201.404 and deposit of the denaturants in the required denaturing material storeroom, storage tank, or other approved receptacle. Except as provided in § 201.406, each shipment of wood alcohol must be accompanied by a certificate, in duplicate, signed by the manufacturer or his agent, showing the name and address of the plant in the United States where produced and the quantity shipped, and certifying under the penalties of perjury that it is a partially purified distillate from crude wood alcohol obtained only by the destructive distillation of wood. The proprietor shall deliver one copy of the certificate to the assigned officer and the other copy shall accompany the sample to be tested.

§ 201.404 Testing of denaturants.

Synthetic oils approved by the Director, essential oils as defined in Part 212 of this chapter, pure chemicals (liquid or solid), or U.S.P. or N.F. substances used as denaturing materials, deposited in storage under direct supervision of the assigned officer in the original sealed package of a reputable manufacturer of chemicals, bearing a label descriptive of the contents placed thereon by the manufacturer, need not be tested except when required by the Director. The proprietor shall test each lot of other denaturants received or shall have each such lot tested by a reputable chemist. In either case, if the test is favorable, the proprietor shall furnish the assigned officer a statement, under the penalties of perjury, that, based on his analysis or the analysis of the reputable chemist, the denaturant conforms in all respects to the specifications prescribed therefor in Part 212 of this chapter. The statement shall show the name and address of the vendor, the kind and quantity of the denaturant, a description of the containers in which received, and by whom tested; the signed analysis or statement by the chemist performing the test shall be attached. In the event it is found the denaturant does not conform to the specifications prescribed under Part 212 of this chapter, the proprietor shall remove the material from the premises unless he intends to treat or manipulate the denaturant to make it conform to such specifications. Such treated or manipulated denaturants shall be again tested.

(72 Stat. 1369; 26 U.S.C. 5242)

§ 201.405 Samples.

Samples of denaturants required to be tested shall be taken by the proprietor. All samples shall be taken in such manner as to represent a true composite of the total lot or lots being sampled. Samples to be tested by other than the proprietor shall be labeled to show the proprietor's name and plant number; the kind of denaturant; the identity of storage container; the quantity represented by the sample; and the date taken, and shall be forwarded to the chemist in securely sealed containers. Samples of denaturants may be taken by internal revenue officers at any time for testing by Government chemists.

(72 Stat. 1369; 26 U.S.C. 5242)

§ 201.406 Transfer of denaturants.

Proprietors may transfer denaturants to other bonded premises, or to manufacturers recovering denatured spirits, or articles containing denatured spirits, and redenaturing the spirits for reuse. Each container of such denaturants shall be marked to show its contents and sealed by the proprietor unless shipped in the original sealed package of the manufacturer. The denaturants shall be accompanied by a statement by the consignor proprietor, approved by the assigned officer, that the denaturants were received and stored in the manufacturer's original sealed packages bearing labels descriptive of the contents, or by a certification by the proprietor that, based on his own analysis, or on a reputable chemist's analysis, as the case may be, that the denaturants conform in all respects to the specifications therefor provided in Part 212 of this chapter. In addition, the statement or certification shall show the name and address of the vendor, the kind and quantity of the denaturants, and a description of the container in which the denaturant is shipped, and the manner in which sealed and, in the case of wood alcohol, shall show that the certificate required by § 201.403 is on file. Such denaturants need not be again tested after receipt by the consignee if delivered in the sealed package or container, and in such case the certified statement provided for in § 201.404 will not be required of the consignee.

§ 201.407 Notice and gauge for denaturation.

The proprietor, when he wishes to denature, shall execute his notice of intent on Form 2634, in duplicate, in accordance with the instructions thereon and deliver the form to the assigned officer who shall supervise the gauge of the spirits, when required, and the denaturation thereof. On completion of denaturation, the officer will complete his verification of the denaturation on both copies of the form, and will return one copy to the proprietor who shall retain the copy in his files. All spirits shall be gauged by the proprietor: *Provided,* That spirits dumped from previously gauged containers or spirits transferred directly to mixing tanks from gauge tanks where they were gauged, need not be again gauged. Measurements of spirits and denaturants shall be made by volume or by weight or, when approved by the Director, by meter or other device.

(72 Stat. 1358, 1369; 26 U.S.C. 5204, 5241)

§ 201.408 Adding denaturants.

Denaturants shall be added to spirits in approved mixing tanks except as provided herein. Specially denatured alcohol Formulas 18, 25, and 25A prescribed in Part 212 of this chapter may be denatured in packages in any quantity. The assigned officer may permit the denaturing in packages, in accordance with other formulas, of limited quantities of spirits on a showing of need therefor. The assistant regional commissioner may, on the showing of need therefor, authorize the denaturation of spirits in tank cars, tank trucks, or similar containers if he deems such denaturation will not hinder effective administration of this part or jeopardize the revenue. The Director may, on written application, authorize other methods of adding denaturants to spirits if he deems such denaturation will not hinder effective administration of this part or jeopardize the revenue. If requested by the Director, the proprietor shall submit a flow diagram of the intended process or method of adding denaturants. The conduct of alternate methods of de-

naturation may be disapproved where additional supervision would be required, or may be restricted to such times as will not require additional supervision.

(72 Stat. 1357, 1369; 26 U.S.C. 5202, 5242)

§ 201.409 Locking.

Except as may be provided by the Director in authorizing other methods for adding denaturants as provided in § 201.408, the spirits and denaturants shall be thoroughly mingled immediately on deposit in the mixing tank or on completion of the gauge of the spirits for denaturation where such gauge is required. The outlets and inlets of mixing tanks shall be so equipped that the flow of spirits into the tanks and denatured spirits from the tanks may be controlled by Government locks; tanks containing spirits deposited for denaturation, or the rooms or building in which such tanks are located, shall be locked at all times except when denaturing operations, or activities related thereto, are being conducted as provided in this part. Except as authorized under § 201.408 or as authorized by the assigned officer, spirits may not be deposited in a mixing tank or partially denatured spirits removed from such tank after denaturation of a lot of spirits has started.

(72 Stat. 1357; 26 U.S.C. 5202)

§ 201.410 Restoration and redenaturation of recovered denatured spirits and recovered articles.

Recovered denatured spirits and recovered articles containing denatured spirits received on bonded premises, as provided in Subpart S of this part, for restoration (including redistillation, if necessary) and/or redenaturation may not be withdrawn from bonded premises except for industrial use or after denaturation thereof. If the recovered or restored denatured spirits or recovered articles are to be redenatured and do not require the full amount of denaturants for redenaturation, a notation to that effect will be made on the notice required by § 201.407. This section shall not be construed as authorizing the manufacture of articles on bonded premises.

(72 Stat. 1369; 26 U.S.C. 5242)

§ 201.411 Conversion of specially denatured alcohol.

Any specially denatured alcohol, except Formula No. 30, may be converted to specially denatured alcohol, Formula No. 1, by the addition of wood alcohol in accordance with the formulation prescribed in Part 212 of this chapter: *Provided,* That such converted specially denatured alcohol is manufactured into an article or used in a process by the proprietor who converted it, or by his controlled or wholly owned subsidiaries (as defined in § 201.206), unless its use by another manufacturer or user (as defined in Part 211 of this chapter) is authorized by the Director. Any specially denatured alcohol not containing methanol or wood alcohol may be converted to any one of the completely denatured alcohol formulas, prescribed in Part 212 of this chapter, by adding the required denaturants.

(72 Stat. 1369; 26 U.S.C. 5242)

§ 201.412 Release of denatured spirits.

On completion of denaturation, the assigned officer shall release the denatured spirits to the proprietor.

(72 Stat. 1357, 1369; 26 U.S.C. 5202, 5242)

§ 201.413 Containers for denatured spirits.

Packaging of denatured spirits and the marking of packages of such denatured spirits shall be in accordance with requirements of Subpart P of this part.

Subpart N—Operations on Bottling Premises

§ 201.421 General.

Proprietors shall conduct operations relating to the rectification, packaging, and bottling of taxpaid spirits and taxpaid wines only on bottling premises, and only pursuant to the provisions of this part. A proprietor of bottling premises who has qualified to carry on the business of a bottler of distilled spirits, but not the business of a rectifier, may use his bottling premises for the bottling or packaging of rectified or unrectified taxpaid spirits or taxpaid wines but shall not use such premises for any operation (including any operation specified in § 201.33 as not coming within the exemptions from the rectifier's occupational tax) which would incur liability for tax under section 5021, 5022, or 5081, I.R.C.

(72 Stat. 1315, 1353, 1356; 26 U.S.C. 5002, 5178, 5201)

FORMULAS AND PROCESSES

§ 201.422 Form 27B Supplemental.

Every rectifier shall file with the Director a statement on Form 27B Supplemental of each formula and process by which he intends to rectify spirits or wines. A rectifier shall not use a formula or process in the manufacture of any rectified product until he has received approval therefor. When an intermediate product is made for use in manufacturing a finished product (or products) a separate Form 27B Supplemental (designating the product as an intermediate) shall be filed for the intermediate product; such intermediate product shall be shown as such and by formula number as an ingredient in the formula for the finished product in which it is to be used. Each formula shall (a) be serially numbered in sequence beginning with the number "1", (b) describe the kind of products in accordance with the appropriate class and type designation prescribed by 27 CFR Part 4 or Part 5, if applicable, (c) state the process completely and concisely in step by step sequence, and (d) designate all ingredients composing the formula in sufficient detail to enable a proper determination as to the tax classification and labeling of the finished product. Alcoholic flavoring materials containing spirits on which drawback has been or may be claimed shall be identified in the formula as such, and shall be separately shown by kind, quantity (by volume) to be used, and the percentage of alcohol (by volume) contained therein; approval of formulas shall be conditioned on compliance with the provisions of § 201.424. The Director may require a diagram, drawing or other pictorial depiction of the process to supplement the statement of process on Form 27B Supplemental. Formulas which show an alternate use of ingredients which would result in a different tax or labeling classification will not be approved.

(72 Stat. 1328, 1356, 1370; 26 U.S.C. 5025, 5201, 5251)

§ 201.423 Manufacture of nonbeverage products.

Spirits and wines may not be used on bottling premises in the manufacture of nonbeverage products except for the manufacture of flavors or flavoring extracts as intermediate products to be used exclusively in the manufacture of taxable rectified products on the bottling premises where produced. Bottling premises may not be used for the manufacture of nonbeverage products on which drawback under sections 5131–5134, I.R.C., is to be claimed. Premises used for the manufacture of nonbeverage products eligible for drawback which are contiguous to bottling premises shall be completely separated therefrom and spirits shall not be transferred between such premises.

(72 Stat. 1345, 1356; 26 U.S.C. 5132, 5201)

§ 201.424 Use of alcoholic flavoring materials.

The use of alcoholic flavoring material on which drawback has been or may be claimed shall be limited by the rectifier so that the quantity of alcohol (proof gallons) contained therein will not represent, on a proof gallon basis, more than 2½ percent of the total proof gallons of spirits in the finished product. In case any finished product will derive more than 2½ percent of its total spirits from alcoholic flavoring materials not manufactured on bottling premises, the proprietor shall procure the flavoring materials which contribute the excess directly from the manufacturer and have available for examination by internal revenue officers an affidavit of the manufacturer showing: The quantity, the identity of each immediate container (by serial number, or other appropriate means), the alcoholic content, the date of manufacture, the kind and brand of flavoring material, and that drawback under sections 5131–5134, I.R.C., has not been and will not be claimed on any spirits contained therein. Each container of alcoholic flavoring materials for which a manufacturer's affidavit has been submitted, as required by this section, shall be marked to indicate that drawback has not been and will not be claimed on any spirits contained therein.

(72 Stat. 1345, 1356; 26 U.S.C. 5132, 5201)

§ 201.425 Changes in formulas.

The addition or elimination of ingredients, changes in quantities of ingredients used (where the percentages are required to be disclosed), and changes in the process of rectification are permissible only after approval of a new Form 27B Supplemental: *Provided,* That where such change of ingredients

or process does not result in altering the class or type of the finished product or the tax applicable, the change may be accomplished by filing, with the Director, a rider to the formula. The rider, in quadruplicate, will clearly identify the original formula by number, date of approval, name of the product, and by name and number of the plant, will specify the ingredients to be added or eliminated, or the change in process, and will be signed and processed in the same manner as the original formula. Such change in ingredients or process is permissible only after approval of the rider. A new Form 27B Supplemental or rider will not be required to cover changes in brand names. Once an approved formula is superseded by a new formula, the original formula shall no longer be used and will be surrendered to the Director.

(72 Stat. 1356; 26 U.S.C. 5201)

RECEIPT OF SPIRITS AND WINES

§ 201.426 General.

Only spirits and wines that have been tax determined may be received on bottling premises. The proprietor shall, as prescribed in Subpart U of this part, record and summarize daily all spirits, wines and alcoholic flavoring materials received on the bottling premises.

(72 Stat. 1356, 1361; 26 U.S.C. 5201, 5207)

§ 201.427 Heterogeneous spirits mingled in bulk gauging tanks on bonded premises.

When heterogeneous spirits which have been mingled in bulk gauging tanks on bonded premises, pursuant to the provisions of § 201.298, are received on bottling premises, the rectifier shall make entry in the records required by § 201.622 identifying the spirits as so mingled in accordance with in information furnished him from the consignor premises, as provided in §§ 201.298 and 201.374. Unless the spirits are eligible for tax-exempt rectification under § 201.444 and are to be so rectified, they shall be used in taxable rectification before removal from the bottling premises.

(72 Stat. 1356, 1367; 26 U.S.C. 5201, 5234)

§ 201.428 Deposit on bottling premises.

Spirits and wines received on bottling premises in packages or cases shall be retained in the packages or cases until used in rectification or in bottling. Spirits and wines received by pipeline or in bulk conveyances shall be deposited in tanks on the bottling premises and gauged therein by the proprietor before use. Alcoholic flavoring materials for which a manufacturer's affidavit is required shall be retained in the immediate container in which received until used in rectification: *Provided,* That such an alcoholic flavoring material may be transferred to a storage container or tank if the proprietor marks or otherwise indicates thereon full identification of the original container, the date of the deposit, and the quantity deposited. Like flavoring materials may be added to the tank if the contents of the tank are accounted for on a first-in first-out basis. An alcoholic flavoring material for which a manufacturer's affidavit is required shall not be mingled with any other alcoholic flavoring material except at time of use in rectification.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.429 Memorandum tank record.

When spirits are deposited in a tank on receipt on bottling premises, the proprietor shall attach to the tank a memorandum record showing the name of the consignor, the date and serial number of the tax determination or gauge report received from the consignor covering such spirits, and the quantity received. He shall enter on such record the date and quantity of each removal from the tank and each loss ascertained to have occurred therefrom. Where spirits are deposited and/or withdrawn from a tank on different dates, the contents of the tank shall be accounted for on a first-in first-out basis.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.430 Containers bearing evidence of tampering or unusual loss.

The proprietor shall inspect containers of spirits at the time of their receipt on bottling premises. If he finds evidence of tampering with the contents of the container, or that there has been an unusual loss, he shall promptly report the matter to the assigned officer and hold the container pending such officer's advice as to its disposition. If the proprietor finds that any container is missing from the shipment, he shall promptly report such fact to the assigned officer. If any container does not bear the stamp required by law to be affixed thereto, the proprietor shall note such fact on the gauge form received from the consignor covering such spirits and report such matter to the assigned officer. The proprietor shall comply with the requirements of § 201.484 in respect of spirits lost by accident or disaster.

(72 Stat. 1323, 1356; 26 U.S.C. 5008, 5201)

§ 201.431 Dumping of partial contents of package.

If less than the entire content of a package is removed at one time, the proprietor of the bottling premises shall keep on the package a record showing the date and quantity of each removal from the package. The stamps, marks, and brands on the package shall not be destroyed until the package is emptied.

(72 Stat. 1356, 1358; 26 U.S.C. 5201, 5205)

USE OF SPIRITS AND WINES

§ 201.432 Record of use.

(a) *Dumping of ingredients.* Whenever any spirits or wines are to be dumped for use in rectification, or are to be dumped for bottling or packaging without rectification (or are to be reduced in proof, filtered, or otherwise manipulated for such bottling or packaging), or are to be removed from the bottling premises by pipeline or bulk conveyance, the proprietor shall prepare Form 122. Spirits or wines received by pipeline or bulk conveyance and deposited in a receiving tank shall be considered as "dumped" when they are removed from such tank for rectification or bottling; spirits or wines so received but not so deposited shall be considered as "dumped" immediately on receipt. Each Form 122 shall be serially numbered and shall identify the spirits or wines to be dumped for use. The proprietor shall, at time of dumping, gauge spirits (1) where required in § 201.494, and (2) whenever it is necessary to insure that the quantity used is within the limitation of the approved formula. The proof gallon content of wines and alcoholic flavoring materials (containing ineligible spirits) shall be determined, at time of dumping, by the proprietor.

(b) *Batch record.* A rectifier shall prepare Form 122 as a batch record (1) to report the dumping of spirits which are to be used immediately and in their entirety in preparing a batch of a rectified product (in this instance one Form 122 serves both as a dump and batch record), (2) to report the use of spirits or wines previously dumped pursuant to Forms 122 and retained in processing tanks or receptacles, and (3) to report any combination of (1) and (2) used in preparing a batch of a rectified product. The proprietor shall record on Form 122 (batch record) the use of alcoholic flavoring materials manufactured on premises other than a bottling premises. Each Form 122 shall be serially numbered in sequence (whether used as a dump or batch record) and shall identify the spirits, wines, and alcoholic flavoring materials used in the batch; substitute batch records, as provided in paragraph (d) of this section, shall be serially numbered in sequence in a separate series, and Forms 122 prepared in addition to the substitute records (as provided in paragraph (d) of this section) shall be given the same numbers as the substitute records.

(c) *Disposition of Form 122.* After the proprietor has indicated on Form 122 his intentions to dump spirits or wines or to prepare a batch of rectified spirits, as the case may be, he may proceed with the operation covered by the form; he shall keep the required entries on Form 122 current with the operations covered by such form. When the proprietor has completed all entries required on the form he shall submit one copy to the assigned officer and retain the remaining copy for his files. Where spirits are bottled or packaged especially for export with benefit of drawback, the proprietor shall prepare an additional copy of each related Form 122 and forward it to the assistant regional commissioner.

(d) *Substitute records.* The proprietor, subject to the approval of the assistant regional commissioner, may use another form of record, as provided in § 201.628(c), in lieu of Form 122 to record batches of rectified spirits. In such case, Form 122 shall be used to record dumping of all spirits whether or not the spirits are to be used immediately in preparing a batch record of a rectified product, and Forms 122 shall be prepared in addition to the approved substitute records, where spirits or wines are to be rectified and bottled or packaged especially for export with benefit of drawback. Application to use substitute

records shall be filed as provided in § 201.628(c).

(72 Stat. 1370; 26 U.S.C. 5251)

§ 201.433 Identifying spirits and wines in process.

The proprietor shall mark or otherwise indicate (for example, by attachment of Form 122) on each tank or receptacle on bottling premises containing spirits or wines in process the kind and quantity of the contents and the serial number of the Form 122 under which the spirits or wines are held.

(72 Stat. 1356, 1358, 1360; 26 U.S.C. 5201, 5204, 5206)

§ 201.434 Rinsing of packages.

All wooden packages (except packages treated so as to preclude contact of the spirits with the wood surface) emptied on bottling premises, and the char and wood chips therein, if any, shall be thoroughly rinsed after dumping. The rinse water so obtained is considered to be homogeneous with the spirits previously contained in the packages. If the packages were not rinsed at the time of tax determination, the rinse water obtained at the bottling premises shall be destroyed or shall be taxpaid as provided in § 201.435. If the packages were rinsed at the time of tax determination on bonded premises, the temperature of the rinse water used at the bottling premises may not be higher than that of the rinse water used at the time of tax determination. Char and wood chips contained in or dumped from such packages shall be burned or treated in such manner, previously approved by an internal revenue officer, as to preclude the abstraction of potable spirits.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.435 Taxpayment of rinsings.

If the rinsings from packages which were not rinsed before removal from bonded premises are not to be destroyed, they shall be accumulated in a closed, locked tank pending determination and payment of the tax thereon. The tank shall be mounted on scales or be equipped with a suitable measuring device. The number and capacity of accumulating tanks shall be suitable for intended operations. When rinsings are to be taxpaid, the proprietor shall submit to the assigned officer an application on Form 179, appropriately modified, for such taxpayment. The proprietor shall indicate on Form 179 the kind and age of the spirits from which the rinsings were obtained. The contents of the tank shall be gauged by the assigned officer, either by weight or by volume, and Form 179 shall be completed showing the proof gallons. The proprietor shall then prepare a tax prepayment return, Form 2521, and submit all copies thereof and all copies of Form 179, with remittance as described in § 201.380, to the designated internal revenue officer or to the district director in accordance with the procedure in § 201.383(b). If heterogeneous spirits are accumulated in the same tank, they shall be used in taxable rectification. The release of the spirits shall be in accordance with the provisions of § 201.385.

(72 Stat. 1335; 26 U.S.C. 5061)

§ 201.436 Extraction of spirits from wood forbidden.

The rinsing of packages on bottling premises with water of a temperature in excess of that provided for in § 201.434 for the purpose of extracting spirits from the staves and heads of the packages or from the char or wood chips is forbidden, unless such rinse water is immediately destroyed. Packages shall not be filled or partially filled with water and permitted to stand; nor shall barrels, char, or wood chips be steamed for the purpose of extracting spirits; nor shall any other method or process, except as authorized in § 201.434, be used to extract spirits from barrels.

(72 Stat. 1356; 26 U.S.C. 5201)

TAXABLE RECTIFICATION

§ 201.437 Treatment of spirits and wines.

Except as otherwise provided in Subpart C of this part and in this subpart any blending, mixing, purifying, refining, compounding, or treating of spirits or wines on bottling premises, which changes the character or composition of the spirits or wines, constitutes taxable rectification and necessitates the payment of the rectification tax. The rectification tax imposed by section 5021, I.R.C., will apply in the case of—

(a) The mingling of spirits produced by different distillers, or of different ages (except as provided in § 201.447), or which differ in kind, or which are otherwise not homogeneous;

(b) The mingling of spirits stored in charred cooperage with spirits stored in plain or reused cooperage, or the mixing of spirits that have been quick-aged or treated with wood chips with spirits not so processed, or the mixing of spirits that have been subjected to any treatment which changes their character with spirits not so treated, unless it is determined that the composition of the spirits is the same, notwithstanding the storage in different kinds of cooperage or the treatment of a portion of the spirits;

(c) The use (except as authorized on bonded premises as provided by this part) of any physical or chemical process or any apparatus which accelerates the maturing of the spirits;

(d) The compounding of spirits or wines through the mixing of any coloring, flavoring, or other material with distilled spirits or wines for sale either as such, or as another product, such as a cordial or liqueur, except where cordials or liqueurs subject to tax under section 5022, I.R.C., are manufactured;

(e) The steeping or soaking of fruits, berries, aromatic herbs, roots, seeds, etc., in spirits or wines;

(f) The artificial carbonating of spirits.

(72 Stat. 1328, 1356; 26 U.S.C. 5021, 5201)

§ 201.438 Cordials and liqueurs containing wine.

All provisions of this part relating to rectification, shall apply to the manufacture of cordials, liqueurs, and similar compounds subject to tax under section 5022, I.R.C.

(72 Stat. 1328; 26 U.S.C. 5022)

§ 201.439 Intermediates.

Where, pursuant to approved formulas as provided by § 201.422, distinct products are compounded as an intermediate step in the manufacture of specified finished products and are retained for use in further compounding under specified processes, tax will attach to the finished product only.

(72 Stat. 1328, 1356; 26 U.S.C. 5021, 5022, 5201)

§ 201.440 Destruction of materials used in quick-aging.

Materials, such as wood chips, used in a quick-aging process shall, on removal from the process, be burned or treated in such manner, previously approved by the internal revenue officer, as to preclude the abstraction of potable spirits.

(72 Stat. 1356; 26 U.S.C. 5201)

TAX-EXEMPT RECTIFICATION

§ 201.441 Gin.

Gin produced on bottling premises is exempt from the rectification tax (as provided in § 201.29(c)) only if produced in a closed system by the redistillation over juniper berries and other natural aromatics of spirits distilled at or above 190 degrees of proof, free from impurities, including spirits of such a nature recovered by redistillation of imperfect gin spirits. Gin produced by redistillation is not exempt from tax if it is mixed with other spirits or treated by the addition or abstraction of any substance or material other than pure water after redistillation, or if any substance or material other than juniper berries or other aromatics or pure water is added to the spirits before or during redistillation. The gin shall be collected in a receiving tank and shall be gauged therein by the proprietor. It may be drawn off in packages, bottled, or transferred by pipeline or bulk conveyance to other bottling premises as provided in § 201.465. Gin exempt from the rectification tax may be filtered to remove materials held in suspension, but the use of filters or filter aids which remove essential oils or flavoring materials in solution will subject the product to the rectification tax. The provisions of this section do not preclude the filtering and stabilizing of gin as provided in § 201.445.

(72 Stat. 1328; 26 U.S.C. 5025)

§ 201.442 Vodka.

Vodka produced on bottling premises is exempt from the rectification tax (as provided in § 201.29(e)) only if produced from spirits distilled at or above 190 degrees of proof which are free of impurities and, as provided in 27 CFR

Part 5, are reduced in proof and treated by one of the methods provided in such part. Vodka is not exempt from the rectification tax (a) if it is mixed after production with other spirits or with any other substance or material except pure water, or (b) if any substance or material other than pure water and the materials provided for in 27 CFR Part 5 are added to the spirits before or during production. The vodka shall be gauged by the proprietor and shall then be drawn into metal, porcelain, glass, or paraffin-lined containers, bottled, or transferred by pipeline or bulk conveyance to other bottling premises as provided in § 201.465. Vodka exempt from the rectification tax may be filtered to remove materials held in suspension, but the use of filters or filter aids or the use of any process which changes the composition or character of the vodka will subject the product to the rectification tax.

(72 Stat. 1328; 26 U.S.C. 5025)

§ 201.443 Blending of wines.

The blending of taxpaid wines by rectifiers for the sole purpose of perfecting such wines according to recognized commercial standards is exempt from the rectification tax (as provided in § 201.29 (h)) when the wines so blended were made from the same kind of fruit. Such blending shall not be commenced unless Form 27B Supplemental has been approved by the Director. The kind and type of wine to be blended, the respects in which it is to be perfected, the kind and type of the blended product, and such additional information as the Director may require shall be shown on Form 27B Supplemental.

(72 Stat. 1328; 26 U.S.C. 5025)

§ 201.444 Blending of straight whiskies, rums, and pure fruit brandies.

The rectification tax (as provided in § 201.29 (l) and (m)) does not attach to blends made exclusively of two or more pure straight whiskies aged in wood for a period of not less than four years and without the addition of coloring or flavoring matter or any other substance than pure water and if not reduced below 80 proof; nor to blends made exclusively of two or more pure fruit brandies distilled from the same kind of fruit, or blends made exclusively of two or more rums, where the brandies or rums have been aged in wood for a period not less than two years and without the addition of coloring or flavoring matter (other than caramel added in bond, under Subpart I or J of this Part) or any other substance than pure water and if not reduced below 80 proof. In addition to the information required to be recorded on Form 122 as provided by § 201.432, the proprietor shall show the age of each package of whisky, brandy, or rum to be blended, the proof to which the blended whisky, brandy, or rum is to be reduced, and the tank in which the spirits will be blended; he shall also include a statement that no coloring, flavoring, or other substance will be added except pure water necessary to reduce the spirits to the desired proof. Blending operations shall be under the general supervision of the assigned officer. The addition of any coloring, flavoring, or other substance, or the reduction of the spirits below 80 proof, will subject the blended whisky, brandy, or rum to the rectification tax.

(72 Stat. 1328; 26 U.S.C. 5025)

PROCESSES NOT CONSTITUTING RECTIFICATION

§ 201.445 Filtering and stabilizing of spirits.

A proprietor may on bottling premises (a) remove foreign substances or other extraneous insoluble materials from spirits, with or without the use of filter aids, and (b) effect minor changes in the soluble color or soluble solids of spirits solely by filtrations, chill proofing, or other physical treatments (which do not involve the addition of any substance which will remain incorporated in the finished product) as may be necessary or desirable to produce a stable product, provided such changes do not result in the removal of more than 10 percent of the soluble solids or soluble color of the spirits so treated (including the extraction incident to such changes of not more than 10 percent of any class of the natural congeners). Treatment of spirits under this section does not constitute rectification.

(72 Stat. 1328; 26 U.S.C. 5025)

§ 201.446 Treatment and mixing of wines.

Wines may be preserved by use of sulphur dioxide compounds, or clarified by refrigeration or pasteurization, or treated by simple filtration. If the bottler desires to treat wine under the provisions of this section in any other manner which does not constitute rectification, he shall first file with the assistant regional commissioner a letterhead application, in triplicate, giving the details of the proposed treatment. The bottler may not use the proposed treatment until he has received notice of approval from the assistant regional commissioner. Under this section water may not be added to wine nor may wine be subjected to any treatment which will alter its basic character. Wine of the same kind (class, type, and national origin) and taxable grade may be mixed to facilitate handling. Sections 5021, 5081, and 5082, I.R.C., shall not apply to the treatment or mixing of wines on bottling premises under this section.

(72 Stat. 1381; 26 U.S.C. 5363)

§ 201.447 Mingling of homogeneous spirits.

The mingling of homogeneous spirits does not constitute rectification. Packages of blended or rectified spirits made with precisely the same spirits under the same formula, packaged in the same kind of cooperage, and stored under the same conditions will be presumed to be homogeneous. Spirits of 190 degrees of proof or more distilled from the same class of materials (such as grain) will be presumed to be homogeneous. Spirits distilled at less than 190 degrees of proof are presumed to be homogeneous if—

(a) They were produced

(1) From the same class of materials,

(2) At approximately the same proof, and

(3) By the same proprietor (under his own or any trade name) at the same distillery; and

(b) In the case of spirits which have been stored in wooden packages so as to be in contact with the wood, they were stored in the same kind of cooperage under approximately the same conditions, and they differ in periods of such storage,

(1) Not more than 18 months in the case of spirits so stored more than 8 years,

(2) Not more than 12 months in the case of spirits so stored more than 4 years and not more than 8 years,

(3) Not more than 6 months in the case of spirits so stored more than 2 years and not more than 4 years,

(4) Not more than 60 days in the case of spirits so stored more than 1 year and not more than 2 years, or

(5) Not more than 30 days in the case of spirits so stored not more than 1 year; and

(c) They do not differ in kind under the standards of identity prescribed in 27 CFR Part 5.

The age of the youngest spirits to be included in any mixture mingled under this section will determine the permissible variation in periods of storage. Whenever there is doubt as to whether spirits are homogeneous, tests shall be made of each component of the proposed mixture and compared with a sample of the final mixture to determine whether the mixture is homogeneous with each of its component parts.

(72 Stat. 1328; 26 U.S.C. 5025)

GAUGE AND TAXPAYMENT OF RECTIFIED PRODUCTS

§ 201.448 Gauge of rectified products.

On completion of the process of rectification, the rectifier shall gauge the spirits or wines in accordance with the provisions of Subpart D of this part, determine the applicable taxes under section 5021, 5022, and/or 5041, I.R.C., report such gauge and determination of tax on Form 2637, and immediately submit one copy of such form to the assistant regional commissioner. Each Form 2637 shall be serially numbered.

(72 Stat. 1330, 1335, 1358; 26 U.S.C. 5026, 5061, 5204)

§ 201.449 Payment by return.

Taxes on rectified products, imposed by sections 5021, 5022, or 5041, I.R.C., shall be paid and collected on the basis of a semimonthly or prepayment return, as provided in this part.

(72 Stat. 1335; 26 U.S.C. 5061)

§ 201.450 Rectifier's statement.

When any taxes on rectified products are to be paid pursuant to a semimonthly return, Form 2527, the rectifier shall, at the time of reporting the tax on Form 2637 as required by § 201.448, execute on all copies of the Form 2637 a statement

in which he (a) agrees to pay, in accordance with law and this part, the amount of tax shown on the form, and (b) certifies, under the penalties of perjury, that he is not in default in any payment of tax chargeable against his bond, Form 2601, and (c) that the penal sum of such bond is in the maximum penal sum or is sufficient to cover such amount in addition to all other amounts chargeable against such bond. The full amount of tax determined shall be included for payment in a tax return, Form 2527, filed as provided in § 201.452. Nothing in this part shall be construed as precluding an adjustment after taxpayment, pursuant to law and regulations, of any overpayment or underpayment of tax.

(72 Stat. 1335, 1349; 26 U.S.C. 5061, 5173)

§ 201.451 Method of taxpayment.

The tax on rectified spirits and wines, reported on Form 2637, shall be paid pursuant to a prepayment return on Form 2523 in all cases where such taxes are required to be paid before such products are removed from the bottling premises or before bottling or packaging for removal from such premises. Returns on Form 2523 may cover one or more transactions. Such tax which is not required to be paid pursuant to Form 2523 shall be paid pursuant to a semimonthly return on Form 2527. The provisions of § 201.382 respecting periods for semimonthly returns on Form 2522 shall apply to returns on Form 2527, and the provisions of § 201.380 respecting acceptable forms of remittances and authorities of the assistant regional commissioners and district directors shall apply to all taxpayments made by a proprietor of bottling premises.

§ 201.452 Filing of returns and payment of taxes on rectified products.

(a) *Payment pursuant to semimonthly return, Form 2527.* Where the proprietor of bottling premises has incurred liability for taxes determined during the return period but not paid on rectified products, he shall file a tax return covering such products on Form 2527, with remittance, not later than the 3d business day next succeeding the last day of the return period: *Provided,* That with respect to the last complete return period (i.e., the semimonthly period ending June 23) in each fiscal year, such return and remittance shall be filed not later than the 2d business day next succeeding the last day of the return period. The provisions of § 201.383 regarding (1) the 2 p.m. time of filing the return and remittance; (2) the person with whom the return and remittance shall be filed; and (3) date of delivery when delivery is by United States mail, shall be applicable when tax is paid under this paragraph. Where a proprietor has defaulted in any payment of tax under this paragraph, he shall, during the period of such default and until the assistant regional commissioner finds that the revenue will not be jeopardized by payment of tax pursuant to this paragraph, pay tax in accordance with the provisions of paragraph (b) of this section.

(b) *Payment pursuant to Form 2523.* If the proprietor of bottling premises is in default in any payment of tax under this part, or if the penal sum of his bond on Form 2601 is not sufficient to cover the amount of the tax in addition to all other amounts chargeable against such bond, no products subject to tax under sections 5021, 5022, or 5041, I.R.C., on which tax has been incurred, may be removed from the bottling premises, or bottled or packaged for removal from such premises until the tax thereon has been paid. To so pay the tax the proprietor of bottling premises shall file a tax prepayment return, Form 2523, with remittance. Form 2523 and remittance shall be filed with the assigned officer, or, as designated by the assistant regional commissioner, with an internal revenue officer or the district director of internal revenue: *Provided,* That where the remittance is in cash, the return and remittances shall be filed directly with the office of the district director. Unless otherwise authorized by the assistant regional commissioner, no rectified products covered by the return may be removed from the bottling premises, or bottled or packaged for removal from such premises, before the return with remittance is filed with the designated internal revenue officer, or if filed with the district director, before the district director furnishes the proprietor a copy of the return showing receipt of the remittance.

(72 Stat. 1335, 1356; 26 U.S.C. 5061, 5201)

BOTTLING, PACKAGING AND REMOVAL OF PRODUCTS

§ 201.453 Removals from bottling premises.

Rectified products on completion of gauge, as provided in § 201.448, and on prepayment of tax when required, and spirits and wines, without rectification, on completion of gauge, as provided in § 201.455, may be bottled or packaged for removal, or may be removed from the bottling premises by pipeline or bulk conveyance on compliance with the provisions of this part.

(72 Stat. 1335, 1356, 1360; 26 U.S.C. 5061, 5201, 5206)

§ 201.454 Bottling tanks.

All spirits and wines bottled on bottling premises shall be bottled from tanks approved for bottling: *Provided,* That the assistant regional commissioner may authorize bottling from original packages or special containers where it is impracticable to use a bottling tank. Bottlers desiring to bottle from packages or special containers shall request approval of the assistant regional commissioner, in writing, showing the necessity therefor, as provided in Subpart D of this part.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.455 Bottling tank gauge.

In the case of spirits or wines to be bottled or packaged without rectification the proprietor shall, on completion of any filtering, reduction, or other treatment, and prior to commencement of bottling or packaging, make an actual gauge of the product. Rectified products to be bottled or packaged on bottling premises shall be gauged as provided in § 201.448. Any gauge made under this section shall be made at bottling proof in the tank from which the product is to be bottled or packaged, and the details of the gauge shall be entered on Form 2637. One copy of Form 2637 shall thereupon be attached to the bottling tank. If the product is to be bottled or packaged especially for export with benefit of drawback, the proprietor shall mark all copies of Form 2637 "Bottled (or packaged) especially for export", and shall prepare one additional copy of Form 2637.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.456 Labels to agree with contents of tanks and containers.

A copy of each (approved or exempted) label to be used in bottling spirits or in bottling or packaging wines shall be affixed to a copy of Form 2637 to be attached to the tank. The label or labels so attached shall agree with the spirits or wines in the tank in every respect and shall not be removed from the tank until it has been emptied. Labels affixed to bottles (and packages, in case of wine) shall be identical with the label on Form 2637 attached to the tank from which the containers were filled. If the containers are labeled with labels which do not properly describe the spirits or wines contained therein, the proprietor shall be required to relabel the spirits or wines with a proper label.

(72 Stat. 1356; U.S.C. 5201)

§ 201.457 Liquor bottles.

The proprietor shall comply with the provisions of Part 175 of this chapter respecting the use of liquor bottles when bottling spirits. Spirits shall be filled only into bottles of the sizes provided by 27 CFR Part 5. Marked liquor bottles may not be used for wines containing 24 percent alcohol by volume or less or for products manufactured with such wines unless such products contain spirits other than wine spirits used in wine production. Liquor bottles may be used, but need not be used, in bottling spirits for export.

(72 Stat. 1374; 26 U.S.C. 5301)

§ 201.458 Certificate of label approval or exemption.

Proprietors are required by 27 CFR Part 4 to obtain approval of labels, or exemption from label approval, for any label to be used on bottles or packages of wine for domestic use and are required by 27 CFR Part 5 to obtain approval of labels, or exemption from label approval, for any label to be used on bottles of spirits bottled for domestic use, and are required to exhibit evidence of label approval, or of exemption of label approval, on request of an internal revenue officer. Labels, covered by a certificate of exemption from label approval, to be affixed to bottles (and packages, in case of wine) in which spirits or wines are packaged for sale shall conform to the provisions of Part 175 (if otherwise sub-

ject to the provisions of such part) or Part 240 of this chapter, as applicable.

(72 Stat. 1374, 1381, 1386; 26 U.S.C. 5301, 5363, 5368, 5386)

§ 201.459 Filling of bottles.

Bottles filled on bottling premises shall be so labeled (a) that the label in use shall be identical with the label attached to Form 2637, and properly describes the spirits; (b) that the bottled spirits agree in proof with the data on the label; and (c) so filled that the quantity agrees with the data on the label or bottle. If the contents do not agree as to quantity (except for such variations in measuring as may occur in filling conducted in compliance with good commercial practice and there is substantially as much overfill as underfill for each lot of spirits bottled) or as to proof (subject to a normal drop in proof occurring during bottling operations, but not to exceed three-tenths of a degree) with the respective data on the label or bottle, the proprietor may be required to rebottle, recondition, or relabel the spirits in such manner that the label will correctly describe the contents.

(72 Stat. 1356, 1374; 26 U.S.C. 5201, 5301)

§ 201.460 Completion of bottling.

When the contents of a bottling tank are not completely bottled at the close of the day, the bottler shall make entries on Form 2637, covering the total quantity bottled that day from the tank. He may elect to make such daily entries only on the original of the form but shall complete the bottling tank copy when the tank has been emptied. When the tank has been emptied, he shall complete the Form 2637 and shall deliver the original of the form to the assigned officer, by placing it on his desk, and file the copy. If spirits are bottled or packaged especially for export with benefit of drawback, the additional copy of Form 2637 shall be submitted to the assistant regional commissioner.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.461 Strip stamps.

The proprietor shall affix to each bottle of spirits filled on bottling premises a red strip stamp. Such stamps shall be procured, overprinted (when required), affixed, and accounted for as provided in Subpart Q of this part.

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

§ 201.462 Cases.

On completion of bottling, the filled bottles with labels and strip stamps (where required) properly affixed shall be placed in cases, and the cases shall then be sealed: *Provided,* That the assigned officer or the assistant regional commissioner may authorize the retention on plant premises of unsealed cases, pending the affixing of brand labels or State stamps. Where the mandatory information required by 27 CFR Part 5 appears on the brand label rather than a separate label, the brand label shall be affixed at the time of bottling. Spirits in unsealed cases shall be kept apart from other spirits on bottling premises. Each case of spirits or wines filled on bottling premises shall be marked as prescribed by Subpart P of this part before removal from such premises.

(72 Stat. 1356, 1360, 1387; 26 U.S.C. 5201, 5206, 5388)

§ 201.463 Remnants.

Where on completion of bottling there remain bottles less than the number necessary to fill a case, the bottles, after being stamped and labeled, may be marked as a remnant case as provided in Subpart P of this part or kept uncased on the bottling premises until spirits of the same kind are again bottled. Appropriate notation shall be made on Form 2637 to cover the bottling and disposition of the remnant. If the remnant is subsequently used to complete the filling of a case, an accounting shall be made on the subsequent Form 2637 showing the use of the remnant by adding the remnant gallonage to the quantity to be accounted for, together with an appropriate notation explaining the transaction.

(72 Stat. 1356, 1360; 26 U.S.C. 5201, 5206)

§ 201.464 Filling packages.

Rectified or unrectified products may be drawn into packages from a tank (conforming to the requirements of § 201.243) on bottling premises. Such packages shall be gauged by the proprietor, and he shall report the details of such gauge on Form 2630 and attach a copy of Form 2630 to each copy of Form 2637 covering the product. On receipt of Form 2630 and Form 2637 from the proprietor, the assigned officer shall issue a distilled spirits stamp for each package of spirits. The information required to be placed on the stamp shall be placed thereon by the proprietor and he shall affix the stamp to the package in the manner required by Subpart Q of this part.

(72 Stat. 1356, 1358; 26 U.S.C. 5201, 5205)

§ 201.465 Removals in bulk.

Where spirits or wines on bottling premises are to be removed in bulk to other bottling premises, the proprietor shall execute one additional copy of Form 2637 and shall forward it to the proprietor at the receiving premises. In the case of pipeline transfers the additional copy shall be delivered before the transfer is commenced. Bulk conveyances shall be marked as provided in Subpart P of this part, and distilled spirits stamps shall be issued and affixed to the conveyances as provided in Subpart Q of this part.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.466 Rebottling, relabeling, and restamping of bottled spirits.

Bottlers desiring to rebottle, restamp, or relabel distilled spirits shall make application to the assigned officer, if any, at the plant, otherwise to the assistant regional commissioner. The application shall state specifically (a) the reason for the rebottling, relabeling, or restamping, (b) the serial numbers of the cases, and (c) the name of the original bottler. If the spirits were originally bottled by a bottler other than the applicant, the application shall be accompanied by a statement from the original bottler consenting to the rebottling or relabeling thereof by the applicant. When spirits are rebottled, the strip stamps on the original bottles shall be destroyed and new strip stamps used. Liquor bottles used for rebottling shall comply with the provisions of § 201.457. When spirits are relabeled, the new label shall be covered by an appropriate certificate of label approval or certificate of exemption from label approval issued under the Federal Alcohol Administration Act. Form 2637, appropriately modified, shall be prepared by the proprietor to cover the relabeling, or restamping of spirits. Forms 122 and 2637 shall be prepared in accordance with this part to cover the rebottling of spirits.

(72 Stat. 1356; 26 U.S.C. 5201)

§ 201.467 Labels for export spirits.

All bottles containing spirits bottled on bottling premises for export shall have securely affixed thereto a label showing the following:

(a) Kind of spirits;
(b) Proof of the spirits;
(c) Net contents, unless the markings on the bottle indicate such contents;
(d) A statement that the spirits were bottled for export;
(e) The name (or, if desired, the trade name) of the bottler; and
(f) The plant number where bottled, unless the markings on the bottle indicate such number.

The bottler may place on the label any additional information that he may desire if it is not inconsistent with the required information. The label information may be stated in the language of the country to which the spirits are to be exported provided the assigned officer is furnished an English translation of the information. The net contents and proof may be stated in the units of measurement of the foreign country provided the assigned officer is furnished a statement of the equivalent United States units.

(72 Stat. 1356, 1374; 26 U.S.C. 5201, 5301)

§ 201.468 Deposit in export storage.

On completion of bottling or packaging, spirits bottled or packaged on bottling premises especially for export with benefit of drawback shall be removed to export storage for subsequent shipment. Removals from export storage shall be under Part 252 of this chapter.

§ 201.469 Domestically bottled spirits for export.

Taxpaid spirits, manufactured or produced in the United States, originally bottled for domestic use may be exported with benefit of drawback without rebottling if (a) the spirits have not left the premises of the original bottler, (b) the red strip stamp affixed to each bottle is legibly overprinted in the center with the word "Export" by means of a rubber stamp or other suitable method, (c) a neck label or similar strip label, containing the words "For Export", is affixed to the bottle, and (d) each case is marked as required by Part 252 of this chapter.

In lieu of affixing a neck label or similar strip label the proprietor may relabel the spirits to show the information required by the provisions of § 201.467. Where spirits are prepared for export under this section the proprietor shall prepare and forward to the assistant regional commissioner a certified true copy, or transcript, of the batch record, on Form 122 (rectified spirits only), and a certified true copy of the bottling record, Form 2637, covering the spirits.

(72 Stat. 1336, 1358; 26 U.S.C. 5062, 5205)

CHANGES IN NAME OR PROPRIETORSHIP

§ 201.470 Changes in name or proprietorship.

(a) *Change in name.* Where there is a change in the individual, firm, or corporate name of the proprietor of the plant, the proprietor shall enter on each outstanding Form 2637 the total quantity of spirits or wines bottled from each lot prior to the effective date of the change. On completion of the bottling, the proprietor shall complete the forms under the new name. Operations shall not be conducted under the new name until the proprietor has complied with the requirements of § 201.162.

(b) *Change in proprietorship.* Where there is a change in proprietorship, other than an alternate proprietorship as provided in § 201.174, and spirits and wines are on hand at the time such change becomes effective, the spirits and wines shall be transferred to the successor. Spirits or wines which have not been used in a batch shall be reported in detail by the outgoing proprietor in an attachment to his final report, Form 2733. Spirits or wines which are in the process of being rectified, dumped, filtered or reduced shall be gauged, and Forms 2637 shall be prepared therefor by the outgoing proprietor, who shall also taxpay any products on which a liability for tax has been incurred. Each proprietor shall make appropriate entries on his monthly report, Form 2733, of the spirits or wines transferred. The outgoing proprietor shall enter on each outstanding Form 2637 the total quantity of spirits or wines bottled by him. Such entries shall be dated and signed by the outgoing proprietor. On completion of the bottling the successor shall complete the execution of the forms. The outgoing and incoming proprietor shall, as applicable, comply with the provisions of §§ 201.164 and 201.176. Where there are alternate operations by proprietors, the proprietors shall comply with the requirements of § 201.174.

(c) *Trade names.* Before a proprietor may rectify, bottle and label, or package spirits or wines under a trade name, he shall secure approval of such name in the manner prescribed by Subpart F of this part. When any trade name is to be used, it shall be entered on the appropriate Form 122 (batch record) or on Form 2637, as the case may be. Form 2637 shall show the serial numbers of the cases or packages of spirits or wines bottled or packaged under each trade name.

(72 Stat. 1356; 26 U.S.C. 5201)

Subpart O—Losses After Tax Determination

§ 201.481 Losses after tax determination.

In the case of spirits lost after determination of tax and prior to completion of physical removal from bonded premises, the tax thereon may, pursuant to claim filed in accordance with subpart C, be abated, remitted, or, without interest, refunded or credited to the proprietor of the bonded premises where the loss occurred, provided the tax would not, by reason of the provisions of section 5008(a)(1), I.R.C., have been collectible if such loss had occurred on bonded premises prior to determination of tax. The loss shall not be allowable if it occurred after the expiration of the bonding period unless it occurred in the course of physical removal of the spirits immediately after such time. This section is not applicable to any loss allowable under any other provision of this subpart or which, except for the limitations of § 201.485, would be so allowable.

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

LOSSES OF SPIRITS WITHDRAWN FROM BOND FOR RECTIFICATION OR BOTTLING

§ 201.482 Allowable losses.

Where spirits withdrawn from internal revenue bond on payment or determination of tax, or from customs bond on payment of tax, for rectification or bottling are lost before the completion of the bottling and casing or other packaging of such spirits for removal from the bottling premises of the plant to which removed from bond, the tax imposed on such spirits under section 5001(a)(1), I.R.C., may be abated, remitted, or, without interest, refunded or credited to the proprietor who so withdrew the spirits for removal to his bottling premises, if it is established to the satisfaction of the assistant regional commissioner that—

(a) Such loss occurred (1) by reason of accident while being removed from bond to bottling premises, or (2) by reason of flood, fire, or other disaster, or

(b) Such loss occurred by reason of, and was incident to, authorized rectifying, packaging, bottling, or casing operations (including losses by leakage or evaporation occurring during removal from bond to the bottling premises and during storage on bottling premises pending rectification or bottling).

Abatement, remission, credit, or refund of tax shall not be made in respect of the losses described in this section to the extent that the claimant is indemnified or recompensed for the tax, and in the case of the losses described under paragraph (b) of this section, abatement, remission, credit, or refund shall not be made in excess of the limitations set forth in this subpart. No allowance is made in section 5008(c), I.R.C., in respect to loss of spirits by theft. Spirits lost by theft in transit to, or while on, bottling premises shall be reflected as losses by theft in the records and reports prepared by the proprietor but shall be excluded from the quantities for which claims are filed pursuant to section 5008(c), I.R.C. Spirits used up in bona fide analysis and testing on bottling premises shall be considered as lost by reason of, and incident to, authorized operations within the meaning of this section. Spirits removed as samples from the bottling premises before completion of bottling and casing or other packaging of such spirits for removal from the bottling premises shall be reflected as proprietor samples or Government samples in the records and reports prepared by the proprietor, and shall be excluded from the quantities for which claims are filed pursuant to section 5008(c), I.R.C.

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

§ 201.483 Application for withdrawal of spirits from bond.

A proprietor of bottling premises is not eligible to obtain abatement, remission, credit, or refund in respect to the losses of spirits described in § 201.482 unless he withdrew the spirits on payment or determination of tax directly from bond to his bottling premises. When spirits are to be so withdrawn from internal revenue bond the proprietor of the bottling premises shall prepare and submit Form 179 as provided in Subpart L of this part. Withdrawals of spirits from customs custody on payment of the internal revenue tax shall be in accordance with the applicable customs regulations.

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

§ 201.484 Losses by accident or disaster.

Where spirits are lost by reason of the conditions stated in § 201.482(a), the proprietor shall, as soon as possible after the loss occurs, report the loss to the assigned officer and determine the actual quantity lost, and record such loss in his records. Claims covering any such losses which occur in transit shall be supported, where possible, with a copy of the bill of lading, and by affidavits of agents of the carrier or of other persons having personal knowledge of the loss. Claims covering other such losses shall be supported by affidavits of persons having personal knowledge of the loss. Where the spirits lost contained ineligible ingredients, the provisions of § 201.486 shall apply. Where any loss covered by this section occurs during removal from bonded premises or customs custody to bottling premises, the proprietor shall show in the records maintained the actual quantity received at the bottling premises.

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

§ 201.485 Operating losses.

Losses of spirits by reason of the conditions stated in § 201.482(b) may be computed and claimed by the proprietor and tentatively allowed as provided in §§ 201.488 and 201.489, but shall be adjusted and finally allowed on a fiscal year basis. Such losses of spirits (except losses incurred in the manufacture of gin and vodka in a closed system which are provided for in § 201.487) shall be allowed in an amount no greater than the excess of losses over gains and not to a greater extent than is set forth below:

If total completions during the fiscal year in proof gallons are—	The maximum allowable loss in proof gallons is—
Not over 24,000	2 percent of completions.
Over 24,000 but not over 120,000	480 proof gallons plus 1 percent of excess over 24,000.
Over 120,000 but not over 600,000	1,440 proof gallons plus 0.6 percent of excess over 120,000.
Over 600,000 but not over 2,400,000	4,320 proof gallons plus 0.3 percent of excess over 600,000.
Over 2,400,000	9,720 proof gallons plus 0.2 percent of excess over 2,400,000.

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

§ 201.486 Ineligible ingredients.

When alcoholic ingredients (such as spirits and wines and alcoholic flavoring and blending materials) other than spirits withdrawn from bond by the proprietor of the bottling premises on payment or determination of tax for removal to his premises for rectification or bottling, are used by him in the manufacture of spirits products, the loss otherwise allowable shall be reduced in a ratio equal to the ratio of the total proof gallons of such other alcoholic ingredients used, to the total proof gallons of all alcoholic ingredients used in the finished products. When ineligible spirits (spirits not withdrawn directly from bond on payment or determination of tax by the proprietor of bottling premises) are used in the manufacture of gin and vodka in a closed system, as provided in § 201.487, the loss from the closed system otherwise allowable shall be reduced in a ratio equal to the ratio of the total proof gallons of the ineligible spirits entered into the closed system, to the total proof gallons of all spirits entered into such system.

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

§ 201.487 Losses in manufacture of gin and vodka.

Where gin or vodka is manufactured on bottling premises by the proprietor who withdrew the spirits from bond on payment or determination of tax, in a closed system (approved as such by the assistant regional commissioner), in a manner similar to that authorized for bonded premises, the proprietor may be allowed actual determined losses of spirits incurred in such manufacture in addition to being allowed the losses otherwise allowable under this subpart. The proprietor shall record the quantities of spirits entered into the closed system and the quantity of the products removed therefrom.

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

§ 201.488 Tentative allowances.

The proprietor may at any time during a fiscal year make claim for tentative allowance of his operating losses, as described in §§ 201.485 and 201.487, from the beginning of the fiscal year through the close of any calendar month thereof, except June. In order to determine the maximum tentative allowable operating loss through the end of any month (within the limitations of § 201.485), (a) the total completions from the beginning of the fiscal year to the end of such month shall be projected at that rate for the full year, (b) the loss which would be allowable for the fiscal year on the basis of the projected completions shall be computed, and (c) such loss shall then be reduced by a quantity attributable to the fractional part of the fiscal year remaining. No claim for tentative allowance shall include any amount previously claimed. Each claim for tentative allowance filed, as provided in this section, shall be plainly marked, "Tentative Claim". Any proprietor who has filed a tentative claim for allowance of loss for any part of a fiscal year is required to file a final claim for that fiscal year or the portion of that fiscal year that he was qualified to operate the plant.

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

§ 201.489 Losses during short-term operations.

Losses allowable to any proprietor under the provisions of § 201.485 shall not exceed the quantity which would be allowed by a tentative estimate constructed in accordance with the provisions of § 201.488 for the portion of the fiscal year that such proprietor was qualified to operate the plant. Each alternating proprietor shall, when not considered as one proprietor under § 201.490, show in his claim the exact number of days (or calendar months, if complete) he was qualified to operate the bottling premises during the period covered by the claim. The maximum amount of loss allowance shall be limited to an amount proportionate to that which would have been allowed for the full fiscal year at the rate of loss and the rate of completions prevailing in his operations during the pertinent period. Where the period of qualification is other than a calendar month or months, computations shall be based on the exact number of days involved and on a year of 365 days. Where the bottling facilities are qualified and operated alternately for bottling spirits in bond and bottling spirits after withdrawal from bond on payment or determination of tax, the bottling premises, for purposes of computing loss allowances, shall be considered to have remained qualified throughout any periods during which operations were temporarily suspended for bottling-in-bond activities.

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

§ 201.490 Affiliated or subsidiary corporation.

Where a corporation and any of its affiliated or subsidiary corporations are qualified for successive operations at the same bottling premises, the several corporations may make a joint application to the assistant regional commissioner for permission to be treated as one proprietor for the purpose of computing the quantities of spirits lost through the various causes described in §§ 201.482 and 201.487, and filing claims for abatement, remission, credit, or refund of tax thereon. The application shall contain or be verified by a written declaration that it is executed under the penalties of perjury and shall set forth the names of the corporations, including affiliates and subsidiaries, making the application, their relationship, the purpose of the application, and the name of the corporation in which reports and claims shall be filed. Any changes in the facts or conditions set forth in the approved application shall necessitate the filing of a new application and approval thereof. As used in this section "affiliated or subsidiary corporations" means corporations of "an affiliated group" as defined in section 1504, I.R.C., and parent and subsidiary corporations where the parent corporation owns stock representing more than 50 percent of the total combined voting power of all classes of stock of the subsidiary corporation entitled to vote (not including stock which is entitled to vote only on default of payment of dividends or other special circumstances).

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

§ 201.491 Claims and supporting data.

Any claim filed under § 201.45(d) shall be accompanied and supported by Form 2611 to cover the computation of the losses described in §§ 201.485 and 201.487, as applicable. The final claim for operational losses, as described in §§ 201.485 and 201.487, shall be filed within 6 months from the close of the fiscal year. Any claim filed under § 201.45(c) to cover losses described in § 201.484, shall be filed within 6 months from the date of the loss.

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

§ 201.492 Inventories.

Any proprietor intending to file claim under § 201.45(d) shall before beginning business on the first business day of the first period for which he intends to file claim, and at the close of the last business day of each period for which any such claim is to be filed, take an inventory of all alcoholic ingredients that have been dumped for use in the production of spirits products and which are in process (i.e., those which are not "completions" as defined in § 201.11). The proprietor shall show, in the record of such inventory, the contents of each container in proof gallons, and as to each container, whether the contents are (a) spirits withdrawn by him from bond directly to his bottling premises for rectification or bottling, as provided in this part, or which are otherwise eligible for loss allowance by reason of the provisions of section 5008(c)(5), I.R.C., (b) other spirits, (c) wines which have been dumped for use in the manufacture of distilled spirits products, or (d) a mixture of such spirits or wines with each other, or with alcoholic flavoring or blending ingredients. The record of any inventory taken, under this section, for the first business day of the first period for which a proprietor intends to file a claim shall show as to paragraphs (c)

and (d) of this section the proof gallons of each component comprising the contents of each container. The proprietor shall record in similar detail the quantities of alcoholic ingredients on hand which are not in process. The proprietor shall, at least three days in advance, advise the assigned officer of the date and time he will take any inventory under this section.

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

§ 201.493 Applicability of loss provisions.

The provisions of this subpart relating to allowance of loss of spirits withdrawn from bond for rectification or bottling apply in respect of spirits withdrawn from bond on payment or determination of tax on or after July 1, 1959. Such provisions shall also apply in respect of losses occurring on and after July 1, 1959, and after dumping for rectification or bottling, of spirits withdrawn from bond prior to July 1, 1959, which have not been bottled after withdrawal from bond, and such spirits shall be considered as having been withdrawn from bond on payment or determination of tax by the proprietor of the bottling premises at which the spirits are, or have been, dumped for rectification or bottling. Distilled spirits on bottling premises on July 1, 1959, which were withdrawn from bond before that date, and which were not dumped for rectification or bottling before that date, are not eligible for loss allowance on losses occurring before such dumping, and shall be maintained in a separate account. Likewise, distilled spirits withdrawn from bond before July 1, 1959, which are brought onto bottling premises on or after that date, are not eligible for loss allowance on losses occurring before such dumping, and such spirits shall also be maintained in a separate account until dumped.

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

§ 201.494 Gauge of spirits.

Where spirits are gauged to determine (a) losses as provided by § 201.484, (b) losses as provided by § 201.485 which occur before dumping, (c) quantities to be dumped for rectification or bottling on or after July 1, 1959, when the spirits were withdrawn from bond before such date, (d) quantities of ineligible spirits dumped for rectification or bottling, or (e) quantities entered into or removed from the closed system, as provided in § 201.487, such gauge shall be made by the proprietor by weight and proof unless the assistant regional commissioner approves another method of gauging.

(72 Stat. 1358; 26 U.S.C. 5204)

Subpart P—Containers and Marks and Brands

CONTAINERS

§ 201.501 General.

Proprietors shall use for any purpose of containing, storing, transferring, conveying, removing, or withdrawing spirits, denatured spirits, or denaturants under this part only containers which are authorized by, or under the provisions of, this part for such purpose, and a container so authorized will be deemed to be an approved container for such purpose. In addition to the containers specifically authorized by this part for spirits, denatured spirits, or denaturants, another container for spirits, denatured spirits, or denaturants may be used for a particular purpose under this part, when authorized by the Director on a finding by him that the use of the container will afford protection to the revenue equal to or greater than that afforded by the containers specifically authorized by this part, and that the use will not cause administrative difficulty. Where another container is so authorized by the Director, he shall prescribe the detail and manner in which such container shall be constructed, protected, marked, and branded, consistent with the provisions of this part. This subpart does not regulate or prohibit the use on plant premises of any container for purposes other than containing alcoholic substances or denaturants.

(72 Stat. 1315, 1360, 1362, 1374; 26 U.S.C. 5002, 5206, 5212, 5213, 5214, 5301)

§ 201.502 Containers of 1 gallon or less.

The provisions of Subpart K of this part govern the containers to be used in bottling spirits in bond under section 5233, I.R.C., and bottling alcohol on bonded premises under section 5235, I.R.C. The provisions of Subpart N of this part govern the bottling of spirits and wines on bottling premises. Denatured spirits may be filled on bonded premises into metal or glass containers of a capacity of 1 gallon or less. Liquor bottles shall not be used for bottling denatured spirits. Spirits in bottles of a capacity of 1 gallon or less, except anhydrous spirits and spirits to be withdrawn from bond free of tax, are deemed to be for nonindustrial use.

(72 Stat. 1315, 1360, 1374; 26 U.S.C. 5002, 5206, 5301)

§ 201.503 Cases.

Spirits, denatured spirits, or wines which have been filled in containers of 1 gallon or less, in accordance with the provisions of § 201.502, shall be placed in cases so constructed as to afford reasonable protection against breakage or theft. Pursuant to the provisions of this part, cases of spirits, including denatured spirits, filled on bonded premises may be stored on bonded premises, transferred in bond, or withdrawn from bonded premises, and cases of taxpaid spirits or taxpaid wines may be received in, stored on, and removed from bottling premises.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.504 Containers holding from 1 gallon to 10 gallons.

Spirits in bond, including denatured spirits, for industrial use, may be filled into glass containers of a capacity greater than 1 gallon but not greater than 10 gallons, and metal containers of a capacity of 1 gallon but not greater than 10 gallons. Spirits in bond, for nonindustrial use, may be filled into metal containers holding 10 gallons and, if for export, such spirits may be filled into metal containers holding 5 gallons. Spirits or wines on bottling premises may be filled into glass containers of a capacity greater than 1 gallon but not greater than 5 gallons and into metal containers of a capacity greater than 1 gallon but not greater than 10 gallons. Pursuant to the provisions of this part, of Part 175 of this chapter, and of 27 CFR Part 5, containers filled in bond under this section may be stored on bonded premises, transferred in bond, or withdrawn from bonded premises, and containers filled on bottling premises under this section may be received in, stored on, and removed from such premises.

(72 Stat. 1315, 1360; 26 U.S.C. 5002, 5206)

§ 201.505 Encased containers.

Unlabeled containers of denatured spirits and spirits of 190 degrees of proof or more for industrial use filled in accordance with the provisions of § 201.504 may be completely encased in wood, fiberboard, or similar material in such a manner that the surface (including opening) of the actual container is not exposed. Required marks, brands, and stamps (if any) shall be applied to an exposed surface of the case, and the case shall be so constructed that the portion containing such marks, brands, and stamps will remain attached to the inner container until all of the contents have been removed therefrom. A statement reading "Do Not Remove Inner Container Until Emptied", or of similar import, shall be placed on the portion of the case bearing the marks, brands, and stamps.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.506 Packages.

Packages containing more than 10 gallons may be used (a) on bonded premises for original entry of spirits, and for packaging from storage tanks, storing, transferring in bond, and withdrawing from bonded premises of spirits and denatured spirits, and (b) on bottling premises for the receiving, storing, and removing of spirits and wines on which tax has been paid or determined. Metal drums shall be so constructed that all openings therein may be sealed and other packages shall be constructed so as to be capable of secure closure.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.507 Bulk conveyances.

Bulk conveyances which conform to the requirements of § 201.510 may be used (a) on bonded premises for original entry of spirits, and for filling from storage tanks, storing, transferring in bond, and withdrawing from bond of taxpaid spirits and of denatured spirits, and (b) on bottling premises for receiving, storing, and removing taxpaid spirits and wines. Spirits may be withdrawn free of tax, pursuant to the provisions of this part, in a bulk conveyance only for use of the United States, or if the Director has authorized the proprietor, as provided in § 201.501, to so withdraw such spirits to a specified con-

signee. Spirits may be withdrawn without payment of tax, pursuant to the provisions of this part, in bulk conveyances for the purposes provided in § 201.386 (a), (b), (c), and (e).

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.508 Tanks.

Tanks which conform to the requirements of § 201.243 may be used on:

(a) Production facilities of bonded premises as containers:

(1) For the deposit of distilling material, or of spirits or denatured spirits for redistillation;

(2) Which are integral parts of the closed distilling system;

(3) In which the production gauge is made, or from which containers to be gauged for production are filled;

(4) In which spirits may be denatured, or denaturants or denatured spirits stored.

(b) Storage facilities of bonded premises as containers for:

(1) Deposit of spirits received from production facilities, and of spirits or denatured spirits transferred in bond or returned to bonded premises;

(2) Denaturation of spirits;

(3) Spirits, denaturants, and denatured spirits;

(4) Mingling spirits;

(5) Gauging purposes, including gauge for determination of tax;

(6) Use in the activities related to bottling in bond, and bottling spirits (including denatured spirits) for industrial use.

(c) Bottling premises as containers for receiving, processing, and for use in the activities related to bottling or packaging taxpaid spirits and wines.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.509 Pipelines.

Pursuant to the provisions of this part, pipelines which conform to the requirements of § 201.244 may be used for (a) the conveyance on bonded premises of spirits, denatured spirits, and denaturants, (b) the conveyance to and from bonded premises of spirits, denatured spirits, and denaturants, where the premises from or to which conveyed is in the immediate vicinity, and (c) the conveyance to, on, and from bottling premises of taxpaid spirits and taxpaid wines.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.510 Construction of bulk conveyances.

(a) *Construction.* All bulk conveyances authorized by this part shall conform to the following:

(1) All openings (including valves) shall be so constructed that they may be closed and sealed to prevent unauthorized access to the contents of the conveyances.

(2) If the conveyance consists of two or more compartments, each shall be so constructed or arranged that emptying of any compartment will not afford access to the contents of any other compartment.

(3) The conveyance (or in the case of compartmented conveyances, each compartment) shall be so arranged that it can be completely drained.

(4) Each tank car or tank truck shall have permanently and legibly marked thereon its number, capacity in wine gallons, and the name or symbol of its owner.

(5) If the conveyance consists of two or more compartments, each compartment shall be identified and the capacity of each shall be marked thereon.

(6) Permanent facilities shall be provided on tank trucks and tank cars to permit ready examination of manholes or other openings.

(7) A route board, or other suitable device, for carrying required marks, brands, and stamps shall be provided on each bulk conveyance.

(8) Calibrated charts, prepared or certified by competent and recognized authorities or engineers, showing the capacity of each compartment in wine gallons for each inch of depth, shall be carried with each tank truck, tank ship, or barge.

(b) *Proprietor's responsibility.* Before filling any bulk conveyance, the proprietor shall examine it to ascertain that it meets the requirements of this section and is otherwise suitable for receiving the spirits or denatured spirits, and he shall refrain from, or discontinue, using any such conveyance found by him or by an internal revenue officer to be unsuitable.

(72 Stat. 1357, 1360, 1362; 26 U.S.C. 5202, 5206, 5212, 5213, 5214)

§ 201.511 Sealing of conveyances and individual packages.

(a) *Sealing of conveyances by assigned officer.* All openings in a bulk conveyance used to transfer spirits in bond or to transport spirits withdrawn free of tax or without payment of tax shall, as soon as such conveyance is loaded, be closed by the proprietor and sealed by the assigned officer with Government cap seals or with another device, if such other device has been approved by the Director for use in lieu of Government cap seals. When spirits in packages are to be transferred in bond and the proprietor elects, under the provisions of § 201.368(b)(1), to seal the transporting conveyance, all openings in such conveyance shall, as soon as the conveyance is loaded, be closed by the proprietor and sealed by the assigned officer as described above.

(b) *Sealing of conveyances by proprietor.* All openings in a bulk conveyance used to transport (1) taxpaid spirits or (2) denatured spirits transferred in bond or withdrawn free of tax shall, as soon as such conveyance is loaded, be closed and sealed by the proprietor with railroad or other appropriate seals dissimilar in marking to Government cap seals.

(72 Stat. 1315, 1360; 26 U.S.C. 5002, 5206)

§ 201.512 Restrictions on disposition of bulk spirits.

(a) *For nonindustrial use.* Spirits for nonindustrial use may be sold or disposed of in containers holding more than 1 wine gallon only to the persons and for the purposes set forth in 27 CFR Part 3.

(b) *For industrial use.* Shipment or delivery of spirits (other than alcohol or neutral spirits) withdrawn from bond in containers holding more than 1 wine gallon for industrial use shall, as provided in 27 CFR Part 3, be made directly to the user of the spirits.

Marks and Brands

§ 201.513 General.

Proprietors shall mark, brand, identify, label, and stamp all containers of spirits (including denatured spirits) and wines as provided by this part. All labor pertaining to the marking, branding, identifying, labeling, and stamping of containers shall be performed by the proprietor at his own expense.

(72 Stat. 1358, 1360; 26 U.S.C. 5204, 5206)

§ 201.514 Numbering of packages and cases.

Packages of spirits (including denatured spirits) and cases containing bottles or other containers of spirits (including denatured spirits) shall, when filled, be consecutively numbered by the proprietor commencing with "1" in each series of serial numbers provided for below, except that any series of such numbers in use may be continued, but in any such case the prefix required by paragraph (a) of this section shall be used. When the numbering in any series reaches "1,000,000", the proprietor may recommence the series. A recommenced series for packages shall be given an alphabetical prefix or suffix. Separate series are required as follows:

(a) Packages of spirits, packages of specially denatured spirits, and packages containing more than 5 gallons of completely denatured alcohol shall be numbered in separate series. Further, packages of spirits shall be numbered in separate series as follows:

Packages of spirits	Distinguishing prefix	Examples of serial numbers [1]
(1) Filled from production facilities	None	1, 2; 1A, 2A.
(2) Filled from bonded storage facilities, spirits of less than 190 degrees of proof.	T and identification of plant	T-12-Ind-1.
(3) Filled from bonded storage facilities, spirits of 190 degrees of proof or more.	T	T-1, T-2.
(4) Filled on bottling premises	BP	BP-1, BP-2.
(5) Mingled under § 201.301	CS and identification of plant	CS-12-Ind-1.
(6) Mingled under § 201.297	CP and identification of plant	CP-12-Ind-1.
(7) Blended under §§ 201.307 and 201.308	BL	BL-1.

[1] Examples illustrate numbering at DSP-Ind-12.

(b) Cases of bottled spirits filled on bonded premises and cases filled on bottling premises shall be numbered in separate series. The proprietor may establish more than one series of serial numbers for cases on either bonded or bottling premises where more than one bottling unit is used and each series is

distinguished from each other by the use of alphabetical prefixes or suffixes. Further, separate series of serial numbers, distinguished from each other by the use of alphabetical prefixes or suffixes, may be established to identify size of bottles, brand names, or other information, on written application to, and approval of, the assistant regional commissioner. Remnant cases shall be given the serial number of the last full case followed by the letter R.

(c) Where there is a change in proprietorship, or in the individual, firm, corporate name, or trade name, all all series in use at that time shall be continued, except that for a change in proprietorship a new series shall be started for all cases on bonded premises and for all series in use on bottling premises.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.515 Specifications for marks and brands.

The proprietor shall place the prescribed marks and brands on cases and encased containers of spirits by printing, stenciling, or stamping and shall place the prescribed marks and brands on packages of spirits by burning, cutting, printing, or stenciling; the prescribed marks and brands may also be made by any equally legible and durable method approved by the Director. The marks required to be placed on packages by this subpart shall be placed on one head, which shall be called the Government head, and the marks for other containers, and for cases, on one side, which shall be called the Government side. The letters and figures shall be large enough to be easily read and, when printed, stamped, or stenciled, shall be in permanent ink and in a color distinctly in contrast to that of the background. The prescribed marks on packages, cases, and encased containers of specially denatured spirits may be placed thereon in the manner provided above, or may be placed thereon by means of labels if the labels are clearly legible and securely affixed to the package, case, or container.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.516 Marks on packages of spirits filled on bonded premises.

(a) *General.* Except as otherwise provided in this part packages of spirits filled on bonded premises shall be marked with—

(1) The name of the producer, or his trade name as provided in paragraph (e) of this section;

(2) The plant number of the producer, such as "DSP–CAL–708";

(3) The kind of spirits or, in the case of distillates removed under § 201.275, the kind of distillate such as "Grape distillate", "Peach distillate", etc.;

(4) The serial number;

(5) The date of original entry;

(6) The date filled, if other than the date of original entry;

(7) Proof;

(8) Tare;

(9) Original gross weight;

(10) "BSA", "OC", or "QA" where spirits are treated with caramel or oak chips or are subjected to a quick-aging process, as the case may be.

(b) *Rated capacity.* The marks relating to proof, tare, original gross weight, and proof gallon, required by this section, may be omitted from a package if the package is filled to capacity and the rated capacity of the package in gallons (as prescribed by the specifications of the manufacturer) is shown as "RC____G".

(c) *Spirits of 190 degrees or more of proof.* In the case of spirits of 190 degrees of proof or more, the date of originial entry need not be shown. If packages of such spirits are filled by other than producer, the name and plant number of the packaging proprietor shall be substituted for that of the producer.

(d) *Packages of heterogeneous spirits.* Packages of heterogeneous spirits, mingled under the provisions of § 201.298 and filled for immediate removal, shall be marked as provided in paragraph (a) of this section (except subparagraphs (5), (6), and (9)), except that the name and plant number of the packaging proprietor shall be shown in lieu of the producer. The kind of spirits shall be shown as "Heterogeneous Whisky", "Heterogeneous Rum", etc., for spirits of the same kind, and as "Heterogeneous Spirits" for spirits of different kinds. Packages so filled shall also be marked to show the proof gallons.

(e) *Real or trade names.* The producer's real name, or any trade name authorized (as provided in § 201.146) at the time of production, may be placed on any package filled at the time of production gauge, or at the time of original packaging of the spirits in wood when, as provided in § 201.270, the spirits were not filled into wooden packages at the time of production gauge. When spirits have been mingled under § 201.297 or § 201.301, the proprietor may use any of the names represented in the mingled spirits, but no other name, as the name of the producer to be marked on packages filled with such mingled spirits: *Provided,* That if the proprietor was the actual producer of the spirits he may in any case use his real name. When spirits have been mingled under § 201.297 and are not eligible for bottling in bond, the name of the producer marked on the package shall be followed by the letter "X" to evidence such ineligibility of the spirits.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.517 Kind of spirits or wine.

(a) *Designation.* The designations as to kind of wine required by § 201.526 shall be in accordance with the classes and types of wines set out in 27 CFR Part 4, and the designations as to kind of spirits required by §§ 201.516 and 201.526, shall be in accordance with the classes and types of spirits set out in 27 CFR Part 5, except that:

(1) Spirits distilled at more than 160 degrees of proof, which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin, and which are substantially neutral in character may be designated as "Alcohol". When alcohol is withdrawn on determination of tax, the designation shall consist of the word "Alcohol" preceded or followed by a word or phrase descriptive of the material from which the alcohol was produced.

(2) The designations for vodka, neutral spirits, or gin shall include a word or phrase descriptive of the material from which the spirits so designated were produced.

(3) Spirits distilled at less than 190 degrees of proof which lack the taste, aroma, and other characteristics generally attributed to whisky, brandy, rum, or gin, may be designated "Spirits", preceded or followed by a word or phrase descriptive of the material from which produced.

(4) Spirits distilled from fruit at or above 190 degrees of proof, if intended for use in wine production, shall be designated "Neutral Spirits—Fruit", preceded or followed by the name of the fruit from which produced.

(5) Spirits distilled at not more than 160 degrees of proof from a fermented mash of not less than 51 percent rye, corn, wheat, malted barley, or malted rye grain, packaged in reused cooperage, may be designated "Whisky" if further qualified with the words "Distilled from rye mash" (or bourbon, wheat, malt, or rye malt mash, as the case may be): *Provided,* That such spirits shall, if distilled from a fermented mash of not less than 80 percent corn, be designated "Corn Whisky."

(b) *Change of designation.* A proprietor may, on approval of the assistant regional commissioner, change the original designation for spirits at any time, before their withdrawal from bonded premises, to a new designation properly describing the spirits in accordance with the provisions of this section.

(c) *Other designations.* If the proprietor proposes to produce spirits for which a designation has not been prescribed, he shall first apply to the Director for a designation for such spirits and they shall be branded accordingly.

(d) *Spirits for nonindustrial use.* The provisions of this section shall not be construed as authority for applying designations to spirits withdrawn for nonindustrial use which designations do not comply with provisions of 27 CFR Part 5.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.518 Change of packages.

Where spirits are transferred from one package to another as authorized in § 201.295, each new package shall be given the same serial number, marks, and brands as the original package, except that the new gross weight and tare shall be shown. The proprietor shall prepare and sign a label to be affixed to the head of each new package in the manner prescribed for affixing distilled spirits stamps. The label shall be in the following form:

The spirits in this _____
(Kind of cooperage)
_____, serial No. _____,
(Barrel or drum)
were transferred from a _____,
(Kind of cooperage)

_____, on _____,
(Barrel or drum) (Date)
under authority date _____.

_____
(Proprietor)

§ 201.519 Packages of blended brandy or rum.

Where brandy or rum is blended in accordance with the provisions of §§ 201.307 and 201.308, packages containing such spirits shall be marked to show the words "Blended by" followed by the name and the plant number of the blending proprietor in lieu of showing the name and plant number of the producing proprietor: *Provided,* That if the blender was the actual producer of the spirits he may mark the packages to show "Produced and Blended by" followed by his name and plant number where the spirits were blended. Such packages shall otherwise be marked in accordance with the provisions of this subpart.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.520 Marks on approved containers of specially denatured spirits.

Each package, case, and encased container of specially denatured spirits filled on bonded premises shall be marked or labeled to show, on the head of the package or side of the container or case, the quantity in gallons, the serial number, the address (city or town and State) of the denaturer, his plant number, the words "Specially Denatured," followed by the word designating the kind of spirits such as "Alcohol" or "Rum" and the formula number. Where the spirits were denatured at other than 190 proof, the proof at which denatured shall also be marked on the package, case, or container. Where spirits were denatured under a formula authorizing a choice of denaturants, the package, case, or container shall be marked or labeled to show the denaturants used and, where the formula authorizes a choice of quantities of denaturants, the quantity used shall be shown.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.521 Marks on containers of completely denatured alcohol.

Each approved container of completely denatured alcohol (except pipelines and bulk conveyances) shall have marked on the head of the package (or side of the can or casing) the name of the proprietor by whom the containers were filled, the plant number where filled, the contents in wine gallons, the apparent proof, the words "Completely Denatured Alcohol", and the formula number. All such containers of more than 5 gallons capacity shall bear a serial number.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.522 Marks on tanks.

All tanks containing spirits or wines shall be marked to show the kind of product therein. When denatured spirits are held in a storage tank or are retained in a mixing tank, the formula of the denatured spirits shall be marked on the tank.

§ 201.523 Caution label.

Each container of completely denatured alcohol containing 5 gallons or less, sold or offered for sale, shall be labeled to show in plain, legible letters (red on white) the words "Completely Denatured Alcohol" and the following statement:

Completely denatured alcohol; contains ingredients which render the product wholly unfit for beverage purposes; if taken internally, will cause serious consequences to health.

The name and address of the denaturer may be printed on such label, but no other extraneous matter will be permitted thereon without the approval of the Director. The word "pure", qualifying denatured alcohol, will not be permitted to appear on the label or the container.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.524 Additional marks on portable containers.

In addition to the other marks required by this part, portable containers (other than bottles enclosed in cases) of spirits (including denatured spirits, as applicable) to be withdrawn from the bonded premises—

(a) Without payment of tax, for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones or supplies for certain vessels and aircraft, shall be marked as provided in Part 252 of this chapter;

(b) On determination of tax shall be marked to show the date of such determination, the serial number of the distilled spirits stamp affixed thereto, and, if wooden packages, with the words "Rinsed" or "Not Rinsed"; if rinsed, the temperature of the water used shall be shown as provided in § 201.377;

(c) Tax-free shall be marked to show the number of the permit of the tax-free user, the date of withdrawal, and the purpose of withdrawal, as, for example, "Hospital Use", "Scientific Purposes", "Use of U.S.";

(d) For use in wine production, in accordance with § 201.386(e), shall show the date of removal and, if to be withdrawn for shipment to a noncontiguous bonded wine cellar, the purpose of the withdrawal; or

(e) For transfer in bond, shall be marked to show such purpose, the date of shipment, and the plant number of the consignee, as, for example, "Trans. 7-8-60, DSP-NY-4."

The proprietor may show the brand or trade name and may place caution notices and other material required by Federal, State, or local law and regulations on the Government head or side if such names and attachments do not interfere with or detract from the markings required by this subpart. Also the proprietor may show wine gallons or proof gallons. No other marks may be placed on the Government head or side except as authorized by the Director.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.525 Marks on bulk conveyances.

The proprietor shall securely attach to the route board of each bulk conveyance used to transport spirits (including denatured spirits) a label (coated with transparent shellac or otherwise adequately protected) to identify each conveyance or, when applicable, each compartment as follows:

(a) In-bond shipments and shipments of spirits on which the tax has been determined shall bear a label showing the name, plant number, location (city or town and State) of both the consignor and the consignee, and the date of shipment. In the case of in-bond shipments, the words "Shipped in bond by" shall precede the name of the consignor. In addition, such label shall show the quantity in proof gallons (wine gallons for denatured spirits), and the formula number for denatured spirits.

(b) Shipments of spirits (including denatured spirits) for tax-free use shall bear a label showing the name, location (city or town and State) of both the consignor and the consignee, the plant number of the consignor, the permit number of the consignee, the date of shipment, the quantity in proof gallons (wine gallons for denatured spirits), the formula number for denatured spirits, and, in the case of tax-free spirits, the purpose of withdrawal as provided in § 201.524(c).

(c) Shipments of spirits withdrawn without payment of tax, for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones, or for use in wine production, shall bear a label showing the name and location (city or town and State) of both the consignor and consignee, the plant number of the consignor, the registry number, if any, of the consignee, the quantity in proof gallons, the date of shipment, and the purpose of the withdrawal, as, for example, "For Export," "For Deposit in CMBW Cl. 6," "For Trans. to F.T.Z. No. _____," or "For Use in Wine Production."

In addition, export shipments shall conform to the requirements of Part 252 of this chapter.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.526 Packages filled at bottling premises.

(a) *Spirits.* Packages of spirits filled at bottling premises shall be marked with the following information:

(1) Tare, proof, and proof gallons;
(2) Serial number;
(3) Kind of spirits;
(4) Date of filling;
(5) If a rectified product, number of approved formula under which rectified and the plant number of the rectifier, if other than the packaging proprietor;
(6) Name (or trade name) of proprietor; and
(7) Plant number.

(b) *Wine.* Packages of wine filled at bottling premises shall be marked in the manner indicated in paragraph (a) of this section except that (1) in lieu of the kind of spirits the kind of wine shall be shown, (2) in lieu of proof the percent of alcohol by volume shall be shown, and (3) if the wine is unrectified, wine gallons shall be shown instead of proof gallons.

(72 Stat. 1360, 1381; 26 U.S.C. 5206, 5368)

§ 201.527 Marks on cases of bottled-in-bond spirits.

(a) *Mandatory marks.* The following information shall be plainly marked at the time of bottling on the Government side of each case of spirits bottled in bond:

(1) Serial number;
(2) The words "Bottled in Bond";
(3) Kind of spirits in accordance with the provisions of 27 CFR Part 5;
(4) Proof gallons;
(5) Plant number of bottler;
(6) Proof (if bottled in bond for export);
(7) Date filled.

In addition, on the date tax is determined on cases of bottled-in-bond spirits, such cases shall be marked with the words "Tax Determined", followed by the date of tax determination. Cases, at the time of transfer in bond, shall be marked to show such purpose, the date, and the plant number of the consignee, as, for example, "Trans. 8-1-60, DSP-Ky-4." Cases withdrawn for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones, or supplies for certain vessels and aircraft, shall bear the additional marks required by Part 252 of this chapter. Cases otherwise withdrawn or removed shall be marked to show the purpose and the date of withdrawal.

(b) *Other marks.* The proprietor may also show the real name and/or the trade name of the producer of the spirits, and may place other material required by Federal, State, or local law and regulations on the Government side, if such names and attachments do not interfere with or detract from the markings required by this subpart. No other marks may be placed on the Government side except as authorized by the Director as provided in § 201.530.

(72 Stat. 1360, 1366; 26 U.S.C. 5206, 5233)

§ 201.528 Marks on cases filled on bottling permises.

(a) *Mandatory marks.* The following information shall be plainly marked on the Government side of each case of spirits or wine filled on bottling premises:

(1) Serial number;
(2) Kind of wine in accordance with the provisions of 27 CFR Part 4, or kind of spirits in accordance with the provisions of 27 CFR Part 5;
(3) Plant number where bottled;
(4) Proof gallons (for spirits and rectified wines);
(5) Wine gallons, for unrectified wines);
(6) Proof (for spirits);
(7) Percent of alcohol by volume (for wines);
(8) Date filled.

Cases removed for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones, or supplies for certain vessels and aircraft, shall bear the additional marks required by Part 252 of this chapter.

(b) *Other marks.* In addition to the required marks on cases filled on bottling premises, the proprietor may include on the Government side of cases marks as follows:

(1) Name or trade name, and location, if desired, of the bottler, and in conjunction therewith the word "Bottler";
(2) For products actually distilled or rectified by the proprietor, his name or trade name, and location, if desired, and in conjunction therewith the words "Distiller" or "Rectifier" as applicable;
(3) For products actually imported and bottled by the proprietor, the words "Imported and Bottled By", followed by his name or trade name, and location if desired;
(4) For products bottled for a dealer, the words "Bottled For", followed by the name of such dealer;
(5) Other material required by Federal or State law and regulations.

The marks authorized by this paragraph shall not interfere with or detract from the mandatory marks prescribed in paragraph (a) of this section. No other marks may be placed on the Government side except as authorized by the Director as provided in § 201.530.

(72 Stat. 1360, 1381; 26 U.S.C. 5206, 5368)

§ 201.529 Cases of bottled alcohol.

(a) *Mandatory marks.* The Government side of each case of alcohol bottled in accordance with the provisions of Subpart K of this part shall be marked with the word "Alcohol", shall be serially numbered, and shall be marked to show the plant number, proof, and proof gallons. In addition, on the date tax is determined on cases of alcohol, such cases shall be marked with the words "Tax Determined", followed by the date of tax determination. Cases otherwise withdrawn or removed shall be marked to show the date of withdrawal or removal. Cases withdrawn for export, transfer to customs manufacturing bonded warehouses, transfer to foreign-trade zones, or supplies for certain vessels and aircraft, shall bear the additional marks required by Part 252 of this chapter. Cases withdrawn tax-free shall be marked to show the number of the permit of the tax-free user and the purpose of the withdrawal as provided in § 201.524(c).

(b) *Other marks.* The proprietor may also show the brand or trade name, and may place other material required by Federal, State, or local law and regulations on the Government side, if such names and attachments do not interfere with or detract from the marks required by this subpart. No other marks may be placed on the Government side except as authorized by the Director as provided in § 201.530.

(72 Stat. 1360, 1369; 26 U.S.C. 5206, 5235)

§ 201.530 Additional marks for cases.

Labels or data describing the contents for commercial identification purposes, or indicating payment of State or local taxes, may appear on the Government side of cases. The Director may authorize designs or other marks on the Government side of cases. Labels, marks, or designs shall not conflict with, or obscure, the markings required by this part. Applications for approval of designs or other marks shall be submitted in duplicate through the assistant regional commissioner and be accompanied by drawings or other representations showing the proposed marks and the colors in which they will appear.

(72 Stat. 1360; 26 U.S.C. 5206)

§ 201.531 Obliteration of marks, brands, stamps, and labels.

Except as to change of designation as provided in § 201.517(b), the marks, brands, stamps, and labels required by this part to be placed on any container or case shall not be destroyed or altered until the container or case is emptied. When the proprietor empties any container, the marks, brands, stamps, and labels shall be effaced or obliterated, except that when any package is to be immediately refilled at the plant where emptied, those marks or brands which will be applicable to the package when refilled may be retained on the package, pending such reuse. The provisions of this section shall not apply to containers stamped with strip stamps or to the permanent marks on tanks required by § 201.236.

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

Subpart Q—Stamps

STRIP STAMPS

§ 201.541 General.

(a) *Spirits bottled in bond.* Every bottle of spirits bottled in bond pursuant to the provisions of section 5233, I.R.C., and Subpart K of this part shall, when filled, be stamped by the proprietor with a prescribed bottled-in-bond strip stamp evidencing the bottling of such spirits in bond. The prescribed stamp is serially numbered (except stamps of less than ½ pint denomination), and shows that (1) the spirits were bottled in bond under supervision of the United States Government, (2) the quantity of spirits in the container, and (3), except for export stamps, the proof of the spirits. Green strip stamps are prescribed for spirits bottled in bond for domestic use, and blue for export. Blue export strip stamps, applied to bottles of spirits bottled in bond for export with benefit of drawback, shall be overprinted with the word "DRAWBACK".

(b) *Spirits bottled on bottling premises.* Every bottle or other immediate container of less than five wine gallons of taxpaid spirits filled on bottling premises for removal therefrom shall, when filled, be stamped by the proprietor with a prescribed red strip stamp, evidencing the determination of tax or indicating compliance with the provisions of Chapter 51, I.R.C., and this part. The prescribed stamps shall be issued in a standard size, serially numbered, for bottles or containers of ½ pint capacity or more and in a small size for bottles or containers of less than ½ pint capacity. Where spirits are bottled especially for export with benefit of drawback, or where taxpaid spirits are restamped for export with benefit of drawback, the word "EXPORT" shall be overprinted on the red strip stamp.

(c) *Alcohol bottled under section 5235, I.R.C.* Every bottle of alcohol bottled on bonded premises pursuant to the provisions of section 5235, I.R.C., and Sub-

part K of this part, shall, when filled, be stamped by the proprietor with a prescribed white strip stamp evidencing the bottling of such alcohol in compliance with such section and subpart. The prescribed stamp shows the contents of the container to be alcohol. Strip stamps applied to bottles of alcohol to be exported shall be overprinted with the word "EXPORT".

(d) *Overprinting.* The words "EXPORT" or "DRAWBACK" shall be overprinted in the center of the strip stamp, in a readily legible manner, by printing or by the use of a rubber stamp or other suitable method.

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

§ 201.542 Bottled-in-bond strip stamp denominations.

Strip stamps for spirits bottled in bond are provided in the following denominations only: 1 gallon, ½ gallon, 1 quart, ⅘ quart, 1 pint, ½ pint, and less than ½ pint. When bottles containing over ½ pint of bottled-in-bond spirits for export are of a size for which blue bottled-in-bond strip stamps in the exact denomination are not provided, the proprietor shall use stamps of the denomination next under the actual quantity of spirits contained in the bottles; he shall strike out the original denominations and shall write or print on the stamps the exact quantity of spirits contained in the bottles.

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

§ 201.543 Procurement of strip stamps.

(a) *General.* Strip stamps may be obtained, without charge, by the proprietor, in reasonable anticipation of current needs, from the district director of the district in which the plant is located, by requisition on Form 428 approved by the assigned officer. Such stamps may not be procured by one proprietor from another or transferred to another plant operated by the same proprietor, except on authorization by the assistant regional commissioner, nor may they, except in the case of emergency, be requisitioned from district directors of other districts. Requisitions shall be for full sheets of such stamps, and unless the stamps are called for in person, the proprietor shall specify the means of delivery and enclose a remittance to cover the cost of such delivery. Means of delivery, other than delivery directly to the proprietor or his agent, shall be limited to (1) registered mail, (2) certified mail, or (3) express. On receipt of the stamps the proprietor shall deliver them and the corresponding Form 428 to the assigned officer for verification.

(b) *Alternative method.* When the assistant regional commissioner determines that the interests of the Government will be best served thereby, the stamps may be shipped, at Government expense, directly to the assigned officer at the distilled spirits plant from a location other than the office of the district director.

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

§ 201.544 Overprinting of bottled-in-bond stamps.

The season and year of production and the season and year of bottling shall be overprinted on bottled-in-bond stamps in the blank space on the end of the stamp bearing the serial number or, in the case of the "less than ½ pint" denomination, on the right hand end of the stamp. The stamp shall be overprinted in the blank space on the other end with the name of the distiller under which the spirits were produced and warehoused. If a word such as "company", "corporation", or "incorporated", is a part of such name, the abbreviation of such word may be used. In overprinting export strip stamps, the proof at which the spirits are to be bottled will also be printed on the stamps. Stamps which cannot be used in the season or year for which they were overprinted, or on which an error was made in the season of production or bottling, may again be overprinted. Other data may not be changed after the first overprinting. All overprinting shall be done by the proprietor or, on his order, by a reputable printer. Overprinting will be done in red ink.

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

§ 201.545 Affixing stamps.

The proprietor shall affix strip stamps to the containers with a strong adhesive, and in such a manner that on opening the container the stamp will be broken and a portion thereof, sufficient to identify the kind of stamp placed thereon, will remain attached to the container or to a cap or seal which is permanently affixed to the container. Strip stamps affixed to containers shall not be concealed or obscured in any manner except that any such stamp may be covered by a cup, cap, seal, carton, wrapping, or other device which can be readily removed without injury to the stamp or which is sufficiently transparent to permit all data on the stamp to be read. If a cup, cap, or seal is placed over a stamp, a portion of the stamp must remain plainly visible. If containers are enclosed in sealed opaque cartons, such cartons and wrappings on such cartons must bear the words, "This package may be opened for examination by Internal Revenue Officers." Internal revenue officers have the right to open such cartons and wrappings and examine the containers. Where there is doubt as to the propriety of the use of any cup, cap, or seal, the closure and container should be submitted to the Director for approval.

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

§ 201.546 Strip stamp accounting.

Proprietors are responsible for the proper control of and accounting for all strip stamps received. Stamps that have been mutilated shall be destroyed under the supervision of an internal revenue officer, and unused stamps for which the proprietor has no use shall be disposed of in accordance with the instructions of the assistant regional commissioner. Proprietors shall not transfer or dispose of strip stamps charged to their account except as provided in this part. Proprietors shall keep records and submit reports relating to such stamps in accordance with the provisions of Subpart U of this part.

§ 201.547 Restamping of spirits.

Bottles of bottled-in-bond spirits and alcohol may be restamped under the provisions of Subpart K of this part. Bottles or other containers to which red strip stamps have been affixed may be restamped under the provisions of Subpart N of this part. Replacement of mutilated or missing strip stamps by persons other than proprietors of a plant shall be made in accordance with the provisions of Part 194 of this chapter.

(72 Stat. 1358, 1366; 26 U.S.C. 5205, 5233)

§ 201.548 Removing or breaking of strip stamps.

Strip stamps shall not be removed from a container until the container is emptied, and shall not be broken except in the process of opening the container.

DISTILLED SPIRITS STAMPS

§ 201.549 General.

(a) *Bonded premises.* Except for containers required to be stamped under § 201.541 and pipelines for the conveyance of spirits, containers of spirits withdrawn from bonded premises on determination of tax, or without payment of tax for the purposes authorized in § 201.386(a)–(d), shall be stamped with a prescribed distilled spirits stamp evidencing compliance with the provisions of Chapter 51, I.R.C., and this part.

(b) *Bottling premises.* All containers of spirits containing 5 wine gallons or more which are filled on bottling premises for removal therefrom (including such containers filled for export with benefit of drawback) shall be stamped with a prescribed distilled spirits stamp evidencing compliance with the provisions of Chapter 51, I.R.C., and this part.

(c) *Information on stamp.* The prescribed distilled spirits stamp is serially numbered. It shall be marked, in the space provided, by the proprietor withdrawing or removing the spirits, to show the name and plant number of such proprietor, the date of affixing the stamp to the container, and the serial number of the container. When spirits are withdrawn under the provisions of § 201.386(a)–(d) the proprietor shall insert the word "Export" on the stamp. When spirits are removed from bottling premises the proprietor shall insert on the stamp the words "Filled on Bottling Premises" and if the spirits have been rectified he shall also insert the words "Rectified Product".

(72 Stat. 1358, 1393; 26 U.S.C. 5205, 5522)

§ 201.550 Issuance and affixing of distilled spirits stamps.

Distilled spirits stamps shall be issued to the proprietor by the assigned officer on tax determination or, in other cases, on receipt of the appropriate form covering the withdrawal or removal of the

spirits. Such stamps shall be affixed and canceled by the proprietor before the packages or conveyances are removed from the bonded or bottling premises, as the case may be. The stamps shall be securely affixed to the Government head of the package, or the route board of the bulk conveyance, or to an appropriate part of any other approved container, and thereupon canceled by drawing or otherwise imprinting a line (not less than one-eighth inch wide) in durable red ink diagonally across the stamp. Such stamps (except in the case of packages to be transferred to contiguous premises) shall be covered with a transparent coating of shellac, lacquer, varnish, or equally suitable material, to protect the markings on the stamp. Where the bulk conveyance consists of separate compartments, a separate stamp for each compartment shall be issued, and shall be affixed to the proper route board, and canceled. Distilled spirits stamps shall remain on the containers or conveyances until the spirits therein are emptied. Such stamps shall be destroyed, as provided in § 201.531, when the containers are emptied.

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

§ 201.551 Restamping packages and conveyances.

Any package or conveyance of spirits which has been duly stamped with a distilled spirits stamp, but from which the stamp has been lost or destroyed by accident, shall, except as otherwise provided in this chapter, be restamped with another distilled spirits stamp. Applications for such restamping shall be made in writing to the assistant regional commissioner for the region in which the package or conveyance to be restamped is located. The application shall set forth the following:

(a) The serial number of each package or conveyance (and proprietor's name thereon);

(b) The location of the package or conveyance;

(c) A description of the contents;

(d) The applicant's interest in the property;

(e) The tax status of the spirits (supported by certified copies of the withdrawal forms);

(f) Statement by the applicant (or person having knowledge of the facts) that the package or conveyance was once duly stamped (and evidence thereof); and

(g) The circumstances connected with the destruction or loss of the stamps.

The application shall be executed under the penalties of perjury. If the assistant regional commissioner is satisfied that the package or conveyance had been properly stamped, and that the loss or destruction of such stamp is satisfactorily explained, he will issue, or cause to be issued, a distilled spirits stamp for the package or conveyance.

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

IMITATION STAMPS

§ 201.552 Imitation of prescribed stamps prohibited.

No person shall affix to any container containing or intended to contain distilled spirits, any stamp, mark, brand, or label, in imitation or simulation of of any prescribed internal revenue stamp required to be affixed to any container of distilled spirits.

Subpart R—Voluntary Destruction

§ 201.561 General.

The tax liability on distilled spirits (including denatured spirits) terminates, or if the tax has been paid it may be refunded or credited, when such spirits are voluntarily destroyed in accordance with this subpart—

(a) By the proprietor or other persons liable for the tax while the spirits are in bond, or

(b) By the proprietor who withdrew the spirits on payment or determination of tax on or after July 1, 1959, for rectification or bottling if the spirits (before the completion of bottling and casing or other packaging for removal from the bottling premises to which removed from bond) are found by him to be unsuitable for the purpose for which intended. A corporation and any of its affiliated or subsidiary corporations who conduct successive operations at the same bottling premises may qualify, as provided in § 201.490, to be treated as one proprietor for the purposes of this subpart. This paragraph does not apply to any tax other than the distilled spirits tax imposed under section 5001 (a)(1), I.R.C., and applies only in respect of tax on the quantity actually destroyed.

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

§ 201.562 Application, Form 1577.

Application for destruction of spirits (including denatured spirits) shall be filed by the proprietor of a plant on Form 1577 with the assigned officer or, if none is regularly assigned, the assistant regional commissioner. If the proprietor desires to destroy spirits in bond at some place other than on bonded premises, the assistant regional commissioner may require that the spirits be moved to a more convenient location. The quantity of spirits to be destroyed shall be determined by an assigned officer, who shall supervise the destruction thereof and prepare his report on Form 1577; denatured spirits may, at the discretion of the approving officer, be destroyed without supervision.

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

§ 201.563 Claims.

Claims for refund or credit of tax on spirits voluntarily destroyed under this subpart shall be filed pursuant to the provisons of Subpart C of this part. Where spirits destroyed on bottling premises contain alcoholic ingredients which were not withdrawn by the proprietor from bonded premises on tax determination, such ingredients shall not be included in any claim for refund or credit. The quantity of all spirits and alcoholic ingredients destroyed on bottling premises shall be reported on Form 2611. All claims under this subpart must be filed within 6 months from the date of destruction.

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

Subpart S—Return of Spirits to Bonded Premises

§ 201.581 Return of taxpaid spirits to bonded premises.

Subject to the provisions of this subpart, spirits withdrawn from bonded premises on payment or determination of tax in bulk containers on or after July 1, 1959, may be returned to bonded premises, if such spirits have been found to be unsuitable for the purpose for which intended to be used before any processing thereof and before removal of any spirits (other than samples for testing or analysis) from the original container in which such spirits were withdrawn. In the case of spirits withdrawn by pipeline, the tank into which the spirits were originally deposited shall be considered the original container, and such spirits may be returned by pipeline or by other approved containers. The returned spirits shall be immediately redistilled or denatured or mingled under the following conditions:

(a) If distilled at 190 degrees or more of proof, mingled with other spirits in bond which were so distilled;

(b) If eligible for denaturation, mingled with other eligible spirits for immediate denaturation;

(c) If eligible to be removed from bond for an authorized tax-free purpose, mingled with other eligible spirits to be immediately so removed; or

(d) If to be redistilled at the same or at another plant, mingled with other spirits for immediate redistillation.

All provisions of Chapter 51, I.R.C., and this part, applicable to spirits in internal revenue bond shall be applicable to spirits returned to bonded premises under this section on such return.

(72 Stat. 1364; 26 U.S.C. 5215)

§ 201.582 Application for return of taxpaid spirits.

Application shall be prepared on Form 2612 by the proprietor of the bonded premises and submitted to the assistant regional commissioner for approval of the return of spirits under the provisions of § 201.581. On receipt from the assistant regional commissioner of the approved application, the proprietor shall make arrangements for the shipment of the spirits to his bonded premises.

(72 Stat. 1364; 26 U.S.C. 5215)

§ 201.583 Receipt of returned taxpaid spirits.

On receipt of taxpaid spirits eligible for return to bonded premises, the proprietor shall gauge the spirits in the presence of the assigned officer. The proprietor shall execute his receipt for the spirits and report of gauge on all copies of the approved Form 2612 and deliver all the copies to the assigned officer who shall, on execution on the form of his verification of the receipt and gauge of the spirits, return two copies to the proprietor. The assigned officer shall forward one copy of Form 2612 to the assistant regional commissioner, and shall retain one copy for his files. The proprietor shall retain one copy of Form 2612 for his files and shall attach one

copy to his claim for refund or credit, as provided by § 201.44. When containers of such spirits are emptied, the proprietor shall comply with the applicable provisions of § 201.531.

(72 Stat. 1364; 26 U.S.C. 5215)

§ 201.584 Return of recovered denatured spirits and recovered articles.

Recovered denatured spirits, and recovered articles containing denatured spirits, may be returned for restoration or redenaturation to the bonded premises of any plant authorized to denature spirits, in accordance with the provisions of Part 211 of this chapter. If restoration requires redistillation, the recovered denatured spirits or articles may be returned for such purpose to bonded premises of a plant authorized to produce spirits. Such spirits and articles shall be kept apart from all other spirits (including denatured spirits and articles containing denatured spirits) and shall be promptly redenatured and removed.

(72 Stat. 1372; 26 U.S.C. 5273)

§ 201.585 Return of recovered tax-free spirits, and spirits and denatured spirits withdrawn free of tax.

Specially denatured spirits withdrawn free of tax under the applicable provisions of Part 252 of this chapter for exportation or for deposit in a foreign-trade zone, and spirits (including denatured spirits) withdrawn free of tax under the applicable provisions of Part 211 or 213 of this chapter, may be returned (a) to bonded premises of any plant authorized to produce distilled spirits, for redistillation; or (b) to any bonded premises for storage pending subsequent lawful withdrawal free of tax. Recovered tax-free spirits may, as provided in Part 213 of this chapter, be returned for redistillation to bonded premises of any plant authorized to produce distilled spirits or to any bonded warehouse facility for restoration (not including redistillation). The return shall be made under the applicable provisions of this part and Part 211, 213, or 252 of this chapter, as appropriate. Before spirits (including denatured spirits) are returned to bonded premises for storage, without redistillation, the proprietor shall file a consent of surety on Form 1533 to extend the terms of his bond, Form 2601, to cover the return and storage of such spirits. The proprietor may, if he so desires, file one consent of surety on his bond to extend the terms thereof to cover all such spirits which may be so returned to him.

(48 Stat. 999 as amended, 72 Stat. 1365; 19 U.S.C. 81c, 26 U.S.C. 5223)

§ 201.586 Return of spirits withdrawn without payment of tax.

Spirits lawfully withdrawn without payment of tax under the provisions of Part 252 of this chapter for exportation, or for deposit in a manufacturing bonded warehouse—class 6, or for deposit in a foreign-trade zone, or for use on vessels and aircraft, and not so exported, deposited, or used (or laden for use) on a vessel or aircraft, may be returned, under the applicable provisions of this part and Part 252 of this chapter, (a) to the bonded premises of any plant authorized to produce distilled spirits, for redistillation, or (b) to the bonded premises from which withdrawn, for storage pending subsequent removal for a lawful purpose. Wine spirits withdrawn pursuant to § 201.387 for use in wine production, and not so used, may be returned to the bonded premises of a plant; the consignee proprietor shall obtain approval, as provided in § 201.366, and the wine spirits shall be removed from the winery in accordance with the provisions of Part 240 of this chapter.

(72 Stat. 1362, 1365, 1382; 26 U.S.C. 5214, 5223, 5373)

§ 201.587 Procedure at plant.

The receipt and deposit of denatured spirits, recovered denatured spirits, and recovered articles containing denatured spirits shall be under the general supervision of the assigned officer; the receipt and deposit of other spirits returned to bonded premises shall be under the direct supervision of the assigned officer. The proprietor shall, at the time of receipt, determine, by gauge when necessary, the quantity of all returned spirits, denatured spirits, and articles and prepare a report thereof on Form 2629 (recording packages on Form 2630 and cases on Form 1620 when packages or cases of spirits are to be returned to storage); and the assigned officer shall, except in the case of denatured spirits and articles, verify such report. The proprietor shall efface export marks and stamps (if any) from the returned containers. If the returned spirits (including denatured spirits) have been shipped by the consignor on Form 1473, the proprietor shall execute the certificate of receipt on such form and forward the original thereof to the assistant regional commissioner. Spirits recovered by the redistillation of denatured spirits, recovered denatured spirits, and articles may not be withdrawn from bonded premises except for industrial use or after denaturation thereof. All spirits redistilled under the provisions of this subpart shall, subject to the provisions of this subpart, be treated the same as if such spirits had been originally produced by the redistiller and all provisions of this part and Chapter 51, I.R.C., applicable to the original production of distilled spirits, shall be applicable thereto. The receipt, redistillation (if any), storage, and disposition of spirits, denatured spirits, and articles containing denatured spirits returned to bond shall be recorded in the appropriate records and reports of the proprietor as prescribed in Subpart U of this part. Except as otherwise provided in this subpart, all spirits (including denatured spirits) returned to bonded storage may be withdrawn for any purpose authorized by this part and Chapter 51, I.R.C. Nothing in this section shall be construed as affecting any provision of law or regulations relating to the labeling, marking, branding, or identification of distilled spirits.

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

§ 201.588 Abandoned spirits.

Spirits abandoned to the United States may be sold, without payment of the internal revenue tax, to a proprietor of a plant for denaturation, or for redistillation and denaturation, if such plant is authorized to denature or redistill and denature spirits. Such spirits shall be kept apart from all other spirits (including denatured spirits) until denatured. The receipt, gauge, handling, and recordkeeping provisions of § 201.587 are applicable to such spirits.

(72 Stat. 1370; 26 U.S.C. 5243)

Subpart T—Samples

§ 201.601 Samples for analysis or testing.

Subject to the conditions prescribed in this subpart, the proprietor may withdraw, free of tax, from the closed distilling system or from containers on bonded premises, samples of spirits in the minimum size and number necessary for the conduct of his business: *Provided,* That the size of such samples shall not exceed one quart unless the assistant regional commissioner has approved the taking of larger samples. Such samples shall be used exclusively for testing or laboratory analysis. When the assistant regional commissioner finds that the number or size of samples withdrawn is excessive, he shall so advise the proprietor and inform him as to the number and size of samples which may be withdrawn free of tax. Where the testing consists of an organoleptic examination, such examinations shall be made only on the plant premises, or in a central laboratory of the proprietor (or central laboratory of any of its affiliated or subsidiary corporations, as defined in § 201.490, which is qualified as a proprietor of a distilled spirits plant), or, when approved by the assistant regional commissioner, in a recognized commercial laboratory. Samples withdrawn free of tax shall not be used for the development of blends, for beverage purposes, for testing the stability or suitability of newly developed materials used in the manufacture of items such as containers, closures, pipes, or hoses, and shall not be furnished to salesmen or dealers or used for advertising or soliciting purposes (including sales promotion purposes and "consumer preference" tests); where spirits are sold subject to approval as to quality a sample may be furnished the purchaser. When the assistant regional commissioner finds that any samples withdrawn were in excess of the minimum size and number necessary or that any samples were used or disposed of in any manner not authorized by this part, he shall proceed to collect the tax thereon.

(72 Stat. 1314, 1362, 1382; 26 U.S.C. 5001, 5214, 5373)

§ 201.602 Samples of denatured spirits.

The proprietor may take such samples of denatured spirits as may be necessary for the conduct of his business In addition, the proprietor may furnish samples of specially denatured spirits to

dealers in and users of specially denatured spirits in advance of sales and to such users and to applicants or prospective applicants for permits to use specially denatured spirits for experimental purposes or for use in preparing samples of a finished product for submission to the Director. Samples for these purposes, in excess of one quart, shall be furnished only pursuant to a permit on Form 1512 issued to the consignee. Form 1473 shall be prepared to cover shipment of samples of a size in excess of one quart, and will show the permit number of the Form 1512.

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

§ 201.603 Schedule of samples.

The proprietor shall furnish the assigned officer a schedule of all samples to be taken on bonded premises by means other than mechanical sampling devices. The schedule (either separate or a part of the schedule of operations) shall be prepared for such period of time as the proprietor may accurately forecast his sampling operations and shall be furnished at least one day in advance of the taking of any samples. When unanticipated samples are needed, the schedule may be appropriately supplemented. The schedule shall provide—

(a) The name of the proprietor and the plant number;

(b) The kind of spirits or formula number of denatured spirits;

(c) The place from which the sample is to be removed, or serial number of the package and the name and plant number of the packaging proprietor if other than the one taking sample;

(d) The purpose for which the sample is to be taken;

(e) The size of the sample;

(f) Whether or not the sample is taxable;

(g) If the sample is to be analyzed or tested at other than the immediate or contiguous premises of the proprietor, the name and address of the laboratory or purchaser to which the sample is to be sent; and

(h) The approximate time the sample will be taken. When samples are taken the proprietor shall indicate on his retained copy of the schedule, or on an appropriate record, the taking of the sample and the disposition thereof.

(72 Stat. 1362, 1382; 26 U.S.C. 5214, 5373)

§ 201.604 Taking of samples.

Samples shall be taken from the closed distilling system by means of mechanical sampling devices installed as provided in this part, unless it is shown that the installation of mechanical sampling devices is not justified and the necessary samples can be taken at times that will not require increased supervision by internal revenue officers. Such mechanical sampling devices also may be used for the taking of samples from storage tanks. Samples taken by means other than mechanical sampling devices shall be taken under the direct supervision of the assigned officer.

(72 Stat. 1362, 1382; 26 U.S.C. 5214, 5373)

§ 201.605 Disposition of samples.

Remnants or residues of samples of spirits withdrawn free of tax, remaining after analysis or testing shall not be accumulated beyond a reasonable time. They shall be destroyed or returned to vessels in the distilling system containing similar spirits.

(72 Stat. 1362, 1382; 26 U.S.C. 5214, 5373)

§ 201.606 Taxable samples.

Samples taken of spirits in bond which are used for purposes other than testing or laboratory analysis, and samples withdrawn free of tax in excess of any limitations, as provided in § 201.601, are taxable. The assigned officer shall keep a record on Form 1615 of all taxable samples withdrawn. Where the proprietor is qualified to defer payment of the tax, the tax due on samples shall be included in the proprietor's tax return on Form 2522 for the period in which the samples were withdrawn; the assigned officer shall furnish the proprietor a copy of the Form 1615. Where a proprietor is not qualified to defer the payment of tax, the tax on samples shall be paid by return on Form 2521.

(72 Stat. 1362, 1382; 26 U.S.C. 5214, 5373)

§ 201.607 Label.

On the container of each sample of spirits, except denatured spirits or a sample solely for testing and immediate disposal at the location where taken or at the operator's control position, the proprietor shall affix a label showing the following information:

(a) The word "sample";

(b) The kind of spirits;

(c) The place from which the sample was removed, and the identity of the package where applicable;

(d) The purpose for which the sample was removed;

(e) The size of the sample;

(f) Whether taxable or free of tax, and if taxable, the proof gallon content to the fourth decimal place;

(g) If the sample is to be removed to other than the immediate or contiguous premises of the proprietor, the name and address of the laboratory or purchaser to which the sample is to be sent;

(h) The name of the proprietor and the plant number;

(i) The signature of the person who removed the sample; and

(j) The date the sample was taken.

Each sample of denatured spirits withdrawn from the premises of the distilled spirits plant shall be labeled as a sample and shall show the name, address, and plant number of the proprietor, the name and address of the person to whom sent, the words "Specially Denatured Spirits" or "Specially Denatured Alcohol", followed by the formula number and the quantity.

(72 Stat. 1362, 1382; 26 U.S.C. 5214, 5373)

Subpart U—Records and Reports

General

§ 201.611 Records in general.

The records required by this part to be maintained by proprietors shall include:

(a) All records and summaries specifically required by this part,

(b) All supplemental and auxiliary data needed for compilation of specifically required records and summaries and for preparation of reports, returns, and claims,

(c) Substitute records authorized under the provisions of this part,

(d) Copies of notices, reports and returns, and approved copies of applications and other documents relating to operations and transactions, and

(e) Proprietors' copies of individual transaction forms.

The term "records" as used in this subpart does not include copies of qualifying documents required under Subpart F of this part or of bonds required under Subpart G of this part.

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

§ 201.612 Maintenance and preservation of records.

Records required by this part shall be kept by the proprietor at the plant where the operation or transaction occurs and shall be available for inspection by any internal revenue officer during business hours. Whenever any record, because of its condition, becomes unsuitable for its intended or continued use the proprietor shall reproduce such record, by a process approved by the Director under § 201.616 for reproducing records, and such reproduction shall be treated and considered for all purposes as though it were the original record, and all provisions of law applicable to the original shall be applicable to such reproduction. Records required by this part shall be preserved for a period of not less than four years from the date thereof or the date of the last entry required to be made thereon, whichever is the later, except that records of spirits stored on bonded premises shall be preserved for not less than four years from the date the spirits covered thereby are removed from the proprietor's bonded premises.

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

§ 201.613 Forms to be provided by user at own expense.

Forms 122, 338, and 2637 shall be provided by the users at their own expense and shall be in the form prescribed by the Director.

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

§ 201.614 Variations from prescribed forms.

Proprietors, subject to the approval of the Director, may modify prescribed forms, other than reports required by §§ 201.633 and 201.634 and other than claim forms and tax return forms, to adapt their use to tabulating or other mechanical equipment, or to special operations, or to provide additional information, where such modifications are not inconsistent with the general requirements of accuracy and clarity and do not result in difficulty of processing or filing of the forms. Such modified forms shall contain the information which would have been on the prescribed form, shall constitute the records or reports required by this part, and shall be

subject to the same requirements as the prescribed forms. Proprietors desiring to modify a prescribed form shall submit to the Director, through the assistant regional commissioner, two copies of the proposed form with typical entries thereon. The Director may withdraw approval of any modified form when in his opinion the administration of this part will be served thereby.

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

§ 201.615 Symbols for proof of distillation.

Where the proof of distillation is required by this part to be shown, the following symbols may be used to designate the proof of distillation, e.g., "D190P" for "Distilled 190 proof or over," "D160–190P" for "Distilled between 160 and 190 proof," and "D160P" for "Distilled not over 160 proof," or in the case of spirits derived from fruit, "D170–190P" for "Distilled between 170 and 190 proof" and "D170P" for "Distilled not over 170 proof": *Provided,* That brandy distilled between 140 and 170 proof, not reduced with water, and intended for use in wine production, shall be marked "D140–170P."

§ 201.616 Photographic copies of records.

Proprietors who desire to record, copy, or reproduce records, required to be preserved under § 201.612, by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original of such records, shall make application to the assistant regional commissioner, in triplicate, to do so, describing:

(a) The records to be reproduced,

(b) The reproduction process to be employed,

(c) The manner in which the reproductions are to be preserved, and

(d) The provisions to be made for examining, viewing, and using such reproductions.

The assistant regional commissioner shall not approve any application unless the Director has approved that type of record for reproduction and the reproduction process to be employed, and unless the manner of preservation of the reproductions and the provisions for examining, viewing, and using such reproductions are, in the assistant regional commissioner's opinion, satisfactory. Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provision shall be made for examining, viewing, and using the reproduced record the same as if it were the original record, and it shall be treated and considered for all purposes as though it were the original record; all provisions of law and regulations applicable to the original shall be applicable to the reproduced record. As used in this section "Original record" shall mean the record required by this part to be maintained or preserved by the proprietor, even though it may be an executed duplicate or other copy of the document.

(72 Stat. 1395; 26 U.S.C. 5555)

DAILY RECORDS

§ 201.617 General.

Each entry required by this part to be made in daily records shall be made therein on the day on which the operation or transaction, to which the entry relates, occurs. Where the proprietor prepares supplemental or auxiliary records concurrent with the individual operation or transaction, which records contain all the required information respecting such operation or transaction, from which daily records can be posted or assembled, he may defer making the entry in or assembly of the daily records to a time not later than the close of the business day next succeeding the day on which such operation or transaction occurs. All entries in the daily records required by this subpart shall show the date of the operation or transaction and shall accurately and clearly reflect the details of each operation or transaction and, as applicable, shall contain all data necessary (a) to enable ready identification and proper marking, branding, and labeling of spirits (including denatured spirits) or wines, (b) to enable proprietors to compile summaries, reports, and returns required by this part, and (c) to enable internal revenue officers (1) to verify and trace the quantity and movement of materials, spirits (including denatured spirits), or wines involved in each operation or transaction, (2) to verify tax determinations and claims (including statements of losses supporting claims), and (3) to ascertain whether there has been compliance with law and regulations. Daily records required by this part shall be so maintained that they clearly and accurately reflect all mandatory information. Where the format or arrangement of the daily records is such that the information is not clearly or accurately reflected, the assistant regional commissioner may require a format or arrangement which will clearly and accurately reflect the information.

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

§ 201.618 Details of daily records.

The daily records required by this part shall conform to the following requirements.

(a) Spirits shall be recorded by kind and by quantity in proof gallons, except that removals of bottled products from bottling premises shall be in wine gallons.

(b) Denatured spirits shall be recorded by formula number and by quantity in wine gallons.

(c) Distilling materials, and chemical byproducts containing spirits, shall be recorded by kind, by percent of alcohol by volume, and by quantity in wine gallons.

(d) Wines shall be recorded by kind, by percent of alcohol by volume, and by quantity in wine gallons, except that wines received for and used in rectification shall be by quantity in proof gallons.

(e) Alcoholic flavoring materials shall be recorded by kind (and formula number, if any), by percent of alcohol by volume, and by quantity in proof gallons.

(f) Containers or cases involved in each operation or transaction shall be recorded by type, serial number, and the number of containers (including identifying marks on bulk conveyances) or cases.

(g) Materials intended for use in the production of spirits shall be recorded by kind and by quantity, recording liquids in gallons and other materials in pounds, and giving the sugar content for molasses.

(h) The name and address of the consignee or consignor, and, if any, the plant number or industrial use permit number of such person, shall be recorded for each receipt or removal of materials, spirits (including denatured spirits), and wine.

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

§ 201.619 Daily production records.

Each proprietor shall maintain daily records of operations of his production facilities showing:

(a) The receipt of fermenting material or other nonalcoholic material intended for use in the production of spirits.

(b) The receipt and use of spirits and denatured spirits received for redistillation.

(c) The fermenting material set in each fermenter or other material used in the production of spirits.

(d) The distilling material produced, received on production facilities, and used in production of spirits, or destroyed or removed from the premises before being distilled (including the residue of beer returned to the producing brewery).

(e) The spirits produced and removed from the production system and the purpose for which such spirits were removed. (The date of production shall be the date of gauge and removal from the production system, and the quantity produced shall be the quantity reported on the deposit or withdrawal forms.)

(f) The fermenting materials or other nonalcoholic materials removed from the premises.

(g) The quantity and alcohol content of fusel oil or other chemicals removed from the closed production system and the disposition thereof with the name of the consignee, if any.

(h) The kind and quantity of distillates removed from the production system pursuant to § 201.275.

(i) The kind and quantity of spirits lost or destroyed prior to production gauge.

Where distillates from two or more types of mash are produced, the proprietor shall maintain a separate record for each type of distillate which will enable ready identification of each kind of distillate produced and of the mash from which produced. Where the proprietors' copies of prescribed transaction forms reflect details of the transactions required by this section, such copies may constitute the records of such details required under this section.

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

§ 201.620 Daily records of other production.

Each proprietor who manufactures substances other than spirits, in a process which produces spirits as a byproduct, shall maintain daily production records as to each such process showing:

(a) The kinds and quantity of materials received, unless included in records maintained under § 201.619.

(b) The spirits produced and disposed of.

(c) The kind and quantity of other substances produced.

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

§ 201.621 Daily denaturing records.

Each proprietor shall maintain daily records of his denaturing operations showing:

(a) The kind and quantity of denaturants received, used in denaturation of spirits, or otherwise disposed of.

(b) The spirits denatured.

(c) The denatured spirits produced, received, removed, or otherwise disposed of.

(d) The recovered denatured spirits or recovered articles received.

(e) The recovered denatured spirits or recovered articles restored and/or redenatured.

A record of packages of denatured spirits filled and disposed of shall be maintained on Form 1467. A separate sheet shall be used for each formula and the forms shall be filed in numerical order according to the serial numbers of the packages. Where denatured spirits are stored in tanks a record by formula number of the denatured spirits deposited in and withdrawn from such tanks shall be maintained; losses determined at the time a tank is emptied, or inventoried, shall be reflected in the record. The mingling under § 201.296 of packages of denatured spirits shall be reflected on Form 1467 and in the record of denatured spirits in tanks, if applicable. Proprietors who denature spirits and store denatured spirits on both production facilities and bonded warehouse facilities shall maintain separate records under this section for each facility.

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

§ 201.622 Daily bonded storage records.

(a) *Daily summary.* Each proprietor shall maintain a daily summary record of his bonded storage operations which shall show for each kind of spirits (1) the spirits received in bonded storage; (2) the spirits removed from bonded storage and the purpose for which removed; (3) the losses of spirits disclosed during storage including losses disclosed by inventories or by emptying tanks or bulk conveyances; and (4) the spirits voluntarily destroyed. Such summary shall, where applicable, be supported by individual transaction forms or gauge forms.

(b) *Other transactions.* Each proprietor shall also maintain records reflecting:

(1) The mingling of spirits under §§ 201.297 and 201.301;

(2) The blending of beverage rums and brandies under §§ 201.307 and 201.308;

(3) The bottling of spirits under subpart K of this part, including—

(i) Spirits entered for bottling in bond,

(ii) Spirits bottled and cased for domestic use or for export,

(iii) Bottled spirits returned to storage,

(iv) The rebottling, relabeling, or restamping of bottled spirits (domestic spirits rebottled, relabeled, or restamped for export shall be appropriately identified on the Form 1515),

(v) Alcohol bottled, and

(vi) The gains or losses determined during bottling;

(4) The change of packages under § 201.295; and

(5) The quick aging of spirits, or the addition of oak chips to spirits or burnt sugar or caramel to brandy and rum under § 201.292.

Where the proprietors' copies of prescribed transaction forms reflect details of the transactions required by this paragraph, such copies may constitute the records of such details required under this paragraph.

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

§ 201.623 Daily bottling premises records.

Each proprietor shall maintain daily records of the details of his bottling premises operations showing:

(a) The spirits, wines, and alcoholic flavoring materials received on the premises. Such receipts shall be supported, as applicable, by copies of Forms 179 (and Form 2630 if any) covering spirits withdrawn from internal revenue bond on tax determination, by taxpayment forms covering spirits withdrawn from customs bond, or by invoices covering other spirits and products received. The total receipts for each day shall be summarized showing (1) the spirits received on withdrawal from bond and the number and serial numbers of Forms 179 or taxpayment forms involved, (2) the spirits received from other sources, (3) the wines received, and (4) the alcoholic flavoring materials received.

(b) The spirits and wines dumped for rectification, or bottling or packaging without rectification, showing the serial number of the Form 122 covering such dump.

(c) The spirits, wines, and alcoholic flavoring materials used for rectification, showing the serial number of the Form 122 covering such use.

(d) The rectified products produced (including heads and tails removed from the closed system) and the formula number under which rectified.

(e) The bottling or packaging (including removals in bulk conveyances or by pipelines) of each batch of spirits and wines after rectification and of each lot of spirits and wines without rectification, showing the serial numbers of the bottling tanks used and the serial number of Form 2637 covering such bottling or packaging.

(f) The bottling of products previously packaged on the premises.

(g) The rebottling, relabeling, and restamping of bottled products.

(h) The spirits, wines, and alcoholic flavoring materials removed from the premises. The total removals for each day shall be summarized showing (1) the spirits and wines removed after rectification but without bottling or packaging, (2) rectified products removed after bottling or packaging, (3) the spirits and wines removed after bottling or packaging without rectification, and (4) the spirits, wines, and alcoholic flavoring materials removed without rectification, bottling, or packaging.

(i) The samples of spirits and rectified products removed from the bottling premises and the name and address of the consignee of such samples.

(j) The accumulation and taxpayment of rinsings on bottling premises.

(k) The voluntary destruction of spirits.

(l) The losses which occur (1) by reason of accident while being removed from bond to bottling premises (where such losses occur, the actual quantity of spirits received shall be reported in the record required by paragraph (a) of this section), (2) by theft, or (3) by reason of flood, fire, or other disaster.

The records required by paragraph (a) of this section shall also show the name and plant number of the producer or rectifier (bonded warehouseman in the case of blended beverage rums or brandies or spirits of 190 degrees or more of proof received from storage facilities) for domestic spirits, the country of origin for imported spirits, and the name and address of the producer of wines and alcoholic flavoring materials. In addition to the above requirements separate records shall be maintained for spirits entered into the closed system for the production of gin or vodka and the spirits recovered therefrom; alcoholic flavoring materials which, under § 201.424, must be procured direct from the manufacturer and covered by an affidavit from him, shall be distinguished in the records from other alcoholic flavoring materials; and spirits bottled or packaged especially for exportation with benefit of drawback, or rebottled, relabeled, or restamped for such exportation, shall be appropriately identified in the records. Where proprietors' copies of prescribed transaction forms reflect details of the transactions required by this section, such copies may constitute the records of such details required under this section.

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

§ 201.624 Daily strip stamp record.

Each proprietor bottling spirits under the provisions of this part shall maintain for each day a transaction in strip stamps occurs a daily record of bottled-in-bond strip stamps by kind (green or blue) and by denomination, of red strip stamps by size (small or standard), and of alcohol strip stamps, showing the number received, used, lost, mutilated, destroyed or otherwise disposed of, and on hand at the beginning and at the end of the day. The record shall also show the number and size of bottles to which red strip stamps and alcohol strip stamps were affixed, except that, as to each kind of stamp, bottles of less than one-half pint capacity shall be recorded as one item.

(72 Stat. 1358, 1361; 26 U.S.C. 5205, 5207)

§ 201.625 Daily taxpaid storeroom record.

Where the proprietor operates a taxpaid storeroom on, contiguous to, adjacent to, or in the immediate vicinity of plant premises, and in connection with his plant, or operates storage premises at another location at or from which distilled spirits are not sold at wholesale, he shall maintain daily records of the receipt and disposition of all distilled spirits and wines at such premises. A separate record shall be kept for each such premises. The records shall contain all data necessary to enable internal revenue officers to identify and trace such receipts and dispositions, and to ascertain whether there has been compliance with all internal revenue laws and regulations relating thereto, and to provide the proprietor with records from which to compile data for his monthly report on Form 338. In addition to any other information shown therein, such records shall include:

(a) The date of the transaction (or date of discovery in the case of casualty or theft),

(b) The name and address of each consignor or consignee, as the case may be,

(c) The actual quantity of distilled spirits involved (proof gallons if in packages, wine gallons if in bottles),

(d) The serial numbers of packages or cases involved,

(e) The name of the producer, and

(f) The country of origin, if imported spirits.

(72 Stat. 1343, 1361; 26 U.S.C. 5114, 5207)

OTHER RECORDS

§ 201.626 Sample record for bonded premises.

Proprietors shall maintain daily records of samples taken by them from bonded premises to show (a) the date taken, (b) the kind of spirits (formula number in the case of denatured spirits), (c) the quantity in wine gallons, (d) the container or place from which taken, (e) the purpose for which taken, (f) the name and address of the consignee when samples are sent out, and (g) whether such samples are tax-free or tax-determined, and, if tax-determined, the proof and tax gallons.

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

§ 201.627 Inventories.

(a) *Production facilities.* Each proprietor of production facilities shall make a record of the monthly inventory of spirits and denatured spirits in tanks and other vessels required by § 201.281, showing the date taken and the details thereof including the identification of the container, and the kind and quantity of spirits or denatured spirits therein, and the losses, if any disclosed by the inventory. Each inventory shall be signed by the proprietor. In addition, where the inventory is taken by a person other than the proprietor, the person taking the inventory shall affix his signature and date to each page of the inventory taken by him. Such inventory record shall be retained by the proprietor and made available for inspection by internal revenue officers.

(b) *Storage facilities.* Each proprietor of bonded storage facilities shall make a record of his monthly inventory of spirits in tanks and other vessels required by § 201.311, showing the date taken and the details thereof including the identifying marks on each such container, the kind and quantity of spirits or denatured spirits therein, and the losses, if any, disclosed by the inventory. The inventory shall be signed and retained as provided in paragraph (a) of this section.

(c) *Bottling premises.* The provisions of paragraph (a) of this section relating to the signing and retention of inventories shall be applicable to inventories taken by proprietors of bottling premises under § 201.492. The date and time such inventories are taken shall be shown on the inventory records.

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

§ 201.628 Record of spirits in storage.

(a) *Records covering deposits.* The proprietor's copies of forms (for example, Forms 236, 1620, 2323, 2630) covering (1) deposit in bonded storage of spirits received from production facilities, from other bonded premises, or by return to bond under subpart S, (2) packages filled from tanks and retained in bonded storage, (3) cases of spirits returned to the storage portion of the warehouse after bottling, (4) spirits retained in tanks after mingling or blending, and (5) spirits of less than 190 degrees of proof transferred from one tank to another, shall be filed by the proprietor as permanent records. Before filing such forms, he shall enter the date of deposit of the spirits in the warehouse at the bottom of each form. Separate files shall be maintained for spirits in packages and in cases, and such files shall be arranged by producers (warehousemen in the case of blended rums or brandies, and spirits of 190 degrees or more of proof), in chronological order according to the date of deposit in the warehouse, and, where possible, in sequence by serial numbers of packages or cases. (For the purpose of records under this section spirits produced under trade names shall be treated as being produced under the real name of the producer.) Also, files, arranged by producers, shall be maintained for spirits of less than 190 degrees of proof in storage tanks, with a separate file for each tank of spirits. Where two or more lots of spirits of less than 190 degrees of proof are deposited in the same storage tank, the forms covering deposits in each tank shall be arranged chronologically according to the date of original entry for deposit in bonded storage of each lot of spirits. In the case of spirits of 190 degrees or more of proof deposited in storage tanks, the proprietor shall consolidate the forms covering deposits in all tanks into one file.

(b) *Records covering withdrawals.* When spirits are withdrawn from bonded storage the proprietor shall note on the record of deposit, required by paragraph (a) of this section, the date and disposition of the spirits so that the files shall currently reflect the spirits remaining in the warehouse. Whenever spirits are removed from storage tanks he shall indicate the date and quantity removed on the appropriate form and when a quantity equivalent to that covered by the form has been removed or otherwise accounted for such form shall be noted accordingly and removed from the active file. Where two or more lots of spirits of less than 190 degrees of proof have been deposited in the same storage tank, removals from the tank shall be charged against the form on the basis that the lot with the earliest date of original entry for deposit is the first lot removed. Withdrawals from bonded storage of spirits of 190 degrees or more of proof shall be charged against the appropriate account on a first-in-warehouse first-out-warehouse, basis.

(c) *Variation from requirements.* Where the proprietor maintains other records which reflect all the required information he may, subject to the approval of the assistant regional commissioner, maintain such other records in lieu of the files required by paragraphs (a) and (b) of this section. Application to use substitute records shall be submitted, in duplicate, to the assistant regional commissioner together with two copies of the proposed records with typical entries thereon. Such substitute records shall not be used until they are approved by the assistant regional commissioner.

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

§ 201.629 Summary of deposits and withdrawals, Form 1621.

Each bonded warehouse proprietor shall keep current summary accounts on Form 1621 of all spirits entered into, withdrawn from, and remaining in his warehouse. The record of spirits of less than 190 degrees of proof shall be arranged alphabetically by States and (a) numerically by producers according to plant number within each State (spirits produced under trade names, for the purpose of this record, shall be treated as being produced under the real name of the producer) or (b) in the case of blended rums or brandies numerically by bonded warehouse proprietors according to plant number within each State. Separate sheets shall be used for each kind of spirits of less than 190 degrees of proof, for each season's production, for each kind of container, and for spirits mingled under § 201.301 and spirits not so mingled. Warehouse summary accounts shall be maintained showing separately for packages, cases, and storage tanks (including tank cars and tank trucks) the total deposits and withdrawals by kinds of spirits and the total deposits and withdrawals of all kinds of spirits; each account covering packages or cases shall show the number of packages or cases and the total proof gallons therein, and each account covering a tank shall show the total proof gallons. A separate account shall be maintained for each storage tank containing spirits of less than 190 degrees of proof, showing all deposits in, and withdrawals from, the tank. Losses determined at the time a tank is emptied or at the time of the month-end inventory required by § 201.-

311, shall be entered on the form. In the case of spirits of 190 degrees or more of proof the proprietor shall keep separate summaries on Form 1621 for such spirits in packages, in cases, and in tanks (including tank cars and tank trucks) showing the number of packages and of cases and the proof gallons therein, and the total proof gallons in tanks; separate summaries shall be kept for domestic spirits and for imported spirits.

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

§ 201.630 Monthly summary records.

Each proprietor shall, within ten days after the end of each month, summarize the transactions recorded in his daily records relating to:

(a) Materials intended for use in production of spirits as required by paragraphs (a), (c), and (d) of § 201.619.

(b) Denaturants as required by paragraph (a) of § 201.621.

(c) Alcoholic flavoring materials as required by paragraphs (a), (c), and (h) of § 201.623.

Such summary shall show the kind of material or denaturant and the quantity on hand the first of the month, produced, and/or received, used, otherwise disposed of, and on hand end of the month. The summaries shall be filed with the daily records to which they pertain and shall be made available for inspection by internal revenue officers.

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

REPORTS

§ 201.631 Submission of reports.

Daily reports required by this part shall be submitted to the assigned officer, or other officer designated by the assistant regional commissioner, and, unless otherwise provided by this part, shall be submitted on or before the close of business on the business day next succeeding that on which the transaction or operation occurs. Monthly and semiannual reports required by this subpart shall, unless otherwise provided by this part, be submitted to the assistant regional commissioner, and shall be submitted on or before the tenth day following the close of the period for which rendered.

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

§ 201.632 Daily reports.

(a) *Daily report of transactions, Form 2636.* Each proprietor of bonded premises shall prepare a daily report of transactions on Form 2636, in triplicate, covering his production, denaturing, warehousing, and bottling transactions for each day during which such transactions occur. The original and one copy of the report shall be submitted to the assigned officer.

(b) *Daily memorandum report of spirits bottled and of strip stamps.* Each proprietor who bottles spirits under the provisions of this part shall prepare and submit to the assigned officer, for each day a transaction in strip stamps occurs, a daily memorandum report of spirits bottled and strip stamps used. A separate report shall be submitted for each kind of strip stamp (i.e., green bottled-in-bond, blue bottled-in-bond, alcohol, and red). Each report shall show (1) the number of cases of spirits bottled, by number and size of bottle, (2) the serial numbers of such cases, and (3) separate summaries (by denomination for green and blue bottled-in-bond strip stamps, and by size (small or standard) for red strip stamps) of strip stamps received, used, lost, mutilated, unaccounted for, destroyed or otherwise disposed of, and on hand at the beginning and at the end of the day.

(c) *Daily report of withdrawals after tax determination. Form 2632.* Each proprietor of bonded premises shall prepare and submit to the assigned officer a report on Form 2632, executed under the penalties of perjury, of the withdrawals of spirits from his bonded premises on determination of tax. Such report shall include all Forms 179 (identified by release numbers) covering the withdrawals.

(72 Stat. 1361, 1395; 26 U.S.C. 5207, 5555)

§ 201.633 Monthly reports.

Each proprietor shall, at the end of each month, report his operations on the forms prescribed below. Each report shall be prepared in duplicate; the original shall be submitted and the copy shall be retained by the proprietor.

Report	Prepared by—	Requirements
(a) Monthly report—Distilled spirits plant:		
Form 2730	Distillers	Reports production operations. Submitted to the assigned officer.
Form 2731	Bonded warehousemen	Reports bonded storage operations. Submitted to the assigned officer.
Form 2732	Proprietors of bonded premises	Reports denaturation operations for entire bonded premises. Submitted to the assigned officer.
Form 2733	Proprietors of bottling premises	Reports rectification and bottling operations.
(b) Monthly report of spirits mingled, Form 2546.	Bonded warehousemen	Reports spirits mingled under § 201.301. Submitted for each month in which such operations are conducted. Submitted to the assigned officer.
(c) Monthly stamp report, Form 2260.	Proprietors using strip stamps	Reports transactions in strip stamps. A separate report shall be prepared for each kind of strip stamp. Submitted to the assigned officer unless otherwise directed by the assistant regional commissioner.
(d) Wholesale liquor dealer's monthly report, Form 338.	Each proprietor operating a taxpaid storeroom in connection with, and contiguous to, adjacent to, in the immediate vicinity of, or on the premises of, his plant, or storage premises at another location at or from which distilled spirits are not sold at wholesale.	Reports taxpaid spirits received at and removed from such storeroom.

(72 Stat. 1361, 1395; 26 U.S.C. 5207, 5555)

§ 201.634 Semiannual report of spirits in warehouse, Form 332.

As of the close of business June 30, and December 31, of each year, each proprietor of a bonded warehouse shall prepare, on Form 332, in duplicate, a statement by kind, season, and year of production, of spirits in his bonded warehouse. A separate Form 332 shall be prepared for spirits which have been mingled under § 201.301 and for spirits which have not been so mingled. Spirits of 190 degrees or more of proof (on which a record of age is not kept) shall be reported as a single item on Form 332; the quantity of domestic spirits and of imported spirits shall be reported separately. The original of Form 332 shall be submitted to the assigned officer, and the copy shall be retained by the proprietor.

(72 Stat. 1361, 1395; 26 U.S.C. 5207, 5555)

§ 201.635 Reports of spirits stored in same wooden packages 12 years.

Each July the proprietor of bonded premises shall determine whether any spirits in storage in bond have been continuously stored in the same wooden packages for 12 years or more, and, if any such spirits are in storage, shall render by July 20 a report, executed under the penalties of perjury, to the assistant regional commissioner, through the assigned officer, of the results of his determination. The proprietor's report shall include a full identification of the packages and shall include only packages not previously reported.

(72 Stat. 1356; 26 U.S.C. 5201)

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