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*Washington, Wednesday, February 25, 1942*

## *The President*

### EXECUTIVE ORDER

AUTHORIZING THE SECRETARY OF WAR TO PRESCRIBE MILITARY AREAS

WHEREAS the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655 (U.S.C., Title 50, Sec. 104):

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order. The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941,[1] and shall supersede the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas.

I hereby further authorize and direct the Secretary of War and the said Military Commanders to take such other steps as he or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, including the use of Federal troops and other Federal Agencies, with authority to accept assistance of state and local agencies.

I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services.

This order shall not be construed as modifying or limiting in any way the authority heretofore granted under Executive Order No. 8972,[1] dated December 12, 1941, nor shall it be construed as limiting or modifying the duty and responsibility of the Federal Bureau of Investigation, with respect to the investigation of alleged acts of sabotage or the duty and responsibility of the Attorney General and the Department of Justice under the Proclamations of December 7 and 8, 1941, prescribing regulations for the conduct and control of alien enemies, except as such duty and responsibility is superseded by the designation of military areas hereunder.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
*February 19, 1942.*

[No. 9066]

[F. R. Doc. 42-1563; Filed, February 21, 1942; 12:51 p. m.]

[1] 6 F.R. 6321, 6323, 6324.

[1] 6 F.R. 6420.

### EXECUTIVE ORDER

PROVIDING FOR THE TRANSFER OF PERSONNEL TO WAR AGENCIES

By virtue of the authority vested in me by the Civil Service Act (22 Stat. 403), and by Section 1753 of the Revised Statutes of the United States (U.S.C., title 5,

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sec. 631), and in order to expedite the transfer of personnel to war agencies, it is hereby ordered as follows:

1. For the purpose of facilitating transfers of employees under the provisions of this Order, the Director of the Bureau of the Budget shall from time to time establish priority classifications of

the several Executive departments and agencies, or of parts or activities thereof, in respect to their relative importance to the war program, and such classifications shall be controlling as to transfers under the provisions of this Order.

2. The Civil Service Commission is authorized to secure information as to employees of Executive departments and agencies who are deemed competent to perform essential war work in departments or agencies having a higher priority classification, and, with the consent of the employee concerned, to effect the transfer of any such employee to meet the personnel needs of a department or agency having a higher priority classification.

3. Whenever a transfer is proposed under the provisions of section 2, it shall become effective not later than ten days after notification to the department or agency in which the employee is serving. If, within that period, the employing department or agency presents to the Civil Service Commission evidence that its work will be jeopardized by the loss of the employee's services, the Civil Service Commission shall consider such evidence and make a final decision. Transfers to departments and agencies having the same or lower classifications, shall not be effected without the consent of the department or agency in which the employee is serving.

4. Any employee transferred pursuant to this Order shall be entitled to all the reemployment benefits provided by Executive Order No. 8973[1] of December 12, 1941.

5. The Civil Service Commission is authorized to adopt such rules and regulations and to establish such procedures as may be necessary to carry out its responsibilities under this Order. Each Executive department and agency shall promptly furnish the Civil Service Commission such information regarding its employees as the Commission may require for the effectuation of this Order.

6. This Order shall supersede any provisions of Executive Order No. 8973 of December 12, 1941, or of any other Executive Order or Rule of the Civil Service Commission which is in conflict therewith.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
*February 20, 1942.*

[No. 9067]

[F. R. Doc. 42-1564; Filed, February 21, 1942; 12:51 p. m.]

[1] 6 F.R. 6420.

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## EXECUTIVE ORDER

### PARTIAL REVOCATION OF EXECUTIVE ORDER NO. 6795 OF JULY 26, 1934, WITHDRAWING PUBLIC LANDS

WYOMING

By virtue of the authority vested in me by the act of June 25, 1910, c. 421, 36 Stat. 847, Executive Order No. 6795 of July 26, 1934, withdrawing public lands in Wyoming pending a resurvey, is hereby revoked as to the following-described townships:

SIXTH PRINCIPAL MERIDIAN

Tps. 12, 13, and 14 N., R. 93 W.
Tps. 12, 13 and 14 N., R. 94 W.
Tps. 13, 15 and 16 N., R. 95 W.
Tps. 14 and 15 N., R. 96 W.

This order shall become effective upon the date of the official filing of the plats of the resurvey of the above-described townships.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
*February 20, 1942.*

[No. 9068]

[F. R. Doc. 42-1545; Filed, February 21, 1942; 10:05 a. m.]

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## EXECUTIVE ORDER

### CONSOLIDATING CERTAIN AGENCIES WITHIN THE DEPARTMENT OF AGRICULTURE

By virtue of the authority vested in me by Title I of the First War Powers Act, 1941 (Public Law 354, 77th Congress), approved December 18, 1941, and to further the successful prosecution of the war through the better utilization of agricultural resources and industries, it is hereby ordered as follows:

1. (a) The Surplus Marketing Administration (including the Federal Surplus Commodities Corporation as an agency of the Department of Agriculture), the Agricultural Marketing Service (except the Agricultural Statistics Division), and the Commodity Exchange Administration of the Department of Agriculture and their functions, personnel, property, and records are consolidated into an agency to be known as the Agricultural Marketing Administration of the Department of Agriculture, which agency shall be administered under the direction and supervision of such officer as the Secretary of Agriculture shall designate.

(b) The Agricultural Statistics Division of the Agricultural Marketing Service, Department of Agriculture, and its functions and the personnel, property, and records used primarily in the administration of its functions are transferred to the Bureau of Agricultural Economics of the Department of Agriculture.

2. The Agricultural Adjustment Administration, the Soil Conservation Service, the Federal Crop Insurance Corporation, and the Sugar Division of the Department of Agriculture and their functions, personnel, property, and records are consolidated into an agency to be known as the Agricultural Conservation and Adjustment Administration of the Department of Agriculture, which agency shall be administered under the direction and supervision of such officer as the Secretary of Agriculture shall designate.

3. The Bureau of Animal Industry, the Bureau of Dairy Industry, the Bureau of Plant Industry, the Bureau of Agricultural Chemistry and Engineering, the Bureau of Entomology and Plant Quarantine, the Bureau of Home Economics, the Office of Experiment Stations, and the Beltsville Research Center of the Department of Agriculture and their functions, personnel, property, and records are consolidated into an agency to be known as the Agricultural Research Administration of the Department of Agriculture, which agency shall be administered under the direction and supervision of such officer as the Secretary of Agriculture shall designate.

4. All libraries administered by agencies of the Department of Agriculture and all units of the Department providing library and bibliographical service and their functions, personnel, property, and records are consolidated and shall be administered through such facilities of the Department as the Secretary of Agriculture shall designate.

5. So much of the unexpended balances, appropriations, allocations, or other funds available (or to be made available) for the use of any agency in the exercise of any function transferred or consolidated by this order or for the use of the head of any agency in the exercise of any function so transferred or consolidated, as the Director of the Bureau of the Budget with the approval of the President shall determine, shall be transferred for use in connection with the exercise of the function so transferred or consolidated. In determining the amount to be transferred the Director of the Bureau of the Budget may include an amount to provide for the liquidation of obligations incurred against such appropriations, allocations, or other funds prior to the transfer.

6. This order shall remain in force during the continuance of the present war and for six months after termination thereof.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
*February 23, 1942.*

[No. 9069]

[F. R. Doc. 42-1617; Filed, February 24, 1942; 10:53 a. m.]

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### [POWER AND AUTHORITY DELEGATED TO SECRETARY OF TREASURY]

THE WHITE HOUSE,
WASHINGTON, *February 12, 1942.*

*Memorandum to the Secretary of the Treasury:* All power and authority conferred upon me by Sections 3 (a) and 5 (b) of the Trading with the Enemy Act, as amended, are hereby delegated to the Secretary of the Treasury.

FRANKLIN D ROOSEVELT

[F. R. Doc. 42-1582; Filed, February 23, 1942; 11:54 a. m.]

## *Rules, Regulations, Orders*

### TITLE 7—AGRICULTURE

### CHAPTER VII—AGRICULTURAL ADJUSTMENT ADMINISTRATION

[ACP-1942-7]

### PART 701—AGRICULTURAL CONSERVATION PROGRAM

SUBPART D—1942

Pursuant to the authority vested in the Secretary of Agriculture under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act (49 Stat. 1148; 16 U.S.C. 590g to 590q), as amended, the 1942 Agricultural Conservation Program, as amended,[1] is further amended as follows:

1. Section 701.301 (i) (1) is amended by adding the following item to the list of cropland uses shown therein:

§ 701.301 *Allotments, yields, grazing capacities, payments, and deductions.*

* * * * *

(i) *Minimum soil-conserving and soil-building requirements* * * *

(1) *Minimum conserving acreage.*

* * * * *

(xii) New seedings of perennial grasses or legumes, or biennial legumes, seeded in accordance with good farming practice with flax, peas or small grains as a nurse crop. The maximum acreage which may qualify under this item shall be limited to 40 percent of the sum of the 1942 acreages of the following crops on the farm: Soybeans for beans, peanuts for oil, flax, hemp, castor beans, sugar beets, dry field peas, dry beans, canning peas, and canning tomatoes.

2. Section 701.301 (i) (2) is amended by adding the following item to the list of crops and uses shown therein:

* * * * *

(2) *Minimum acreage of erosion-resisting crops.* * * * Winter legumes, ryegrass, and small grains (except wheat) seeded in the fall of 1942 on land from which peanuts are harvested in 1942.[2] The maximum acreage which may qualify under this item shall be limited to 12½ percent of the cropland but not in excess of the amount by which the 1942 acreage of peanuts exceeds the 1942 peanut allotment.

Done at Washington, D. C., this 23d day of February 1942. Witness my hand and the seal of the Department of Agriculture.

[SEAL] CLAUDE R. WICKARD,
*Secretary of Agriculture.*

[F. R. Doc. 42-1596; Filed, February 23, 1942; 3:37 p. m.]

[1] 6 F.R. 4111, 5520, 5581, 6472, 7 F.R. 56, 57, 923.

### TITLE 10—ARMY: WAR DEPARTMENT

### CHAPTER VII—PERSONNEL

### PART 77—MEDICAL AND DENTAL ATTENDANCE[1]

§ 77.15 *Persons who may be admitted to Army hospitals*—(a) *General.* When suitable facilities for hospitalization are available, sick and injured persons enumerated in paragraph (b) of this section may be admitted to Army hospitals, except that admissions to the Army and Navy General Hospital, Hot Springs, Ark., and to the Fitzsimons General Hospital, Denver, Colo., will be governed by special provisions relating to those hospitals, as published in §§ 77.24 and 77.27, respectively.

(b) *List.* (1) Officers, Army nurses, warrant officers, cadets of the United States Military Academy, and enlisted men in the Army; also contract surgeons serving full time. The admission of retired personnel on inactive status will be limited to cases which, in the judgment of the commanding officer of the hospital, will be benefited by hospitalization for a reasonable time. Those requiring merely domiciliary care by reason of age or chronic invalidism will not be admitted. Officers on the Emergency Officers' Retired List and officers retired under the provisions of the act of April 3, 1939 (53 Stat. 557; 10 U.S.C. 456), are not admissible except under the provisions of subparagraphs (16) or (20) of this paragraph.

(2) Members of the Officers' Reserve Corps, and of the Enlisted Reserve Corps of the Army who suffer personal injury or contract disease while on active duty under proper orders; or who are injured while voluntarily participating in aerial flights in Government owned aircraft by proper authority as an incident to their military training, but not on active duty; or who are readmitted under proper authority for further treatment of injuries or diseases incurred in line of duty.

(3) Officers, warrant officers, and enlisted men of the National Guard who suffer personal injury or contract disease in line of duty while en route to or from, or during attendance at encampments, maneuvers, or other exercises, or at service schools, under the provisions of sections 94, 97, and 99 of the National Defense Act of June 3, 1916, as amended; or who suffer personal injury in line of duty when participating in aerial flights prescribed under the provisions of section 92 of the National Defense Act, as amended, and members of the National Guard of the United States who suffer injury or contract disease in line of duty while on active duty under proper orders; or who are readmitted under proper authority for further treatment thereof. Hospitalization must be authenticated in each case by the National Guard Bureau, subject to the report of a line of duty board convened by the camp or school commander, or the State adjutant general.

(4) Members of the Reserve Officers' Training Corps, and members of the Citizens' Military Training Camps who suffer personal injury or contract disease in line of duty while en route to or from, or during their attendance at camps of instruction under the provisions of the National Defense Act of June 3, 1916, as amended, or who are readmitted under proper authority for further treatment of the same.

(5) Officers, commissioned warrant officers, warrant officers, and enlisted men of the Navy or Marine Corps, and members of the Navy Nurse Corps, in active service or on retired, inactive, or leave (furlough) status, including enlisted men transferred to the Fleet Naval Reserve after 16 or more years of service, as follows:

(i) In active service. On the request of their commanding officers, or on their own request if the commanding officer of the hospital concerned deems their admission necessary. Whenever authority has not been received from the commanding officer of such active duty personnel, a report of hospitalization should be made immediately to the Bureau of Medicine and Surgery, Navy Department, Washington, D. C., and authorization for such hospitalization requested.

(ii) On inactive status. On the request of the proper representative of the Navy Department, or on their own request if their admission be deemed necessary by the commanding officer of the hospital concerned, provided beds are available in the hospital concerned. In emergency admissions involving personnel admitted from a leave (furlough) status, reports should be made immediately to the Bureau of Medicine and Surgery, Navy Department, Washington, D. C., and authorization for such hospitalization requested.

The admission of patients requiring merely domiciliary care by reason of age or chronic invalidism is not authorized.

(6) (i) Commissioned officers of the United States Public Health Service on active duty, disabled on account of sickness or injury, upon the individual officer's own written request.

(ii) Officers or employees of the United States Public Health Service on duty at any national quarantine station or on a national quarantine vessel, or detached for duty in foreign ports, suffering from sickness or injury, upon written authorization by a responsible officer of the United States Public Health Service.

(7) Officers, cadets, and enlisted men of the United States Coast Guard, on active duty, including those on shore duty,

[1] §§ 77.15 to 77.21 are superseded. The regulations contained in §§ 77.15 to 77.20 are also contained in AR 40-590, dated February 2, 1942, the particular paragraphs being shown in brackets at the end of sections.

and those on detached duty, upon written authorization of the responsible Coast Guard officer.

(8) Commissioned officers, ship officers, and members of the crew of vessels of the United States Coast and Geodetic Survey, on active duty, including those on shore duty, and those on detached duty, upon written authorization of the responsible Coast and Geodetic Survey officer.

(9) The wife and dependent children of officers, warrant officers, and enlisted men, and other dependent members of the family when residing with such persons, provided, they are not legally dependent upon an individual not in the military service, requiring hospital treatment or isolation, when suitable accommodations for their care are available. Application in each case will be made to the commanding officer of the hospital concerned by the officer, warrant officer, or enlisted man with evidence, satisfactory to the commanding officer, showing the relationship, dependency, residence, and, also, the nature of the illness and the need for hospital treatment. Dependents of military personnel should not undertake travel to a military hospital without first ascertaining whether and when accommodations will be available. If the case is under the care or within the province of an attending surgeon of the Army, the application will be made by him; otherwise, it will be made direct.

(10) Civilian employees compensable by the United States Employees' Compensation Commission who suffer personal injury while in the performance of official duty, or who acquire a disease as a natural result of such injury, or who acquire an occupational disease in the performance of official duty, are entitled to hospitalization or treatment in conformity with circular letters issued from time to time by The Surgeon General.

(11) Any civilian employed at a military station and paid from an exchange, mess, company, or similar unit fund, provided civilian hospital service is not available.

(12) Recently discharged soldiers needing hospital treatment who arrive in the United States on Government transports may be sent to one of the military hospitals in the vicinity of the port of debarkation, and commutation of rations drawn for them while undergoing treatment.

(13) A civilian seaman or river boatman, only on a permit issued by a medical officer of the United States Public Health Service or by a customs officer, unless his condition demands immediate relief, when, in the discretion of the station commander, he may be admitted in advance of the receipt of the permit.

(14) An enrolled Indian who is a beneficiary of the Indian Service, upon written approval by the Office of Indian Affairs, Department of Interior, or, preferably, by the superintendent of the agency to which the Indian belongs, provided beds are available.

(15) Red Cross field directors and other officially recognized welfare workers on duty at military stations for treatment, on the status of officer patients.

(16) Beneficiaries of the United States Veterans' Administration may be admitted, in limited numbers, to certain designated Army hospitals upon request of the proper representatives of the United States Veterans' Administration.

(17) Prisoners of war, persons undergoing internment, and other persons in military custody or confinement.

(18) Civilian Conservation Corps enrollees and former enrollees when undergoing hospitalization at the expense of CCC funds, provided beds are available.

(19) Civilians not in the public service (other than those enumerated above) may be admitted only in case of extreme necessity, and when in the opinion of the commanding officer of the hospital or his authorized representative such admission is necessary to save life or prevent greater suffering. Under these circumstances, a written report will be submitted immediately to the post commander.

(20) Such other persons as may be designated by the Secretary of War.* [Par. 6]

*§§ 77.15 to 77.20, inclusive, issued under authority contained in R.S. 161; 5 U.S.C. 22.

§ 77.16 *Disposition of patients*—(a) *General.* Unless directed by higher authority, the commanding officer of a hospital will not order a patient discharged or transferred from the hospital until, in such commanding officer's opinion, the discharge or transfer in question would not endanger the life of the patient concerned. The commanding officer may appoint a board composed of three or more medical officers, to be known as a disposition board, to advise him in such cases as he considers necessary. The report of the disposition board will be forwarded with his recommendations to higher authority in appropriate cases. For disposition of the insane see §§ 76.1 and 76.2 and AR 600-505.[2]

(b) *Discharge.* (1) Persons other than those in the public service will, in the discretion of the commanding officer of the hospital, be discharged from hospital upon completion of hospital treatment.

(2) Civilians admitted to Army hospitals as patients must, in all particulars, conform to the rules and regulations governing the operation of such hospitals, and, in the event of failure or refusal to comply therewith, the patient at once becomes liable to discharge from the hospital in the discretion of the commanding officer. A patient so discharged from hospital for disregard or disobedience of rules and regulations will be refused admission thereto or to any other Army hospital within 90 days after such discharge, except when, in the opinion of the commanding officer, earlier admission is necessary to save life or to prevent extreme suffering. Whenever beneficiaries of the United States Veterans' Administration are discharged from hospital under the preceding conditions, the commanding officer of the hospital involved will forward to the Director of the United States Veterans' Administration, through the regional manager, a report giving the reasons for the patient's discharge, together with his full name and address, and condition at the time of discharge.

(c) *Transfer.* Patients may be transferred, under proper military authority, from one hospital to another, for observation or to obtain better treatment or hospital accommodations. See AR 40-600.[3]

(d) *Discharge of members of civilian components.* Members of the civilian components, hospitalized or rehospitalized under provisions of § 77.15 (b) (2), (3), or (4) for personal injury or for disease requiring treatment after expiration of the period of active duty during which contracted, will be brought before boards of medical officers for final disposition when hospital treatment is no longer necessary, or when discharged upon their own request before maximum improvement has been reached. The medical boards acting on cases of individuals remaining in hospital subsequent to completion of the period of active duty in which their disability was incurred will recommend the final disposition of the patients, and will incorporate in the proceedings the diagnosis, line of duty status, physical condition on completion of hospitalization, statement that further hospitalization is not required, and a concise medical history of the case. If further medical or surgical treatment will be required after return home, the reasons therefor, and the probably duration of such treatment will be included in the proceedings. Arrangement for such treatment as is required after return home will be made by the local commanding officer in accordance with § 77.3, and with the approval of the corps area commander. The proceedings of the disposition board will be forwarded in duplicate to the corps area commander, stating the date upon which hospitalization was terminated, and, in the case of Reserve personnel, will be accompanied by the report of physical examination made by the board of W.D., A.G.O. Form No. 63 (Report of Physical Examination). Any claim for injuries sustained while en route to or from, or while at camps of instruction will be acted on by a board of officers convened by the military commander having immediate jurisdiction.* [Par. 7]

§ 77.17 *Patients' effects*—(a) *General.* These provisions have particular application to and are intended to cover the ordinary requirements of peacetime conditions. In time of war, when large numbers of patients are being received daily, strict adherence to the procedures herein prescribed may be impracticable; therefore, such deviations as the commanding officer of the hospital concerned may deem necessary may be made to assure the safeguarding of patients' effects.

[2] Administrative regulations of the War Department relative to Army Commitment Boards.

[3] Administrative regulations of the War Department relating to hospitals.

(b) *Responsibility.* The commanding officer of a hospital is responsible that due care is observed in safeguarding the money, valuables, clothing, and other effects of patients admitted to hospital. The registrar ordinarily will be the custodian of money and valuables turned over to the hospital by patients for safekeeping.

(c) *Money and valuables.* Patients will be informed by the admitting officer that the hospital will receive, for safekeeping, money and valuables, including watches, trinkets, personal papers, keepsakes, etc., and that receipts will be given for such articles by a commissioned officer. In case the patient is unconscious, he will be searched by the admitting officer, in the presence of a witness, for money and valuables, which will be receipted for by a commissioned officer and properly safeguarded. Money and valuables will be received and receipted for without condition or other evasion of complete responsibility by the commanding officer or by an officer designated by him. Money and valuables of considerable intrinsic value, such as watches and jewelry, will be deposited in a bank or locked in the hospital safe. Articles of lesser value may be stored in locked compartments in a well safeguarded storeroom. Enlisted men are forbidden to receive money or other valuables from patients for safekeeping. When a patient is discharged, transferred, dies, or deserts, his money and other valuables will be disposed of as prescribed for the disposition of effects other than public property.* [Par. 8]

§ 77.18 *Subsistence and other charges for patients*—(a) *Subsistence charges; rates.* The following is the schedule of rates for subsistence charges for patients in Medical Department establishments (except the Army and Navy and the Fitzsimons General Hospitals), who are not entitled to commutation of rations under the provisions of Army Regulations. Rates for patients in the Army and Navy and the Fitzsimons General Hospitals will be found in § 77.24 and § 77.27, respectively.

(1) For officers, Army nurses, warrant officers, and cadets of the United States Military Academy, $1 a day, except in mobile hospital units, where the rate will be an amount equal to the commutation rate prescribed in Army Regulations. Retired enlisted men who have been advanced on the retired list to commissioned or warrant grades under the provisions of the act of Congress approved May 7, 1932, will be subsisted as officer patients unless they elect to be subsisted on enlisted status. See subparagraph (4) of this paragraph.

(2) For officers, commissioned warrant officers, and warrant officers of the Navy and Marine Corps, active or retired, and for active and retired members of the Navy Nurse Corps, the same rates as prescribed for officers of the Army in subparagraph (1) of this paragraph.

(3) For retired enlisted men of the Army and for enlisted men of the Navy and Marine Corps, active or retired, an amount per day equal to the commutation rate prescribed in Army Regulations.

(4) For civilians in the status of officers $1.25 a day for civilians in the status of enlisted men, the same rate as that prescribed for enlisted patients plus 10 cents a day, except that in the Philippines the commanding general may prescribe such special reduced rates for Filipino civilians as will cover the cost of their subsistence. The surgeon will determine in each case, subject to instructions from higher authority, whether civilian patients will be on the footing of officers or of enlisted men.

(5) When necessary to protect the hospital fund at stations in Alaska against actual loss, the station commander may prescribe an additional charge for each patient not to exceed 25 cents a day, except in the case of retired enlisted men of the Army, Navy, and Marine Corps.

(b) *Medicine charges; rates.* Per diem charges of 50 cents for medicines and dressings will be collected from civilian employees and other civilians who are patients in Medical Department establishments and who are not entitled to medical relief at the expense of public funds.* [Par. 12]

§ 77.19 *Civilian hospital employees*—(a) *General.* The employment of civilians necessary for the proper care of sick officers and enlisted men is authorized in the annual appropriations "Medical and Hospital Department" under such regulations fixing their number, qualifications, assignment, pay, and allowances as may be prescribed by The Surgeon General with the approval of the Secretary of War.

(b) *Number and assignment.* The number and assignment of civilians employed for the proper care of the sick will be determined by The Surgeon General for hospitals within the continental limits of the United States, and by the department or expeditionary force surgeons under instructions of The Surgeon General for hospitals beyond the continental limits of the United States.

(c) *Qualifications.* The employment of hospital employees is subject to the requirements of the Civil Service Commission under the procedure established by the Civil Service Act and rules.

(d) *Appointment, promotion, demotion, suspension, and discharge.* Hospital employees will be appointed, promoted, demoted, suspended without pay, and discharged under the provisions of such regulations as The Surgeon General may from time to time prescribe with the approval of the office of the Secretary of War and the Civil Service Commission.

(e) *Rations.* Whenever it is found necessary or deemed desirable, civilian employees, irrespective of their rate of pay, may be either furnished meals at the hospital, or, by special authority of The Surgeon General in exceptional circumstances, furnished with a ration in kind: *Provided,* That deductions are taken from their pay for such subsistence or ration, or that reimbursement in cash is received. Civilian employees permitted or required to take meals regularly at the hospital will have appropriate deductions made from their gross compensation. Civilian employees permitted to take an occasional meal at the hospital will make reimbursement to the hospital fund in cash. The deductions for subsistence will be made according to the evaluation set forth in AR 35-3840. The cash value of subsistence furnished will be determined by The Surgeon General.

(f) *Quarters.* Such quarters as may be available will be furnished for the use of employees whose constant presence at the hospital is necessary or appropriate.* [Par. 13]

§ 77.20 *Laundry*—(a) *General.* The hospital laundry will consist of—

(1) The linen, clothing, and bedding belonging to the Medical Department.

(2) The washable clothing of Army nurses and enlisted men while patients in the hospital.

(3) The white coats and trousers of enlisted attendants.

(4) The uniforms of Army nurses and of civilian nurses, paid from Veterans' Administration or Civilian Conservation Corps funds, employed in the hospital.

(5) Washable clothing of civilian attendants when their contracts of employment entitle them to this service.

(b) *Purchase from commercial sources.* Any excess laundry service required at hospitals with laundries, and the entire laundry service at other hospitals, and at dispensaries, unless otherwise provided for under special instructions from The Surgeon General, will be purchased from commercial sources as prescribed in paragraph (c) of this section.

(c) *Instructions governing purchases*—(1) *General provisions.* For general instructions governing the contracts for or the purchase of laundry services, see §§ 81.1 to 81.9. The paragraphs thereof defining supplies as including nonpersonal services (such as laundry service), prescribing the duties of contracting officers, citing general laws, directing how purchases will be made, prescribing the forms to be used, and indicating the offices of permanent record for various purchase papers should be given special attention.

(2) *Periods for which purchases are to be made and estimates of services required.* Ordinarily, laundry services will be purchased for one entire fiscal year. Under special conditions, they may cover other periods within one fiscal year, but in no case will a purchase cover services in different fiscal years. Decision having been made as to this period, an estimate will be prepared to show, for each different piece of laundry, the quantity thereof which will probably be required to be laundered during the future period. This estimate will be based upon the total services which have been required by the hospital or dispensary concerned for the preceding 12 months, or based upon the average monthly service required in the case of large general hospitals. Applying to the above estimate the unit prices being paid under the current contract or, in the absence of such, local commercial prices for laundry service, an estimate of the total money value of the future services required will be made.* [Par. 14]

[SEAL] E. S. ADAMS,
*Major General,*
*The Adjutant General.*

[F. R. Doc. 42-1595; Filed, February 23, 1942; 1:15 p. m.]

PART 78—DECORATIONS, MEDALS, RIBBONS, AND SIMILAR DEVICES[1]

AMERICAN DEFENSE SERVICE MEDAL

§ 78.40 *American Defense Service Medal; how earned*—(a) *Service required.* The Secretary of War has authorized the issuance of American Defense Service Medals to military personnel for honorable service by those who entered upon a period of active Federal service of 12 months or longer and who in the discharge of such service served at any time between September 8, 1939, and December 7, 1941, both dates inclusive.

(b) *Organizations in which service required.* (1) American Defense Service Medals are awarded for rendition of the prescribed service in any one or more of the following only:

(i) Regular Army, including the Philippine Scouts and the Regular Army Reserve while serving on active duty.

(ii) Volunteer forces duly mustered into the Federal service.

(iii) National Guard called or ordered into the Federal service.

(iv) Organized Reserves, including the Enlisted Reserve Corps, while serving on active duty to which ordered or on which placed by the President.

(2) An American Defense Service Medal will not be awarded by the War Department for service in any one or more of the following:

(i) United States Navy.
(ii) United States Marine Corps.
(iii) United States Coast Guard.
(iv) National Guard not called or ordered into Federal service.
(v) Philippine Constabulary.
(vi) Home defense organizations.

(c) *Bronze stars.* Bronze stars will be awarded for wear on the suspension ribbons of the medals in cases where personnel were exposed to hostile attack during the period for which the medal may be awarded, one star for each separate hostile attack. *[Pars. 2, 3, 4, and 5]

*§§ 78.40 to 78.44, inclusive, issued under authority contained in E.O. No. 8808, (6 F.R. 3209), and 45 Stat. 500, 47 Stat. 158; 10 U.S.C. 1415a, 1415b.

§ 78.41 *Award of medals*—(a) *Limitation on number of medals awarded.* Not more than one American Defense Service Medal will be awarded to any individual regardless of the number of periods of honorable active service rendered subsequent to September 7, 1939.

(b) *Original supply.* Original issue of American Defense Service Medals, accompanying ribbons, and lapel buttons will be made gratuitously.

(c) *To whom furnished.* American Defense Service Medals are furnished only to—

(1) Members and former members of the Army who have rendered the required service.

(2) Next of kin of those deceased who shall have rendered the required service. By next of kin is meant the first of the following who are living: widow (if not remarried), eldest son, eldest daughter, father, mother, eldest brother, eldest sister, eldest grandchild.

(d) *By whom furnished; method of delivery.* (1) American Defense Service Medals are furnished by the quartermaster of the nearest military post or station upon requisition therefor submitted by organization commanders or other officers of the Army who are in custody of records upon which such awards may be based.

(2) Officers, warrant officers, nurses, enlisted men, and other personnel of the Army detached from commands and at places where a supply of the medals is not available will make application for the medal on W.D., A.G.O. Form No. 0714 to The Adjutant General, Washington, D. C.

(3) Officers, warrant officers, nurses, enlisted men, and other personnel of the Army who have been honorably separated from the Army or returned to an inactive status should make application for the medal on W.D., A.G.O. Form No. 0714 to The Adjutant General, Washington, D. C.

(4) In case an individual dies before delivery has been made to him of an American Defense Service Medal the medal will be returned to the issuing quartermaster for cancellation or delivery to the next of kin, as the case may be.* [Pars. 6, 7, 8, and 9]

§ 72.42 *Action to be taken in case of loss.* In case of loss of an American Defense Service Medal, the loser will at once make all reasonable efforts to recover it. If in the service he will also inform his immediate commanding officer, who will cause an investigation to be made with a view to determining the circumstances of loss and with a view to recovering the medal.* [Par. 12]

§ 78.43 *Duplicates*—(a) *When furnished.* Under authority contained in the act of May 12, 1928 (45 Stat. 500; 10 U.S.C. 1415b), a duplicate of an American Defense Service Medal will be furnished in case the original has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom originally presented.

(1) *By gratuitous issue.* To persons in the military service.

(2) *By sale.* To all others.

(b) *How obtained*—(1) *Application for; when made.* In the cases of persons in the military service, and in other cases when the loss is the result of fire, tornado, earthquake, shipwreck, or similar catastrophe, application may be made immediately; otherwise, the application should not be made until after the lapse of 3 months.

(2) *To whom application addressed.* Applications should be addressed to The Adjutant General.

(3) *Forms of application.* (i) If from a person in the military service, the application will be in the form of a letter.

(ii) If from a person not in the military service, it will be on a blank form furnished by The Adjutant General.

(4) *Matter to accompany application.* In any case the application will be supported by proof in the form of an affidavit setting forth the circumstances attending the loss or destruction, showing that such loss or destruction was without fault or neglect on the part of the applicant, and what efforts, if any, were made toward recovery.

(5) *How application forwarded.* (i) If the application is from a person in the military service, it will be forwarded through military channels to The Adjutant General together with recommendations as to issue of a duplicate.

(ii) If from a person not in the military service, it will be forwarded direct to The Adjutant General.

(c) *Purchase from authorized dealers.* If the applicant so desires, he may purchase a duplicate American Defense Service Medal from any of the individuals, firms, or corporations authorized under the provisions of §§ 7.1 to 7.9 of this title to sell or manufacture and sell service medals, etc., by exhibiting some official paper or document, such as a discharge certificate or true copy thereof, or a letter from an officer of the War Department or other official document containing a definite proof of his authority to wear the American Defense Service Medal.* [Par. 13]

§ 78.44 *Exhibition purposes.* Upon approval by the Secretary of War, samples of American Defense Service Medals awarded by the War Department will be furnished at cost prices, plus transportation and packing charges (except to the War Department or a governmental agency), to museums, libraries, historical, numismatic, and military societies, or institutions of such a public nature as will insure an opportunity to the public to view the exhibits. Except for a War Department or a governmental agency exhibit, all sample American Defense Service Medals so furnished will be engraved at the expense of the purchaser with the words "For exhibition purposes only."* [Par. 14]

[SEAL] E. S. ADAMS,
*Major Genral,*
*The Adjutant General.*

[F.R. Doc. 42-1553; Filed, February 21, 1942; 11:11 a. m.]

[1] §§ 78.40 to 78.44 are added.

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TITLE 12—BANKS AND BANKING

CHAPTER II—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 204—RESERVES OF MEMBER BANKS

Part 204 is amended in the following respects, effective with the reserve computation period beginning February 28, 1942:

Section 204.3 (a) is changed to read as follows:

§ 204.3 *Deficiencies in reserves*—(a) *Computation of deficiencies.* (1) Deficiencies in reserve balances of member banks in central reserve cities and in reserve cities shall be computed on the basis of average daily net deposit bal-

ances covering weekly periods. Deficiencies in reserve balances of other member banks shall be computed on the basis of average daily net deposit balances covering semimonthly periods.[8]

(2) In computing such deficiencies the required reserve balance of each member bank at the close of business each day shall be based upon its net deposit balances at the opening of business on the same day; and the weekly and semimonthly periods referred to in subparagraph (1) of this paragraph shall end at the close of business on days to be fixed by the Federal Reserve banks with the approval of the Board of Governors of the Federal Reserve System.

Section 204.4 is changed to read as follows:

§ 204.4 *Loans and dividends while reserves are deficient.* It is unlawful for any member bank the reserves of which are deficient to make any new loans or pay any dividends unless and until the total reserves required by law are fully restored, and the payment of penalties for deficiencies in reserves does not exempt member banks from this prohibition of law. As provided in § 204.3, penalties for deficiencies in reserves are computed on the basis of the average reserve balances for weekly or semimonthly periods; but this prohibition of law applies whenever the reserves are deficient for one day or more, regardless of whether or not the average reserve balances for the weekly or semimonthly period are deficient. (Sec. 11 (c), (e), (i), 38 Stat. 262, sec. 10, 40 Stat. 239, sec. 4, 40 Stat. 970, sec. 207, 49 Stat. 706, sec. 324, 49 Stat. 714; 12 U.S.C. 248 (c), (e), (i), 462, 466, 12 U.S.C., Sup., 462b, 461, 462a1, 465)

Board of Governors of the Federal Reserve System.

[SEAL] S. R. CARPENTER, *Assistant Secretary.*

[F. R. Doc. 42-1597; Filed, February 23, 1942; 4:16 p. m.]

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## TITLE 14—CIVIL AVIATION

## CHAPTER I—CIVIL AERONAUTICS BOARD

[Amendments 40-8, 40-9, Civil Air Regulations]

### PART 40—AIR CARRIER OPERATING CERTIFICATES

At a session of the Civil Aeronautics Board held at its office in Washington, D. C., on the 10th day of February, 1942.

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a) and 601 of said Act, and finding that its action is desirable in the public interest and is necessary to carry out the provisions of, and to exercise and perform its powers and duties under, said Act, the Civil Aeronautics Board amends the Civil Air Regulations as follows:

Effective March 6, 1942, Part 40 of the Civil Air Regulations is amended as follows:

1. By striking §§ 40.4 to 40.79, inclusive, and inserting in lieu thereof the following:

§ 40.4 *Air carrier operating certificate.*

§ 40.40 *Application for and issuance of air carrier operating certificate.* (a) Application for an air carrier operating certificate shall be made upon the applicable forms prescribed and furnished by the Administrator.

(b) An air carrier operating certificate may be issued by the Administrator to an applicant after approval of application made and proof submitted in connection therewith, if the Administrator finds, after investigation, that such person is properly and adequately equipped and able to conduct a safe operation in accordance with the requirements of the Act and the applicable rules, regulations and standards prescribed thereunder for such operation.

§ 40.41 *Display.* The air carrier operating certificate shall be presented for inspection upon the request of any duly authorized representative of the Administrator or Board.

§ 40.42 *Duration.* An air carrier operating certificate shall be of indefinite duration unless cancelled, suspended, or revoked.

§ 40.43 *Surrender.* Upon the cancellation, suspension, or revocation of an air carrier operating certificate, or part thereof, the holder shall, upon request, surrender such certificate, or part thereof, to any officer or employee of the Administrator.

§ 40.44 *Non-transferability.* An air carrier operating certificate is not transferable except with the written consent of the Administrator.

§ 40.45 *Inspection.* A duly authorized representative of the Administrator shall be permitted at any time and place to make such inspection or examination as may be deemed necessary to determine the operator's compliance with the requirements of the Civil Air Regulations and the Civil Aeronautics Act of 1938, as amended.

§ 40.46 *Amendment.* Application by the air carrier to amend the air carrier operating certificate shall be made upon the applicable form prescribed and furnished by the Administrator.

2. By amending the Table of Contents of Part 40 to conform with paragraph No. 1 of this amendment.

By the Civil Aeronautics Board.

[SEAL] DARWIN CHARLES BROWN, *Secretary.*

[F. R. Doc. 42-1547; Filed, February 21, 1942; 9:47 a. m.]

[Amendment 60-53, Civil Air Regulations]

### PART 60—AIR TRAFFIC RULES

AIR CARRIER OPERATING CERTIFICATES

At a session of the Civil Aeronautics Board held at its office in Washington, D. C., on the 10th day of February, 1942.

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a) and 601 of said Act, and finding that its action is desirable in the public interest and is necessary to carry out the provisions of, and to exercise and perform its powers and duties under, said Act, the Civil Aeronautics Board amends the Civil Air Regulations as follows:

Effective March 6, 1942, Part 60 of the Civil Air Regulations is amended as follows:

By striking from the first paragraph of § 60.351 the words "competency letters" and inserting in lieu thereof the words "air carrier operating certificate."

By the Civil Aeronautics Board.

[SEAL] DARWIN CHARLES BROWN, *Secretary.*

[F. R. Doc. 42-1548; Filed, February 21, 1942; 9:47 a. m.]

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[Amendments 61-21 through 61-31, Civil Air Regulations]

### PART 61—SCHEDULED AIR CARRIER RULES

AIR CARRIER OPERATING CERTIFICATES

At a session of the Civil Aeronautics Board held at its office in Washington, D. C., on the 10th day of Februrary, 1942.

Acting pursuant to the authority vested in it by the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a) and 601 of said Act, and finding that its action is desirable in the public interest and is necessary to carry out the provisions of, and to exercise and perform its powers and duties under, said Act, the Civil Aeronautics Board amends the Civil Air Regulations as follows:

Effective March 6, 1942, Part 61 of the Civil Air Regulations is amended as follows:

1. By striking § 61.00 and inserting in lieu thereof a new section to read as follows:

§ 61.00 *Certificate required.* No air carrier shall operate aircraft in scheduled interstate air transportation within the continental limits of the United States carrying mail, goods or persons, or any combination thereof unless such air carrier is possessed of a valid air carrier operating certificate issued by the Administrator of Civil Aeronautics.

2. By striking § 61.01 and inserting in lieu thereof the following:

§ 61.01, (*Unassigned*).

3. By amending § 61.10 to read as follows:

§ 61.10 *Service performed.* No scheduled air carrier shall perform or render any service, as related to the carriage of

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[8] Deficiencies in reserve balances of member banks in outlying sections of central reserve and reserve cities which have been authorized by the Board of Governors of the Federal Reserve System, under the provisions of § 204.2 (a), to maintain seven per cent reserves against demand deposits, will also be computed on the basis of average daily net deposit balances covering semimonthly periods.

mail, goods or persons, or to day or night operation, until rated competent to render such service in the air carrier operating certificate issued by the Administrator.

4. By amending § 61.20 to read as follows:

§ 61.20 *Route operation.* No scheduled air carrier shall operate over any route or part thereof until rated competent to operate thereover in the air carrier operating certificate issued by the Administrator.

5. By striking the phrase "route competency letter" in §§ 61.21, 61.22, 61.23, and 61.24 and inserting in lieu thereof the phrase "air carrier operating certificate".

6. By striking the phrase "an appropriate competency letter" in § 61.24 and inserting in lieu thereof the phrase "the air carrier operating certificate".

7. By amending § 61.30 to read as follows:

§ 61.30 *Aircraft operation.* No scheduled air carrier shall operate any aircraft until rated competent with respect thereto in the air carrier operating certificate issued by the Administrator.

8. By striking the phrase "aircraft and maintenance competency letters" in § 61.3500 and inserting in lieu thereof the phrase "air carrier operating certificate".

9. By striking the phrase "the current maintenance competency letter" in § 61.41 and inserting in lieu thereof the phrase "that portion of the air carrier operating certificate pertaining to maintenance".

10. By amending § 61.453 (d) to read as follows:

§ 61.453 (d) Any data not issuing from the Administrator may be changed by the operator without the approval of the Administrator, provided such change is not inconsistent with any Federal regulation, the air carrier operating certificate, or safe maintenance practice. Notice of such change shall be promptly given in accordance with § 61.450.

11. By striking the last sentence of § 61.50.

12. By striking the phrase "airmen competency letter" in §§ 61.511, 61.513, 61.552, and 61.7100 and inserting in lieu thereof the phrase "air carrier operating certificate".

13. By amending § 61.55304 (e) to read as follows:

§ 61.55304 (e) He shall be familiar with all portions of the air carrier operating certificate pertaining to enroute operations and airport specifications for the route or part thereof for which qualification is sought.

14. By striking the phrase "route and weather competency letter" in § 61.55316 (q) and inserting in lieu thereof the phrase "air carrier operating certificate".

15. By striking the phrase "airmen competency letter" in § 61.554 and inserting in lieu thereof the phrase "operating certificate".

16. By striking the phrase "weather competency letter" in §§ 61.555, 61.71070 (a), 61.71071 (b), 61.71080, 61.71090, 61.71091, 61.71092, 61.7208, 61.7300, 61.7301, 61.750, 61.751, and 61.761 and inserting in lieu thereof the phrase "air carrier operating certificate".

17. By striking the phrase "letter of competency" in § 61.7110 and inserting in lieu thereof the phrase "air carrier operating certificate".

18. By striking the phrase "competency letters" in § 61.742 and inserting in lieu thereof the phrase "air carrier operating certificate".

19. By amending § 61.810 (a) to read as follows:

§ 61.810 (a) A copy of that portion of the air carrier operating certificate pertaining to enroute operations and airport specifications,

20. By amending § 61.850 (a) to read as follows:

§ 61.850 (a) Any change issuing from the Administrator pertaining to that portion of the air carrier operating certificate covering enroute operations and airport specifications shall be promptly incorporated in the operations manual and a copy thereof sent, in the form of a new page of such manual, to each person required to hold a copy of the manual. Each amended page of the manual shall be properly dated.

21. By striking §§ 61.852 (c) and 61.853 (d) and inserting in lieu thereof the following:

§ 61.852 (c) Any data not issuing from the Administrator may be changed by the operator, without approval of the Administrator, providing such change is not inconsistent with any Federal regulation or the air carrier operating certificate. Notice of any such change shall be given promptly in accordance with the provisions of § 61.850.

22. By amending the Table of Contents of Part 61 to conform with paragraphs Nos. 1, 2, 3, 4, and 7 of this amendment.

By the Civil Aeronautics Board.

[SEAL] DARWIN CHARLES BROWN, *Secretary.*

[F. R. Doc. 42-1546; Filed, February 21, 1942; 9:47 a. m.]

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[Orders, Serial Number 1561]

PART 202—ACCOUNTS, RECORDS AND REPORTS

UNIFORM SYSTEM OF ACCOUNTS FOR DOMESTIC AIR CARRIERS

At a session of the Civil Aeronautics Board held at its office in Washington, D. C., on the 21st day of February 1942.

The Civil Aeronautics Board, on January 21, 1942, having promulgated an amendment of section 202.2 of the Economic Regulations relating to Forms of Accounts for Air Carriers; and

It appearing to the Board that certain amendments to the Uniform System of Accounts for Domestic Air Carriers[1] therein prescribed are now necessary to clarify the intention of the Board with respect thereto; and

The Board finding that its action is in the public interest and is necessary to carry out the provisions of the Civil Aeronautics Act of 1938, as amended, and to enable the Board to exercise and perform its powers and duties under that Act;

*It is ordered,* That the Uniform System of Accounts for Domestic Air Carriers be and the same is amended as set forth in Exhibit A attached hereto.[2]

By the Civil Aeronautics Board.

[SEAL] DARWIN CHARLES BROWN, *Secretary.*

[F. R. Doc. 42-1627; Filed, February 24, 1942; 11:22 a. m.]

[1] 7 F.R. 500.

[2] Filed as part of the original document.

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[Regulations, Serial No. 206]

PART 248—INTERLOCKING DIRECTORS AND OFFICERS

APPROVALS OF INTERLOCKING RELATIONSHIPS

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 18th day of February, 1942.

The Civil Aeronautics Board, acting pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a) and 409 (a) thereof, and deeming its action necessary to carry out the provisions of said Act and to exercise its powers and perform its duties thereunder, hereby makes and promulgates the following regulation:

Effective March 10, 1942, § 248.1 of the Economic Regulations is hereby amended in its entirety to read as follows:

§ 248.1 *Approvals of interlocking relationships*—(a) *Application.* If approval by the Board is desired of an interlocking relationship which would otherwise be prohibited by section 409 (a) of the Act (hereinafter referred to as an "interlocking relationship"), an application for such approval shall be filed with the Board by the individual (hereinafter referred to as the "individual applicant") occupying or seeking to occupy the interlocking relationship, and by each air carrier (hereinafter referred to as the "air carrier applicant") in which such individual holds or seeks to hold the position of officer or director. At their election such applicants may join in a single application. If separate applications are submitted it is desirable that all shall be filed at the same time. An application may incorporate by specific reference current information contained in another application in the same matter or in any document then on file with the Board.

(b) *Formal requirements.* Applications filed pursuant to this section shall conform generally to the outline set forth in paragraph (c) hereof and to the requirements of rule 3 of § 285.1 of the Economic Regulations, with the additional requirement that each individual verifying the application shall include in his verification a statement that

he has personally made a careful investigation of the proposed interlocking relationship and that the application includes all of the information required by this section of the Economic Regulations and that it contains no misleading statement and does not omit information which would tend to show that the public interest would be adversely affected by the existence of the proposed interlocking relationship. If a joint application is filed it shall be verified by the individual applicant and by a responsible officer of each air carrier applicant. However, any individual verifying any such joint application may disclaim responsibility for any statements therein except statements concerning matters which are peculiarly within his knowledge. In any such case, however, every allegation contained in the application shall be verified by one or more qualified individuals.

(c) *General provisions concerning contents.* Each application (except one filed pursuant to paragraph (d) hereof) shall, among other things, include the following information;

(1) the full name, place of residence and citizenship of the individual applicant.

(2) The name and address of the major business or professional activity of the individual applicant.

(3) A complete description of the interlocking relationship for which approval is sought, as well as a description of any other interlocking relationship occupied by the individual applicant which has been approved by the Board. This description shall include the date and manner of the individual applicant's election or appointment to the position or positions which he occupies or seeks to occupy, and shall state the name or names of the persons primarily responsible, directly or indirectly, for his election or appointment. It shall also include a statement of his present or contemplated duties in connection with the interlocking relationship for which approval is sought and the approximate amount of time devoted or expected to be devoted thereto.

(4) The name of the person or persons, if any, whom the individual applicant represents or will represent on the board of directors of each air carrier applicant, together with a statement as to any financial interest held by such person or persons in any air carrier, common carrier, person engaged in any phase of aeronautics otherwise than as an air carrier, or person whose principal business, in purpose or in fact, is the holding of stock in, or control of any other person engaged in any phase of aeronautics.

(5) The name and address of each business (including but not limited to corporations, partnerships, trusts, etc.) of which the individual applicant is an officer, director, partner, trustee, receiver, manager, attorney, agent, or controlling stockholder or employee, the general character of each such business and a description of the individual applicant's financial interest therein.

(6) A complete description of any benefit and of the amount of and basis for any money or thing of value (i) received by the individual applicant during the last year from each air carrier applicant and from any person with whom the individual applicant has or seeks to have an interlocking relationship, whether for services, reimbursement of expenses or otherwise, and (ii) which the applicant contemplates receiving from any such person during the continuance of the interlocking relationship.

(7) The names and titles of all officers and directors of each air carrier applicant, and of each person with whom the individual applicant has or seeks to have an interlocking relationship.

(8) With respect to each officer and director (including the individual applicant) of each air carrier applicant, a statement that the information contained in the most recent reports filed with the Board pursuant to § 280.1 of the Economic Regulations for each of such individuals is the same as of the date within 30 days of the filing of the application pursuant to this section, or, if such information has changed, a statement setting forth the details of such changes. If no such report is on file with respect to any such officer or director (including the individual applicant), it shall be filed concurrently with the application pursuant to this section.

(9) The name of each stockholder, but not exceeding the twenty largest stockholders of each air carrier applicant, holding 1 per centum or more of the voting capital stock of at least one air carrier applicant, and the name of each person with whom the individual applicant has or seeks to have an interlocking relationship, together with the number of shares of each class of stock held by each of such stockholders and the percentage which such shares bear to the total authorized and outstanding number of shares of the same class. If all or any part of such shares are held for the account of any person other than the holder the names of such other persons shall be disclosed.

(10) A description of the shares of stock or other interests held by each air carrier applicant for its account in persons other than itself.

(11) A full description of any professional, financial or other business transactions or arrangements which have been entered into within one year prior to the date of the filing of the application by each air carrier applicant with the individual applicant and by each air carrier applicant or individual applicant with any person with whom the individual applicant has or seeks to have an interlocking relationship, together with a full statement as to any such transactions or arrangements which it is contemplated may be entered into while such interlocking relationship continues.

Each application shall state fully such further facts as the applicants respectively deem desirable in order to show that the public interest will not be adversely affected by the approval by the Board of the interlocking relationship.

(d) *System of affiliated and subsidiary companies.* In the event that an individual occupies or seeks to occupy an interlocking relationship falling within the purview of section 409 (a) of the Act which involves only the holding by him of the position of officer or director in two or more companies within the same system of affiliated and subsidiary companies (as hereinafter defined), an application for approval of such relationships need not comply with the requirements of paragraph (c) (11), of this section, but shall comply with all other requirements of that paragraph. Such application shall also include:

(1) Such information as is necessary to disclose the fact that the companies in which the individual applicant occupies or seeks to occupy the interlocking relationships are members of the system of affiliated and subsidiary companies as defined herein, and

(2) A statement that the individual applicant does not occupy or seek to occupy any interlocking relationship falling within the purview of section 409 (a) of the Act other than those within the same system of affiliated and subsidiary companies.

The individual applicant may include in any application made by him pursuant to this regulation a request for an order authorizing him to hold generally, in addition to the positions so specifically requested, directorships or offices within the same system of affiliated and subsidiary companies, and it shall not be necessary to file a separate application with respect to each such relationship. Any applicant assuming a directorship or office pursuant to such authorization shall, not later than 15 days after assuming such directorship or office, make or cause to be made a full and complete report thereof to the Board. As used in this regulation, the term "system of affiliated and subsidiary companies" shall include only a specified company and those companies of which it, directly, or indirectly, through one or more intermediate companies, owns 50 per centum or more of the voting capital stock issued by such companies.

(e) *Supplements.* Applicants under this section shall, upon requests of the Board and within such time as may be allowed, supplement any application with such information as may be required by the Board. In the event of any substantial change in the information set forth in the application prior to a decision by the Board upon such application, either by reason of the individual applicant's election or appointment to another position or positions involving an interlocking relationship or otherwise, the application shall be supplemented by such information as will fully describe such change. Such supplements shall comply with the formal requirements of paragraph (b) hereof.

(f) *Uninterrupted tenure.* After the individual applicant has been authorized

by the Board to hold a particular position, further application in connection with each successive term will not be required so long as he continues in uninterrupted tenure of such position, except as may be ordered by the Board.

(g) *Notice of changes.* In the event of the individual applicant's resignation, withdrawal or failure of reelection or reappointment with respect to any of the positions for which authorization has been granted by the Board or in the event of any other material or substantial change therein, the individual and each air carrier applicant shall promptly and not more than thirty days after any such change occurs give notice thereof to the Board, setting forth fully the details of any such change. Such notices shall comply with the formal requirements of paragraph (b) hereof, except that the verification may be in simple form.

(h) *Extent of authorization.* An order by the Board authorizing an individual applicant to hold the position of director of a company will be construed as sufficient to authorize him to serve also as chairman of the board of directors or as a member or chairman of any committee or committees of such board.

(i) *Revocation of authorization.* Any order issued by the Board pursuant to section 409 (a) of the Act shall be subject to revocation in whole or in part by the Board at any time if it deems that the public interest will be adversely affected by the holding by the individual applicant of any or all of the positions authorized to be held by such order. If any individual or air carrier applicant knowingly or wilfully withholds any information called for by this regulation or any other information which may be material or relevant to the application, or misrepresents facts disclosed in the application, such omission or misrepresentation may be considered sufficient cause for the immediate revocation of any such order.

(j) *Effect of order.* No order of the Board entered in connection with any application filed pursuant to this regulation shall constitute approval by the Board of any interlocking relationship which was not fully disclosed.

(k) *Reports.* An individual occupying an interlocking relationship pursuant to authorization of the Board may be required to file such periodic or special reports as the Board may deem necessary.

(l) *Effect of regulation on prior applications.* Any application filed prior to the effective date of this regulation shall not be subject to the provisions of this regulation, except to the extent that the Board may, by appropriate request, in particular cases require compliance with any specific provision or provisions hereof.

(m) *Procedure governing disposition of applications.* (1) Each application will be docketed as received and applicants will be advised of the docket number assigned thereto.

(2) If the Board is convinced by the application and its consideration and investigation thereof that applicants have made a due showing that the public interest will not be adversely affected by the interlocking relationships for which approval is sought, an order of approval will be entered.

(3) If the Board is not convinced that applicants have made a due showing, applicants will be advised to that effect by letter. Thereupon applicants may file with the Board a petition in the proceeding for leave to withdraw the application; may request that the application be assigned for hearing; or may submit, within a reasonable time to be fixed by the Board, such additional information as they believe will result in a due showing.

(4) In the event additional information is submitted, the Board reserves the right to assign the application for hearing on its own initiative or to enter an order of approval or an order of disapproval in accordance with its determination that a due showing has or has not been made.

(5) The Board further reserves the right to vary the procedure herein set forth insofar as necessary or desirable in disposing of any particular application. (Secs. 205 (a), 409 (a), 52 Stat. 984, 1002; 49 U.S.C., 425 (a), 489 (a))

By the Civil Aeronautics Board.

[SEAL] DARWIN CHARLES BROWN, *Secretary.*

[F. R. Doc. 42-1567; Filed, February 23, 1942; 8:50 a. m.]

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## CHAPTER II—ADMINISTRATOR OF CIVIL AERONAUTICS, DEPARTMENT OF COMMERCE

### PART 600—DESIGNATION OF CIVIL AIRWAYS

FEBRUARY 6, 1942.

Acting pursuant to the authority vested in me by section 302 of the Civil Aeronautics Act of 1938, as amended, I hereby amend the designation of civil airways as follows:

1. By striking Part 300 of the Regulations of the Administrator of Civil Aeronautics, "Designation of Civil Airways".

2. By adopting the following regulations:

§ 600.1 *Civil airway designation.* The following described paths through the navigable airspace of the United States are suitable for interstate, overseas, or foreign air commerce and are hereby designated as civil airways:

§ 600.10 *Scope.* (a) Each civil airway shall include the navigable air space of the United States above all that area on the surface of the earth lying within 10 miles of the center line prescribed for each such airway, but shall not include any of the air space of an air-space reservation set apart as provided in section 4 of the Air Commerce Act of 1926.

(b) The center line of each civil airway shall be a line extended in the manner hereinafter prescribed through the center of the points specified for such airway.

§ 600.100 *Green civil airways:*

§ 600.10000 *Green civil airway No. 1 (United States-Canadian Border to Forest City, Maine).* From the intersection of the center line of the on course signal of the east leg of the Megantic, Quebec, Canada, radio range and the United States-Canadian Border, via the Millinocket, Maine, radio range station; to Forest City, Maine. (United States-Canadian Border.)

§ 600.10001 *Green civil airway No. 2 (Seattle, Wash., to Boston, Mass.).* From Boeing Field, Seattle, Wash., via the Seattle, Wash., radio range station; Ellensburg, Wash., radio range station; Ephrata, Wash., radio range station; Spokane, Wash., radio range station; Coeur D'Alene, Idaho, radio range station; Mullan Pass, Idaho, radio range station; Superior, Mont., radio range station; Missoula, Mont., radio range station; Drummond, Mont., radio range station; Helena, Mont., radio range station; the intersection of the center lines of the on course signals of the southeast leg of the Helena, Mont., radio range and the northwest leg of the Belgrade, Mont., radio range; Belgrade, Mont., radio range station; Livingston, Mont., radio range station; Billings, Mont., radio range station; Custer, Mont., radio range station; Miles City, Mont., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Miles City, Mont., radio range and the west leg of the Golva, N. Dak., radio range; Golva, N. Dak., radio range station; Dickinson, N. Dak., radio range station; Bismarck, N. Dak., radio range station; Jamestown, N. Dak., radio range station; Fargo, N. Dak., radio range station; Alexandria, Minn., radio range station; Minneapolis, Minn., radio range station; La Crosse, Wis., radio range station; Lone Rock, Wis., radio range station; Madison, Wis., radio range station; Milwaukee, Wis., radio range station; Muskegon, Mich., radio range station; Grand Rapids, Mich., radio range station; Lansing, Mich., radio range station; the intersection of the center lines of the on course signals of the southeast leg of the Lansing, Mich., radio range and the northwest leg of the Detroit, Mich., (Wayne County Airport), radio range; and the Detroit, Mich., (Wayne County Airport), radio range station; to the intersection of the center line of the on course signal of the east leg of the Detroit, Mich., (Wayne County Airport), radio range and the U. S.-Canadian Border. From the intersection of the center line of the on course signal of the west leg of the Buffalo, N. Y., radio range and the U. S.-Canadian Border, via the Buffalo, N. Y., radio range station; Syracuse, N. Y., radio range station; Utica, N. Y., radio range station; Albany, N. Y., radio range station; Westfield, Mass., radio range station; the intersection of the center lines of the on course signals of the southeast leg of the Westfield, Mass., radio range and the southwest leg of the Boston, Mass., radio range; and the Boston, Mass., radio range station; to the Municipal Airport, Boston, Mass.

§ 600.10002 *Green civil airway No. 3 (San Francisco, Calif., to New York, N. Y.).* From the Municipal Airport, San Francisco, Calif., via the San Francisco, Calif., radio range station; Oakland, Calif., radio range station; Sacra-

mento, Calif., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Sacramento, Calif., radio range and the southwest leg of the Donner Summit, Calif., radio range; Donner Summit, Calif., radio range station; Reno, Nev., radio range station; Humboldt, Nev., radio range station; Buffalo Valley., Nev., radio range station; Elko, Nev., radio range station; Wendover, Utah, radio range station; Salt Lake City, Utah, radio range station; Ogden, Utah, radio range station; Fort Bridger, Wyo., radio range station; Rock Springs, Wyo., radio range station; Wamsutter, Wyo., radio range station; Parco, Wyo., radio range station; the intersection of the center lines of the on course signals of the east leg of the Parco, Wyo., radio range and the northwest leg of the Laramie, Wyo., radio range; the intersection of the center lines of the on course signals of the northwest leg of the Laramie, Wyo., radio range and the northwest leg of the Cheyenne, Wyo., radio range; Cheyenne, Wyo., radio range station; Sidney, Nebr., radio range station; North Platte, Nebr., radio range station; Grand Island, Nebr., radio range station; Omaha, Nebr., radio range station; Des Moines, Iowa, radio range station; Montezuma, Iowa, radio marker station; Iowa City, Iowa, radio range station; Moline, Ill., radio range station; the intersection of the center lines of the on course signals of the east leg of the Moline, Ill., radio range and the southwest leg of the Chicago, Ill., radio range; Chicago, Ill., radio range station; the intersection of the center lines of the on course signals of the southeast leg of the Chicago, Ill., radio range and the west leg of the Goshen, Ind., radio range; Goshen, Ind., radio range station; Toledo, Ohio, radio range station; Cleveland, Ohio, radio range station; Mercer, Pa., radio range station; Brookville, Pa., radio marker station; Bellefonte, Pa., radio range station; the intersection of the center lines of the on course signals of the east leg of the Bellefonte, Pa., radio range and the west leg of the Allentown, Pa., radio range; Allentown, Pa., radio range station; the intersection of the center lines of the on course signals of the east leg of the Allentown, Pa., radio range and the southwest leg of the New York, N. Y., (New York, LaGuardia Field), radio range; and the New York, N. Y., (New York, LaGuardia Field), radio range station; to the New York Municipal Airport, LaGuardia Field, New York, N. Y.

§ 600.10003 *Green civil airway No. 4 (Los Angeles, Calif., to Philadelphia, Pa.)*. From the Municipal Airport, Los Angeles, Calif., via the Los Angeles, Calif., radio range station; the intersection of the center lines of the on course signals of the north leg of the Los Angeles, Calif., radio range and the southwest leg of the Palmdale, Calif., radio range; Palmdale, Calif., radio range station; Daggett, Calif., radio range station; the intersection of the center lines of the on course signals of the east leg of the Daggett, Calif., radio range and the southwest leg of the Kingman, Ariz., radio range; Kingman, Ariz., radio range station; the intersection of the center lines of the on course signals of the east leg of the Kingman, Ariz., radio range and the southeast leg of the Ashfork, Ariz., radio range; Winslow, Ariz., radio range station; El Morro, N. Mex., radio range station; Acomita, N. Mex., radio range station; Albuquerque, N. Mex., radio range station; Otto, N. Mex., radio range station; Tucumcari, N. Mex., radio range station; Amarillo, Tex., radio range station; Gage, Okla., radio range station; Wichita, Kans., radio range station; Lebo, Kans., radio range station; Kansas City, Mo., radio range station; Columbia, Mo., radio range station; St. Louis, Mo., radio range station; Effingham, Ill., radio range station; Terre Haute, Ind., radio range station; Indianapolis, Ind., radio range station; Dayton, Ohio, radio range station; the intersection of the center lines of the on course signals of the north leg of the Dayton, Ohio, radio range and the west leg of the Columbus, Ohio, radio range; Columbus, Ohio, radio range station; Cambridge, Ohio, radio marker station; Pittsburgh, Pa., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Pittsburgh, Pa., radio range and the west leg of the Cove Valley, Pa., radio range; Cove Valley, Pa., radio range station; Harrisburg, Pa., radio range station; the intersection of the center lines of the on course signals of the east leg of the Harrisburg, Pa., radio range and the southwest leg of the Philadelphia, Pa., radio range; and the Philadelphia, Pa., radio range station; to the Municipal Airport, Philadelphia, Pa.

§ 600.10004 *Green civil airway No. 5 (Los Angeles, Calif., to Wash., D. C.)*. From the Los Angeles, Calif., radio range station, via the Riverside, Calif., radio range station; the intersection of the center lines of the on course signals of the east leg of the Riverside, Calif., radio range and the west leg of the Blythe, Calif., radio range; Blythe, Calif., radio range station; Phoenix, Ariz., radio range station; the intersection of the center lines of the on course signals of the south leg of the Phoenix, Ariz., radio range and the northwest leg of the Tucson, Ariz., radio range; Tucson, Ariz., radio range station; the intersection of the center lines of the on course signals of the southeast leg of the Tucson, Ariz., radio range and the west leg of the Cochise, N. Mex., radio range; Cochise, N. Mex., radio range station; Rodeo, N. Mex., radio range station; Columbus, N. Mex., radio range station; El Paso, Tex., radio range station; Salt Flat, Tex., radio range station; Wink, Tex., radio range station; Big Spring, Tex., radio range station; Abilene, Tex., radio range station; Fort Worth, Tex., radio range station; Texarkana, Ark., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Texarkana, Ark., radio range and the southwest leg of the Little Rock, Ark., radio range; Little Rock, Ark., radio range station; Brinkley, Ark., radio range station; Memphis, Tenn., radio range station; Jacks Creek, Tenn., radio range station; Nashville, Tenn., radio range station; Smithville, Tenn., radio range station; Knoxville, Tenn., radio range station; Bristol, Tenn., radio range station; Pulaski, Va., radio range station; Roanoke, Va., radio range station; Gordonsville, Va., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Gordonsville, Va., radio range and the south leg of the Washington, D. C., radio range; and the Washington, D. C., radio range station; to the Washington National Airport, Washington, D. C.

§ 600.10005 *Green civil airway No. 6 (Corpus Christi, Tex., to Norfolk, Va.)*. From the Municipal Airport, Corpus Christi, Tex., via the Corpus Christi, Tex., radio range station; Palacios, Tex., Houston, Tex., radio range station; Beaumont, Tex., range station; Lake Charles, La., radio range station; New Orleans, La., radio range station; Mobile, Ala., radio range station; Gunter Field, Montgomery, Ala.; Atlanta, Ga., radio range station; Spartanburg, S. C., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Spartanburg, S. C., radio range and the west leg of the Charlotte, N. C., radio range; the intersection of the center lines of the on course signals of the north leg of the Charlotte, N. C., radio range and the southwest leg of the Greensboro, N. C., radio range; Greensboro, N. C., radio range station; South Boston, Va., radio marker station; Richmond, Va., radio range station; and the Norfolk, Va., radio range station; to the Municipal Airport, Norfolk, Va.

§ 600.101 *Amber civil airways:*

§ 600.10100 *Amber civil airway No. 1 (San Diego, Calif., to U. S.-Canadian Border)*. From the Municipal Airport, San Diego, Calif., via the San Diego, Calif., radio range station; the intersection of the center lines of the on course signals of the northwest leg of the San Diego, Calif., radio range and the southeast leg of the Long Beach, Calif., radio range; and the Long Beach, Calif., radio range station. From the intersection of the center lines of the on course signals of the north leg of the Los Angeles, Calif., radio range and the southwest leg of the Palmdale, Calif., radio range, via the Bakersfield, Calif., radio range station; Fresno, Calif., radio range station; and the Modesto, Calif., radio range station; to the Oakland, Calif., radio range station. From the intersection of the center lines of the on course signals of the northeast leg of the Oakland, Calif., radio range and the south leg of the Williams, Calif., radio range, via the Williams, Calif., radio range station; Red Bluff, Calif., radio range station; Fort Jones, Calif., radio range station; Medford, Oreg., radio range station; Eugene, Oreg., radio range station; Portland, Oreg., radio range station; Toledo, Wash., radio range station; Seattle, Wash., radio range station; Everett, Wash., radio range station; and the Bellingham, Wash., radio range station to the intersection of the center line of the on course signal of the northwest leg of the Bellingham, Wash., radio range and the United States-Canadian Border.

§ 600.10101 *Amber civil airway No. 2 (Daggett, Calif., to U. S.-Canadian Border).* From the Daggett, Calif., radio range station, via the Silver Lake, Calif., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Silver Lake, Calif., radio range and the southwest leg of the Las Vegas, Nev., radio range; Las Vegas, Nev., radio range station; Mormon Mesa, Nev., radio range station; Enterprise, Utah, radio range station; Milford, Utah, radio range station; Delta, Utah, radio range station; Tintic, Utah, radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Tintic, Utah, radio range and the south leg of the Salt Lake City, Utah, radio range; to the Salt Lake City, Utah, radio range station. From the Ogden, Utah, radio range station, via the Plymouth, Utah, radio range station; Pocatello, Idaho, radio range station; Idaho Falls, Idaho, radio range station; Dubois, Idaho, radio range station; Dillon, Mont., radio range station; Whitehall, Mont., radio range station; Helena, Mont., radio range station; the intersection of the center lines of the on course signals of the north leg of the Helena, Mont., radio range and the southwest leg of the Great Falls, Mont., radio range; Great Falls, Mont., radio range station; to the intersection of the center line of the on course signal of the southeast leg of the Lethbridge, Alberta, Canada, radio range and the U. S.-Canadian Border.

§ 600.10102 *Amber civil airway No. 3 (El Paso, Tex., to Great Falls, Mont.).* From the intersection of the center lines of the on course signals of the west leg of the El Paso, Tex., radio range and the south leg of the Engle N. Mex., radio range via the Engle, N. Mex., radio range station; to the Albuquerque, N. Mex., radio range station. From the intersection of the center lines of the on course signals of the east leg of the Otto, N. Mex., radio range and the southwest leg of the Las Vegas, N. Mex., radio range, via the Las Vegas, N. Mex., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Las Vegas, N. Mex., radio range and the south leg of the Trinidad, Colo., radio range; Trinidad, Colo., radio range station; Pueblo, Colo., radio range station; Denver, Colo., radio range station; Cheyenne, Wyo., radio range station; the intersection of the center lines of the on course signals of the north leg of the Cheyenne, Wyo., radio range and the southeast leg of the Douglas, Wyo., radio range; Douglas, Wyo., radio range station; the intersection of the center lines of the on course signals of the northwest leg of the Douglas, Wyo., radio range and the east leg of the Casper, Wyo., radio range; Casper, Wyo., radio range station; the intersection of the center lines of the on course signals of the north leg of the Casper, Wyo., radio range and the southeast leg of the Sheridan, Wyo., radio range; Sheridan, Wyo., radio range station; Billings, Mont., radio range station; the intersection of the center lines of the on course signals of the northwest leg of the Billings, Mont., radio range and the southeast leg of the Lewistown, Mont., radio range; and the Lewistown, Mont., radio range station; to the Great Falls, Mont., radio range station.

§ 600.10103 *Amber civil airway No. 4 (Brownsville, Tex., to Bismarck, N. Dak.)* From the Municipal Airport, Brownsville, Tex., via the Brownsville, Tex., radio range station; the intersection of the center lines of the on course signals of the north leg of the Brownsville, Tex., radio range and the southwest leg of the Corpus Christi, Tex., radio range; Corpus Christi, Tex., radio range station; San Antonio, Tex., radio range station; Austin, Tex., radio range station; Waco, Tex., radio range station; the intersection of the center lines of the on course signals of the northwest leg of the Waco, Tex., radio range and the south leg of the Fort Worth, Tex., radio range; Fort Worth, Tex., radio range station; the intersection of the center lines of the on course signals of the north leg of the Fort Worth, Tex., radio range and the south leg of the Oklahoma City, Okla., radio range; Oklahoma City, Okla., radio range station; the intersection of the center lines of the on course signals of the east leg of the Oklahoma City, Okla., radio range and the southwest leg of the Tulsa, Okla., radio range; Tulsa, Okla., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Tulsa, Okla., radio range and the south leg of the Chanute, Kans., radio range; and the Chanute, Kans., radio range station; to the intersection of the center lines of the on course signals of the northeast leg of the Chanute, Kans., radio range and the southwest leg of the Kansas City, Mo., radio range. From the Kansas City, Mo., radio range station, via the St. Joseph, Mo., radio range station; Omaha, Nebr., radio range station; Sioux City, Iowa, radio range station; Sioux Falls, S. Dak., radio range station; Huron, S. Dak., radio range station; Aberdeen, S. Dak., radio range station; and the intersection of the center lines of the on course signals of the northwest leg of the Aberdeen, S. Dak., radio range and the southeast leg of the Bismarck, N. Dak., radio range; to the Bismarck, N. Dak., radio range station.

§ 600.10104 *Amber civil airway No. 5 (New Orleans, La., to Milwaukee, Wis.).* From the New Orleans, La., radio range station, via the Tylertown, Miss., radio range station; Jackson, Miss., radio range station; Greenwood Miss., radio range station; Memphis, Tenn., radio range station; Advance, Mo., radio range station; the intersection of the center lines of the on course signals of the northwest leg of the Advance, Mo., radio range and the south leg of the St. Louis, Mo., radio range; St. Louis, Mo., radio range station; the intersection of the center lines of the on course signals of the north leg of the St. Louis, Mo., radio range and the southwest leg of the Springfield, Ill., radio range; Springfield, Ill., radio range station; and the Joliet, Ill., radio range station; to the intersection of the center lines of the on course signals of the northeast leg of the Joliet, Ill., radio range and the southwest leg of the Chicago, Ill., radio range. From the Chicago, Ill., radio range station, via the intersection of the center lines of the on course signals of the northwest leg of the Chicago, Ill., radio range and the south leg of the Milwaukee, Wis., radio range; to the Milwaukee, Wis., radio range station.

§ 600.10105 *Amber civil airway No. 6 (Jacksonville, Fla., to United States-Canadian Border).* From the Jacksonville, Fla., radio range station; via the Alma, Ga., radio range station; Macon, Ga., radio range station; Atlanta, Ga., radio range station; Adairsville, Ga., radio marker station; Chattanooga, Tenn., radio range station; the intersection of the center lines of the on course signals of the northwest leg of the Chattanooga, Tenn., radio range and the southeast leg of the Nashville, Tenn., radio range; Nashville, Tenn., radio range station; the intersection of the center lines of the on course signals of the northwest leg of the Nashville, Tenn., radio range and the southwest leg of the Smiths Grove, Ky., radio range; Smiths Grove, Ky., radio range station; Louisville, Ky., radio range station; and the Cincinnati, Ohio, radio range station; and the intersection of the center lines of the on course signals of the northwest leg of the Cincinnati, Ohio, radio range and the southwest leg of the Dayton, Ohio, radio range; to the Dayton, Ohio, radio range station. From the Columbus, Ohio, radio range station, via Hayesville, Ohio, radio marker station; Cleveland, Ohio, radio range station; Perry, Ohio, radio marker station; Erie, Pa., radio range station; Dunkirk, N. Y., radio marker station; to the Buffalo, N. Y., radio range station; and the intersection of the center lines of the on course signals of the northeast leg of the Buffalo, N. Y., radio range and the southeast leg of the Malton, Ontario, radio range, to the intersection of the center line of the on course signal of the southeast leg of the Malton, Ontario, radio range and the U. S.-Canadian Border.

§ 600.10106 *Amber civil airway No. 7 (Key West, Fla., to Caribou, Maine.)* From the Key West, Fla., radio range station, via the intersection of the center lines of the on course signals of the east leg of the Key West, Fla., radio range and the southwest leg of the Miami, Fla., radio range; Miami, Fla., radio range station; the intersection of the center lines of the on course signals of the north leg of the Miami, Fla., radio range and the southeast leg of the Melbourne, Fla., radio range; Melbourne, Fla., radio range station; Daytona Beach, Fla., radio range station; Jacksonville, Fla., radio range station; Savannah, Ga., radio range station; Charleston, S. C., radio range station; Florence, S. C., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Florence, S. C., radio range and the south leg of the Raleigh, N. C., radio range; Raleigh, N. C., radio range station; and the Richmond, Va., radio range station; to the intersection of the center lines of the on course signals of

the northeast leg of the Gordonsville, Va., radio range and the south leg of the Washington, D. C., radio range. From the Washington, D. C., radio range station, via the intersection of the center lines of the on course signals of the northeast leg of the Washington, D. C., radio range and the southwest leg of the Philadelphia, Pa., radio range; Philadelphia, Pa., radio range station; Newark, N. J., radio range station; and the Hartford, Conn., radio range station; to the intersection of the center lines of the on course signals of the east leg of the Westfield, Mass., radio range and the southwest leg of the Boston, Mass., radio range. From the Boston, Mass., radio range station, via the Portland, Maine, radio range station; Augusta, Maine, radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Augusta, Maine, radio range and the southwest leg of the Bangor, Maine, radio range; Bangor, Maine, radio range station; the intersection of the center lines of the on course signals of the northwest leg of the Bangor, Maine, radio range and the southwest leg of the Millinocket, Maine, radio range; Millinocket, Maine, radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Millinocket, Maine, radio range and the southeast leg of the Caribou, Maine, radio range, to the Caribou, Maine, radio range station.

§ 600.102 *Red civil airways:*

§ 600.10200 *Red civil airway No. 1 (Portland, Oreg., to Fort Bridger, Wyo.)* From the Portland, Oreg., radio range station, via the intersection of the center lines of the on course signals of the northeast leg of the Northdalles, Wash., radio range and the west leg of the Arlington, Oreg., radio range; Arlington, Oreg., radio range station; Pendleton, Oreg., radio range station; Baker, Oreg., radio range station; Boise, Idaho, radio range station; the intersection of the center lines of the on course signals of the southeast leg of the Boise, Idaho, radio range and the northwest leg of the Burley, Idaho, radio range; Burley, Idaho, radio range station; and the Locomotive Springs, Utah, radio range station; Salt Lake City, Utah, radio range station; to the Fort Bridger, Wyo., radio range station.

§ 600.10201 *Red civil airway No. 2 (Whitehall, Mont., to Belgrade, Mont.).* From the Whitehall, Mont., radio range station; to the Belgrade, Mont., radio range station.

§600.10202 *Red civil airway No. 3 (Philadelphia, Pa., to New York, N. Y.).* From the Philadelphia, Pa., radio range station, via the intersection of the center lines of the on course signals of the east leg of the Philadelphia, Pa., radio range and the southwest leg of the New York, N. Y. (New York, LaGuardia Field) radio range; to the intersection of the center lines of the on course signals of the east leg of the Allentown, Pa., radio range and the southwest leg of the New York, N. Y. (New York, LaGuardia Field), radio range.

§ 600.10203 *Red civil airway No. 4 (Dallas, Tex., to Shreveport, La.).* From the intersection of the center lines of the on course signals of the east leg of the Dallas, Tex., radio range and the northwest leg of the Tyler, Tex., radio range, via the Tyler, Tex., radio range station; to the intersection of the center lines of the on course signals of the north leg of the Tyler, Tex., radio range and the west leg of the Shreveport, La., radio range.

§ 600.10204 *Red civil airway No. 5 (Sioux Falls, S. Dak., to Minneapolis, Minn.).* From the Sioux Falls, S. Dak., radio range station to the Minneapolis, Minn., radio range station.

§ 600.10205 *Red civil airway No. 6 (Parco, Wyo., to Omaha, Nebr.).* From the intersection of the center lines of the on course signals of the northwest leg of the Laramie, Wyo., radio range and the northwest leg of the Cheyenne, Wyo., radio range, via the Laramie, Wyo., radio range station; to the intersection of the center lines of the on course signals of the southeast leg of the Laramie, Wyo., radio range and the north leg of the Denver, Colo., radio range. From the Denver, Colo., radio range station, via the Akron, Colo., radio range station; and the Hayes Center, Nebr., radio range station; Overton, Nebr., radio marker station to the Grand Island, Nebr., radio range station. From the intersection of the center lines of the on course signals of the west leg of the Omaha, Nebr., radio range and the northwest leg of the Lincoln, Nebr., radio range via the Lincoln, Nebr., radio range station to the Omaha, Nebr., radio range station.

§ 600.10206 *Red civil airway No. 7 (Spartanburg, S. C., to Greensboro, N. C.).* From the intersection of the center lines of the on course signals of the northeast leg of the Spartanburg, S. C., radio range and the west leg of the Charlotte, N. C., radio range, via the Charlotte, N. C., radio range station; to the intersection of the center lines of the on course signals of the north leg of the Charlotte, N. C., radio range and the southwest leg of the Greensboro, N. C., radio range.

§ 600.10207 *Red civil airway No. 8 (Concord, N. H., to Portland, Maine).* From the Concord, N. H., radio range station; to the Portland, Maine, radio range station.

§ 600.10208 *Red civil airway No. 9 (Tallahassee, Fla., to Alma, Ga.).* From the intersection of the center lines of the on course signals of the east leg of the Tallahassee, Fla., radio range and the southwest leg of the Alma, Ga., radio range, to the Alma, Ga., radio range station.

§ 600.10209 *Red civil airway No. 10 (Amarillo, Tex., to Charleston, S. C.).* From the intersection of the center lines of the on course signals of the east leg of the Amarillo, Tex., radio range and the northwest leg of the Clarendon, Tex., radio range, via the Clarendon, Tex., radio range station; Wichita Falls, Tex., radio range station; to the intersection of the center lines of the on course signals of the southeast leg of the Wichita Falls, Tex., radio range and the north leg of the Fort Worth, Tex., radio range. From the Fort Worth, Tex., radio range station, via the Dallas, Tex., radio range station; the intersection of the center lines of the on course signals of the east leg of the Dallas, Tex., radio range and the northwest leg of the Tyler, Tex., radio range; the intersection of the center lines of the on course signals of the north leg of the Tyler, Tex., radio range and the west leg of the Shreveport, La., radio range; Shreveport, La., radio range station; Monroe, La., radio range station; Jackson, Miss., radio range station; Meridian, Miss., radio range station; and the Birmingham, Ala., radio range station; to the Atlanta, Georgia, radio range station. From the intersection of the center lines of the on course signals of the northeast leg of the Atlanta, Ga., radio range and the northwest leg of the Augusta, Ga., radio range, via the Augusta, Ga., radio range station; to the Charleston, S. C., radio range station.

§ 600.10210 *Red civil airway No. 11 (Tulsa, Okla., to St. Louis, Mo.).* From the Tulsa, Okla., radio range station, via the Neosho, Mo., radio range station; Springfield, Mo., radio range station; and the Spring Bluff, Mo., radio range station; to the intersection of the center lines of the on course signals of the northeast leg of the Spring Bluff, Mo., radio range and the south leg of the St. Louis, Mo., radio range.

§ 600.10211 *Red civil airway No. 12 (Kansas City, Mo., to Detroit, Mich.).* From the Kansas City, Mo., radio range station, via the Kirksville, Mo., radio range station; Burlington, Iowa, radio range station; to the intersection of the center lines of the on course signals of the east leg of the Moline, Ill., radio range and the southwest leg of the Chicago, Ill., radio range. From the Chicago, Ill., radio range station, via the South Bend, Ind., radio range station; to the Detroit, Mich. (Wayne County Airport), radio range station.

§ 600.10212 *Red civil airway No. 13 (Westfield, Mass., to Boston, Mass.).* From the Westfield, Mass., radio range station, via the intersection of the center lines of the on course signals of the south leg of the Westfield, Mass., radio range and the northwest leg of the Hartford, Conn., radio range; Hartford, Conn., radio range station; and the Providence, R. I., radio range station; to the Boston, Mass., radio range station.

§ 600.10213 *Red civil airway No. 14 (Lone Rock, Wis., to Louisville, Ky.).* From the Lone Rock, Wis., radio range station, via the Rockford, Ill., radio range station; and the intersection of the center lines of the on course signals of the southeast leg of the Rockford, Ill., radio range and the northwest leg of the Chicago, Ill., radio range; to the intersection of the center lines of the on course signals of the northwest leg of the Chicago, Ill., radio range and the south leg of the Milwaukee, Wis., radio range. From the intersection of the center lines of the on course signals of the southeast leg of the Chicago, Ill., radio range and the west leg of the Goshen, Ind., radio range, via the Lafay-

ette, Ind., radio range station; and the Indianapolis, Ind., radio range station; to the Louisville, Ky., radio range station.

§ 600.10214 *Red civil airway No. 15 (Las Vegas, Nev., to Phoenix, Ariz.).* From the Las Vegas, Nev., radio range station; to the Kingman, Ariz., radio range station. From the intersection of the center lines of the on course signals of the east leg of the Kingman, Ariz., radio range and the southeast leg of the Ashfork, Ariz., radio range, via the intersection of the center lines of the on course signals of the southeast leg of the Ashfork, Ariz., radio range and the northwest leg of the Phoenix, Ariz., radio range; to the Phoenix, Ariz., radio range station.

§ 600.10215 *Red civil airway No. 16 (Augusta, Ga., to Charleston, S. C.).* From the Augusta, Ga., radio range station, via the Columbia, S. C., radio range station; the intersection of the center lines of the on course signals of the southeast leg of the Columbia, S. C., radio range and the northwest leg of the Charleston, S. C., radio range; to the Charleston, S. C., radio range station.

§ 600.10216 *Red civil airway No. 17 (Martinsburg, W. Va., to Baltimore, Md.).* From the Martinsburg, W. Va., radio range station; to the Baltimore, Md., radio range station.

§ 600.10217 *Red civil airway No. 18 (Indianapolis, Ind., to Washington, D. C.).* From the intersection of the center lines of the on course signals of the east leg of the Indianapolis, Ind., radio range and the northwest leg of the Cincinnati, Ohio, radio range; to the intersection of the center lines of the on course signals of the northwest leg of the Cincinnati, Ohio, radio range and the southwest leg of the Dayton, Ohio, radio range. From the Cincinanti, Ohio, radio range station; via the intersection of the center lines of the on course signals of the southeast leg of the Cincinnati, Ohio, radio range and the northwest leg of the Huntington, W. Va., radio range; Huntington, W. Va., radio range station; Charleston, W. Va., radio range station; the intersection of the center lines of the on course signals of the southeast leg of the Charleston, W. Va., radio range and the southwest leg of the Elkins, W. Va., radio range; Elkins, W. Va., radio range station; and the Front Royal, Va., radio range station; to the intersection of the center lines of the on course signals of the east leg of the Front Royal, Va., radio range and the northwest leg of the Washintgon, D. C., radio range.

§ 600.10218 *Red civil airway No. 19 (Dayton, Ohio, to Grand Rapids, Mich.).* From the Dayton, Ohio, radio range station, via the Fort Wayne, Ind., radio range station; to the intersection of the center lines of the on course signals of the northwest leg of the Fort Wayne, Ind., radio range and the east leg of the Goshen, Ind., radio range. From the Goshen, Ind., radio range station, via the intersection of the center lines of the on course signals of the north leg of the Goshen, Ind., radio range and the southwest leg of the Grand Rapids, Mich., radio range; to the Grand Rapids, Mich., radio range station.

§ 600.10219 *Red civil airway No. 20 (Sault Ste. Marie, Mich., to Washington, D. C.).* From the Sault Ste. Marie, Mich., radio range station via the intersection of the center lines of the on course signals of the southwest leg of the Sault Ste. Marie, Mich., radio range and the northeast leg of the Traverse City, Mich., radio range; Traverse City, Mich., radio range station; Saginaw, Mich., radio range station; the intersection of the center lines of the on course signals of the southwest leg of the Saginaw, Mich., radio range and the northwest leg of the Detroit, Mich. (Wayne County Airport), radio range; to the intersection of the center lines of the on course signals of the southeast leg of the Lansing, Mich., radio range and the northwest leg of the Detroit, Mich. (Wayne County Airport), radio range. From the intersection of the center line of the on course signal of the northwest leg of the Cleveland, Ohio, radio range and the U. S.-Canadian Border, via the Cleveland, Ohio, radio range station; and the Akron, Ohio, radio range station, to the intersection of the center lines of the on course signals of the southeast leg of the Cleveland, Ohio, radio range and the west leg of the Pittsburgh, Pa., radio range. From the Pittsburgh, Pa., radio range station, via the Martinsburg, W. Va., radio range station; to the Washington, D. C., radio range station.

§ 600.10220 *Red civil airway No. 21 (Detroit, Mich., to Woodward, Pa.).* From the Detroit, Mich. (Wayne County Airport), radio range station; to the intersection of the center lines of the on course signals of the southeast leg of the Detroit, Mich. (Wayne County Airport), radio range and the east leg of the Toledo, Ohio, radio range. From the intersection of the center lines of the on course signals of the west leg of the Cleveland, Ohio, radio range and the northwest leg of the Akron, Ohio, radio range, via the Akron, Ohio, radio range station; Pittsburgh, Pa., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Pittsburgh, Pa., radio range and the north leg of the Cove Valley, Pa., radio range; to the Woodward, Pa., radio marker station.

§ 600.10221 *Red civil airway No. 22 (Roanoke, Va., to Gordonsville, Va.)* From the Roanoke, Va., radio range station, via the Lynchburg, Va., radio range station; to the Gordonsville, Va., radio range station.

§ 600.10222 *Red civil airway No. 23 (Buffalo, N. Y., to New York, N. Y.).* From the Buffalo, N. Y., radio range station, via the intersection of the center lines of the on course signals of the east leg of the Buffalo, N. Y., radio range and the northwest leg of the Elmira, N. Y., radio range; Elmira, N. Y., radio range station; to the New York, N. Y. (New York, LaGuardia Field), radio range station.

§ 600.10223 *Red civil airway No. 24 (Amarillo, Tex., to Oklahoma City, Okla.).* From the Amarillo, Tex., radio range station; to the Oklahoma City, Okla., radio range station.

§ 600.10224 *Red civil airway No. 25 (Daytona Beach, Fla., to Miami, Fla.).* From the Daytona Beach, Fla., radio range station, via the Orlando, Fla., radio range station; Tampa, Fla., radio range station; and the Fort Myers, Fla., radio range station; to the Miami, Fla., radio range station.

§ 600.10225 *Red civil airway No. 26 (New York, N. Y., to Syracuse, N. Y.).* From the intersection of the center lines of the on course signals of the southeast leg of the Elmira, N. Y., radio range; and the south leg of the Syracuse, N. Y., radio range; to the Syracuse, N. Y., radio range station.

§ 600.10226 *Red civil airway No. 27 (Dayton, Ohio, to Detroit, Mich.).* From the intersection of the center lines of the on course signals of the northeast leg of the Dayton, Ohio, radio range and the west leg of the Columbus, Ohio, radio range, via the Toledo, Ohio, radio range station; to the Detroit, Mich. (Wayne County Airport), radio range station.

§ 600.10227 *Red civil airway No. 28 (Chicago, Ill., to Grand Rapids, Mich.).* From the Chicago, Ill., radio range station, via the intersection of the center lines of the on course signals of the northeast leg of the Chicago, Ill., radio range and the southwest leg of the Grand Rapids, Mich., radio range; to the Grand Rapids, Mich., radio range station.

§ 600.10228 *Red civil airway No. 29 (Baltimore, Md., to Elmira, N. Y.).* From the Baltimore, Md., radio range station, via the Harrisburg, Pa., radio range station; Williamsport, Pa., radio range station; to the intersection of the center lines of the on course signals of the southeast leg of the Elmira, N. Y., radio range and the north leg of the Williamsport, Pa., radio range.

§ 600.10229 *Red civil airway No. 30 (Mobile, Ala., to Jacksonville, Fla.).* From the Mobile, Ala., radio range station, via the Crestview, Fla., radio range station; the intersection of the center lines of the on course signals of the east leg of the Crestview, Fla., radio range and the northwest leg of the Tallahassee, Fla., radio range; and the Tallahassee, Fla., radio range station; to the Jacksonville, Fla., radio range station.

§ 600.10230 *Red civil airway No. 31 (Cheyenne, Wyo., to Minneapolis, Minn.).* From the intersection of the center lines of the on course signals of the east leg of the Cheyenne, Wyo., radio range, and the southwest leg of the Scottsbluff, Neb., radio range, via the Scottsbluff, Neb., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Scottsbluff, Neb., radio range and the south leg of the Rapid City, S. Dak., radio range; Rapid City, S. Dak., radio range station, Municipal Airport, Pierre, S. Dak.; Huron, S. Dak., radio range station; Watertown, S. Dak., radio range station; and the Willmar, Minn., radio range station; to the intersection of the center lines of the on course signals of the east leg of the Willmar, Minn., radio range and the northwest leg of the Minneapolis, Minn., radio range.

§ 600.10231 *Red civil airway No. 32 (San Antonio, Tex., to Houston, Tex.).* From the intersection of the center lines of the on course signals of the southeast leg of the San Antonio, Tex., radio range and the west leg of the Yoakum, Tex., radio range, via the Yoakum, Tex., radio range station; to the intersection of the center lines of the on course signals of the east leg of the Yoakum, Tex., radio range and the southwest leg of the Houston, Tex., radio range.

§ 600.10232 *Red civil airway No. 33 (Harrisburg, Pa., to New York, N. Y.).* From the intersection of the center lines of the on course signals of the east leg of the Harrisburg, Pa., radio range and the southwest leg of the Allentown, Pa., radio range, via the Allentown, Pa., radio range station; to the intersection of the center lines of the on course signals of the northeast leg of the Allentown, Pa., radio range and the northwest leg of the New York, N. Y. (LaGuardia Field), radio range.

§ 600.10233 *Red civil airway No. 34 (Raleigh, N. C., to Pulaski, Va.).* From the Raleigh, N. C., radio range station, via the Greensboro, N. C., radio range station; to the Pulaski, Va., radio range station.

§ 600.10234 *Red civil airway No. 35 (Pueblo, Col., to Wichita, Kan.).* From the Pueblo, Col., radio range station, via the La Junta, Col., radio range station; Garden City, Kan., radio range station; Hutchinson, Kan., radio range station; the intersection of the center lines of the on course signals of the east leg of the Hutchinson, Kan., radio range and the north leg of the Wichita, Kan., radio range, to the Wichita, Kan., radio range station.

§ 600.10235 *Red civil airway No. 36 (Rochester, Minn., to La Crosse, Wis.).* From the Rochester, Minn., radio range station, to the intersection of the center lines of the on course signals of the northeast leg of the Rochester, Minn., radio range and the northwest leg of the La Crosse, Wis., radio range.

§ 600.103 *Blue civil airways:*

§ 600.10300 *Blue civil airway No. 1 (Pendleton, Oreg., to Spokane, Wash.).* From the Pendleton, Oreg., radio range station, via the intersection of the center lines of the on course signals of the east leg of the Pendleton, Oreg., radio range and the southwest leg of the Walla Walla, Wash., radio range and the Walla Walla, Wash., radio range station; to the Spokane, Wash., radio range station.

§ 600.10301 *Blue civil airway No. 2 (Birmingham, Ala., to Erie, Pa.).* From the intersection of the center lines of the on course signals of the east leg of the Birmingham, Ala., radio range and the southwest leg of the Chattanooga, Tenn., radio range, via the Chattanooga, Tenn., radio range station; to the intersection of the center lines of the on course signals of the northeast leg of the Chattanooga, Tenn., radio range and the west leg of the Knoxville, Tenn., radio range. From the intersection of the center lines of the on course signals of the northeast leg of the Bristol, Tenn., radio range and the south leg of the Charleston, W. Va., radio range; to the Charleston, W. Va., radio range station. From the Elkins, W. Va., radio range station; to the intersection of the center lines of the on course signals of the north leg of the Elkins, W. Va., radio range and the west leg of the Pittsburgh, Pa., radio range. From the intersection of the center lines of the on course signals of the northwest leg of the Pittsburgh, Pa., radio range and the south leg of the Mercer, Pa., radio range, via the Mercer, Pa., radio range station; to the Erie, Pa., radio range station.

§ 600.10302 *Blue civil airway No. 3 (Memphis, Tenn., to Tampa, Fla.).* From the intersection of the center lines of the on course signals of the northeast leg of the Memphis, Tenn., radio range and the northwest leg of the Muscle Shoals, Ala., radio range, via the Muscle Shoals, Ala., radio range station; the intersection of the center lines of the on course signals of the southeast leg of the Muscle Shoals, Ala., radio range and the north leg of the Birmingham, Ala., radio range; Birmingham, Ala., radio range station; Gunter Field, Montgomery, Ala.; and the Dothan, Ala., radio range station, to the intersection of the center lines of the on course signals of the southeast leg of the Dothan, Ala., radio range and the northwest leg of the Tallahassee, Fla., radio range. From the intersection of the center lines of the on course signals of the east leg of the Tallahassee, Fla., radio range and the northwest leg of the Cross City, Fla., radio range; via the Cross City, Fla., radio range station; and the intersection of the center lines of the on course signals of the southeast leg of the Cross City, Fla., radio range and the north leg of the Tampa, Fla., radio range; to the Tampa, Fla., radio range station.

§ 600.10303 *Blue civil airway No. 4 (Boston, Mass., to Rouses Point, N. Y.).* From the Boston, Mass., radio range station, via the intersection of the center lines of the on course signals of the northwest leg of the Boston, Mass., radio range and the south leg of the Concord, N. H., radio range; Concord, N. H., radio range station; and the Burlington, Vt., radio range station; to Rouses Point, N. Y. (U. S.-Canadian Border).

§ 600.10304 *Blue civil airway No. 5 (Galveston, Tex., to Wichita, Kans.).* From the Municipal Airport, Galveston, Tex., via the Galveston, Tex., radio range station; Houston, Tex., radio range station; Navasota, Tex., radio range station; Waco, Tex., radio range station; the intersection of the center lines of the on course signals of the northeast leg of the Waco, Tex., radio range and the south leg of the Dallas, Tex., radio range; and the Dallas, Tex., radio range station; to the intersection of the center lines of the on course signals of the northwest leg of the Dallas, Tex., radio range and the north leg of the Fort Worth, Tex., radio range. From the Oklahoma City, Okla., radio range station, via the intersection of the center lines of the on course signals of the north leg of the Oklahoma City, Okla., radio range and the southeast leg of the Wichita, Kans., radio range; to the Wichita, Kans., radio range station.

§ 600.10305 *Blue civil airway No. 6 (Abilene, Tex., to Oklahoma City, Okla.).* From the Abilene, Tex., radio range station, via the Wichita Falls, Tex., radio range station; to the intersection of the center lines of the on course signals of the northeast leg of the Wichita Falls, Tex., radio range and the south leg of the Oklahoma City, Okla., radio range.

§ 600.10306 *Blue civil airway No. 7 (Springfield, Ill., to Morse, Ill.).* From the Springfield, Ill., radio range station, via the Peoria, Ill., radio range station; to the intersection of the center lines of the on course signals of the north leg of the Peoria, Ill., radio range and the southwest leg of the Chicago, Ill., radio range.

§ 600.10307 *Blue civil airway No. 8 (Fargo, N. Dak., to U. S.-Canadian Border.)* From the Fargo, N. Dak., radio range station, via the Grand Forks, N. Dak., radio range station; and the Pembina, N. Dak., radio range station; to the intersection of the center line of the on course signal of the north leg of the Pembina, N. Dak., radio range and the U. S.-Canadian Border.

§ 600.10308 *Blue civil airway No. 9 (Columbia, Mo., to Duluth, Minn.).* From the Columbia, Mo., radio range station, via the Kirksville, Mo., radio range station; the intersection of the center lines of the on course signals of the northwest leg of the Kirksville, Mo., radio range and the south leg of the Des Moines, Iowa, radio range; Des Moines, Iowa, radio range station; and the intersection of the center lines of the on course signals of the north leg of the Des Moines, Iowa, radio range and the southwest leg of the La Crosse, Wis., radio range; Rochester, Minn., radio range station; to the intersection of the center lines of the on course signals of the north leg of the Rochester, Minn., radio range and the southeast leg of the Minneapolis, Minn., radio range. From the Minneapolis, Minn., radio range station to the Duluth, Minn., radio range station.

§ 600.10309 *Blue civil airway No. 10 (Modesto, Calif., to Williams, Calif.)* From the Modesto, Calif., radio range station, via the intersection of the center lines of the on course signals of the northeast leg of the Modesto, Calif., radio range and the southeast leg of the Sacramento, Calif., radio range; and the Sacramento, Calif., radio range station; to the Williams, Calif., radio range station.

§ 600.10310 *Blue civil airway No. 11 (Muscle Shoals, Ala., to Nashville, Tenn.).* From the Muscle Shoals, Ala., radio range station; to the intersection of the center lines of the on course signals of the north leg of the Muscle Shoals, Ala., radio range and the southwest leg of the Nashville, Tenn., radio range.

§ 600.10311 *Blue civil airway No. 12 (Northdalles, Wash., to Ellensburg, Wash.).* From the Northdalles, Wash., radio range station, via the Yakima, Wash., radio range station; to the Ellensburg, Wash., radio range station.

§ 600.10312 *Blue civil airway No. 13 (Lake Charles, La., to Texarkana, Ark.).*

From the Lake Charles, La., radio range station, via the intersection of the center lines of the on course signals of the north leg of the Lake Charles, La., radio range and the southeast leg of the Shreveport, La., radio range; and the Shreveport, La., radio range station; to the intersection of the center lines of the on course signals of the northwest leg of the Shreveport, La., radio range and the southwest leg of the Texarkana, Ark., radio range.

§ 600.10313 *Blue civil airway No. 14 (Riverside, Calif., to Bakersfield, Calif.).* From the Riverside, Calif., radio range station, via the intersection of the center lines of the on course signals of the northwest leg of the Riverside, Calif., radio range and the southeast leg of the Palmdale, Calif., radio range; and the Palmdale, Calif., radio range station; to the intersection of the center lines of the on course signals of the northwest leg of the Palmdale, Calif., radio range and the south leg of the Bakersfield, Calif., radio range.

§ 600.10314 *Blue civil airway No. 15 (Columbus, Ohio, to Erie, Pa.).* From the intersection of the center lines of the on course signals of the east leg of the Columbus, Ohio, radio range and the southwest leg of the Akron, Ohio, radio range, via the Akron, Ohio, radio range station; to the intersection of the center lines of the on course signals of the northeast leg of the Akron, Ohio, radio range and the southwest leg of the Erie, Pa., radio range.

§ 600.10315 *Blue civil airway No. 16 (Dillon, Mont., to Helena, Mont.).* From the Dillon, Mont., radio range station, via the intersection of the center lines of the on course signals of the west leg of the Dillon, Mont., radio range and the south leg of the Butte, Mont., radio range; Butte, Mont., radio range station; to the Helena, Mont., radio range station.

§ 600.10316 *Blue civil airway No. 17 (Blythe, Calif., to Kingman, Ariz.).* From the Blythe, Calif., radio range station, via the Needles, Calif., radio range station; to the intersection of the center lines of the on course signals of the north leg of the Needles, Calif., radio range and the southwest leg of the Kingman, Ariz., radio range.

§ 600.10317 *Blue civil airway No. 18 (Newark, N. J., to Burlington, Vt.).* From the intersection of the center lines of the on course signals of the northeast leg of the Newark, N. J., radio range and the south leg of the New Hackensack, N. Y., radio range, via the New Hackensack, N. Y., radio range station; and the Albany, N. Y., radio range station; to the Burlington, Vt., radio range station.

§ 600.10318 *Blue civil airway No. 19 (Melbourne, Fla., to Orlando, Fla.).* From the Melbourne, Fla., radio range station; to the Orlando, Fla., radio range station.

§ 600.10319 *Blue civil airway No. 20 (Philadelphia, Pa., to Allentown, Pa.).* From the Philadelphia, Pa., radio range station, to the Allentown, Pa., radio range station.

§ 600.10320 *Blue civil airway No. 21 (Grand Rapids, Mich., to Traverse City, Mich.).* From the Grand Rapids, Mich., radio range station to the Traverse City, Mich., radio range station.

§ 600.10321 *Blue civil airway No. 22 (Wichita, Kans., to Tulsa, Okla.).* From the Wichita, Kans., radio range station, via the intersection of the center lines of the on course signals of the southeast leg of the Wichita, Kansas, radio range and the northwest leg of the Tulsa, Okla., radio range to the Tulsa, Okla., radio range station.

§ 600.104 *Additional civil airways:*

§ 600.10400 *Anchorage, Alaska, to Fairbanks, Alaska, Civil Airway.* From the center of Anchorage, Alaska, via the Talkeetna, Alaska, Airways Communications Station (Lat. 62°18'54" N.; Long. 150°05'36" W.); and the Summit, Alaska, Airways Communications Station (Lat. 63°19'45" N.; Long. 149°09'20" W.), to the center of Fairbanks, Alaska.

§ 600.10401 *Anchorage, Alaska, to Naknek, Alaska, Civil Airway.* From the center of Anchorage, Alaska, via the center of Kenai, Alaska; and the center of Iliamna, Alaska, to the center of Naknek, Alaska.

§ 600.10402 *Anchorage, Alaska, to Nome, Alaska, Civil Airway.* From the center of Anchorage, Alaska, via Farwell, Alaska, (Lat. 62°11' N.; Long. 153° 09' W.); and the center of McGrath, Alaska, to the center of Nome, Alaska.

§ 600.10403 *Anchorage, Alaska, to Unalaska, Alaska, Civil Airway.* From the center of Anchorage, Alaska, via the center of Seward, Alaska; the center of Kodiak, Alaska; the center of Chignik, Alaska; and the center of King Cove, Alaska, to the center of Unalaska, Alaska.

§ 600.10404 *Bismarck, N. Dak., to Minot, N. Dak., Civil Airway.* From the Municipal Airport, Bismarck, N. Dak., to the Municipal Airport, Minot, N. Dak.

§ 600.10405 *Boundary, Alaska, to Fairbanks, Alaska, Civil Airway.* From Boundary, Alaska (Lat. 62°31' N.; Long 141°15' W.), via the center of Tanana Crossing, Alaska; and the center of Big Delta, Alaska, to the center of Fairbanks, Alaska.

§ 600.10406 *Charleston, W. Va., to Pittsburgh, Pa., Civil Airway.* From the Municipal Airport, Charleston, W. Va., via the Municipal Airport, Parkersburg, W. Va., to the Municipal Airport, Pittsburgh, Pa.

§ 600.10407 *Cordova, Alaska, to Big Delta, Alaska, Civil Airway.* From the center of Cordova, Alaska, via the center of Valdez, Alaska; the center of Copper Center, Alaska; and the center of Paxson, Alaska, to the center of Big Delta, Alaska.

§ 600.10408 *Du Bois, Idaho, to West Yellowstone, Mont., Civil Airway.* From the Du Bois, Idaho, Intermediate Field of the Civil Aeronautics Administration to the Municipal Airport, West Yellowstone, Mont.

§ 600.10409 *Fairbanks, Alaska, to Bethel, Alaska, Civil Airway.* From the center of Fairbanks, Alaska, via the center of Nenana, Alaska; the center of McGrath, Alaska; and the center of Aniak, Alaska, to the center of Bethel, Alaska.

§ 600.10410 *Fairbanks, Alaska, to Nome, Alaska, Civil Airway.* From the center of Fairbanks, Alaska, via the center of Tanana, Alaska; the center of Ruby, Alaska; and Moses Point, Alaska, (Lat. 64°42' N.; Long. 161°57' W.), to the center of Nome, Alaska.

§ 600.10411 *Juneau, Alaska, to Anchorage, Alaska, Civil Airway.* From the center of Juneau, Alaska, via Cape Spencer, Alaska, (Lat. 58°13' N.; Long. 137°13' W.); the center of Yakutat, Alaska; the center of Yakataga, Alaska; the center of Cordova, Alaska; and the center of Portage, Alaska, to the center of Anchorage, Alaska.

§ 600.10412 *Ketchikan, Alaska, to Haines, Alaska, Civil Airway.* From the center of Ketchikan, Alaska, via the center of Petersburg, Alaska; and the center of Juneau, Alaska, to the center of Haines, Alaska.

§ 600.10413 *Kodiak, Alaska, to Nome, Alaska, Civil Airway.* From the center of Kodiak, Alaska, via the center of Naknek, Alaska; the center of Goodnews Bay, Alaska; and the center of Bethel, Alaska, to the center of Nome, Alaska.

§ 600.10414 *Los Angeles, Calif., to San Francisco, Calif., Civil Airway (Coastal Route).* From the Municipal Airport, Los Angeles, Calif., via the Goleta Airport, Santa Barbara, Calif.; Santa Maria Airport, Santa Maria, Calif.; Paso Robles Airport, Paso Robles, Calif., and the Municipal Airport, Salinas, Calif.; to Mills Field, San Francisco, Calif.

§ 600.10415 *Nome, Alaska, to Point Barrow, Alaska, Civil Airway.* From the center of Nome, Alaska, via the center of Kotzebue, Alaska, to the center of Point Barrow, Alaska.

§ 600.10416 *Norfolk, Va., to Washington, D. C., Civil Airway.* From the Municipal Airport, Norfolk, Va., to the National Airport, Washington, D. C.

§ 600.10417 *Petersburg, Alaska, to Cape Spencer, Alaska, Civil Airway.* From the center of Petersburg, Alaska, via the center of Sitka, Alaska, to Cape Spencer, Alaska (Lat. 58°13' N.; Long. 137°13' W.).

§ 600.10418 *Rapid City, S. Dak., to Spearfish, S. Dak., Civil Airway.* From the Municipal Airport, Rapid City, S. Dak., to the Municipal Airport, Spearfish, S. Dak.

§ 600.10419 *St. Louis, Mo., to Des Moines, Iowa, Civil Airway.* From the Municipal Airport, St. Louis, Mo., via the Municipal Airport, Quincy, Ill., and the Municipal Airport, Ottumwa, Iowa, to the Municipal Airport, Des Moines, Iowa.

§ 600.10420 *St. Louis, Mo., to Louisville, Ky., Civil Airway.* From the Municipal Airport, St. Louis, Mo., via the Municipal Airport, Evansville, Ind., to the Municipal Airport, Louisville, Ky.

§ 600.10421 *Tallahassee, Fla., to Atlanta, Ga., Civil Airway.* From the Municipal Airport, Tallahassee, Fla., via the Municipal Airport, Albany, Ga., to Candler Field, Atlanta, Ga.

§ 600.10422 *Winslow, Ariz., to Las Vegas, Nev., Civil Airway.* From the

T. & W. A. Airport, Winslow, Ariz., via the South Rim Airport, Grand Canyon, Ariz., and the Boulder City Airport, Boulder City, Nev., to the Western Air Express Airport, Las Vegas, Nev.

The foregoing designation of civil airways shall become effective, and all other designations of civil airways heretofore made by the Administrator of Civil Aeronautics shall be repealed at, 00:01, E. S. T., March 1, 1942. (Sec. 302, 52 Stat. 985; 49 U.S.C. 452)

CHARLES I. STANTON,
*Acting Administrator.*

[F. R. Doc. 42-1550; Filed, February 21, 1942; 9:49 a. m.]

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[Amendment No. 5 of Part 601]

PART 601 [1]—DESIGNATION OF AIRWAY TRAFFIC CONTROL AREAS, CONTROL ZONES OF INTERSECTION, CONTROL AIRPORTS, AND RADIO FIXES

REDESIGNATION OF AIRWAY TRAFFIC CONTROL AREAS AND DELETION OF CERTAIN CONTROL ZONES OF INTERSECTION

FEBRUARY 20, 1942.

Acting pursuant to the authority vested in me by section 308 of the Civil Aeronautics Act of 1938, as amended, and sections 60.22 and 60.23 of the Civil Air Regulations, and finding that this action is necessary in the interest of safety and for the proper control of air traffic, I hereby amend Part 601 of the Regulations of the Administrator of Civil Aeronautics which became effective January 1, 1942, as follows:

1. By amending § 601.1001 to read as follows:

§ 601.1001 *Green civil airway No. 1 airway traffic control areas (U. S.-Canadian Border to Forest City, Maine).* All of green civil airway No. 1.

2. By amending § 601.1003 to read as follows:

§ 601.1003 *Green civil airway No. 3 airway traffic control areas (San Francisco, Calif., to New York, N. Y.).* All of green civil airway No. 3.

3. By amending § 601.1006 to read as follows:

§ 601.1006 *Green civil airway No. 6 airway traffic control areas (Corpus Christi, Tex., to Norfolk, Va.).* That portion of green civil airway No. 6: From the Municipal Airport, Corpus Christi, Tex., to the Richmond, Va., radio range station.

4. By amending § 601.1013 to read as follows:

§ 601.1013 *Amber civil airway No. 3 airway traffic control areas (El Paso, Tex., to Great Falls, Mont.).* That portion of amber civil airway No. 3: From a line extended at right angles across such airway through a point on the center line thereof 25 miles north of the Engle, N. Mex., radio range station to the Great Falls, Mont., radio range station.

[1] 7 F.R. 378, 528, 597, 841, 1016.

5. By amending § 601.10201 to read as follows:

§ 601.10201 *Red civil airway No. 1 airway traffic control areas (Portland, Oreg., to Fort Bridger, Wyo.).* All of red civil airway No. 1.

6. By amending § 601.10206 to read as follows:

§ 601.10206 *Red civil airway No. 6 airway traffic control areas (Parco, Wyo., to Omaha, Nebr.).* All of red civil airway No. 6.

7. By amending § 601.10220 to read as follows:

§ 601.10220 *Red civil airway No. 20 airway traffic control areas (Sault Ste. Marie, Mich., to Washington, D. C.).* All of red civil airway No. 20.

8. By amending § 601.10231 to read as follows:

§ 601.10231 *Red civil airway No. 31 airway traffic control areas (Cheyenne, Wyo., to Minneapolis, Minn.).* All of red civil airway No. 31.

9. By adding a new section, § 601.10235 to read as follows:

§ 601.10235 *Red civil airway No. 35 airway traffic control areas (Pueblo, Colo., to Wichita, Kans.).* All of red civil airway No. 35.

10. By adding a new section, § 601.10236 to read as follows:

§ 601.10236 *Red civil airway No. 36 airway traffic control areas (Rochester, Minn., to La Crosse, Wis.).* All of red civil airway No. 36.

11. By amending § 601.10309 to read as follows:

§ 601.10309 *Blue civil airway No. 9 airway traffic control areas (Columbia, Mo., to Duluth, Minn.).* All of blue civil airway No. 9.

12. By adding a new section, § 601.-10320 to read as follows:

§ 601.10320 *Blue civil airway No. 20 airway traffic control areas (Philadelphia, Pa., to Allentown, Pa.).* All of blue civil airway No. 20.

13. By adding a new section, § 601.-10321 to read as follows:

§ 601.10321 *Blue civil airway No. 21 airway traffic control areas (Grand Rapids, Mich., to Traverse City, Mich.).* All of blue civil airway No. 21.

14. By adding a new section, § 601.-10322 to read as follows:

§ 601.10322 *Blue civil airway No. 22 airway traffic control areas (Wichita, Kans., to Tulsa, Okla.).* All of blue civil airway No. 22.

15. By striking the following control zones of intersection appearing in § 601.2: Cheyenne, Wyo.; Denver, Colo.; Grand Island, Nebr.; Laramie, Wyo.

This amendment shall become effective 00:01 E. S. T., March 1, 1942.

CHARLES I. STANTON,
*Acting Administrator.*

[F. R. Doc. 42-1549; Filed, February 21, 1942; 9:49 a. m.]

# TITLE 16—COMMERCIAL PRACTICES

## CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 4242]

### PART 3—DIGEST OF CEASE AND DESIST ORDERS

IN THE MATTER OF CONSUMERS MERCANTILE SERVICE

§ 3.99 (b) *Using or selling lottery devices—In merchandising.* In connection with offer, etc., in commerce of cameras, silverware, broilers, fishing tackle, clocks, pens, pencils, and other articles of merchandise, (1) supplying others with push cards or other devices which are to be used, or may be used, in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme; (2) shipping, etc., to agents or distributors, etc., push cards or other devices which are to be used or may be used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme; and (3) selling, etc., any merchandise by means of a game of chance, gift enterprise, or lottery scheme; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Sup. IV, sec. 45b) [Cease and desist order, Consumers Mercantile Service, Docket 4242, February 16, 1942]

*In the Matter of John J. Schocket, Individually and Trading as Consumers Mercantile Service*

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 16th day of February, A. D. 1942.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence taken before W. W. Sheppard and A. B. Duvall, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiners upon the evidence and exceptions filed thereto, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act;

*It is ordered,* That the respondent, John J. Schocket, an individual trading as Consumers Mercantile Service, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of cameras, silverware, broilers, fishing tackle, clocks, pens, pencils, and other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Supplying, or placing in the hands of others, push cards or other devices which are to be used, or may be used, in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme;

(2) Shipping, mailing, or transporting to agents or to distributors or to members of the purchasing public, push cards or other devices which are to be used or may be used in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme;

(3) Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

*It is further ordered,* That the respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 42-1556; Filed, February 21, 1942; 11:41 a. m.]

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[Docket No. 4541]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

IN THE MATTER OF BATTLE CREEK DRUGS, INC., ET AL.

§ 3.6 (c) *Advertising falsely or misleadingly—Composition of goods:* § 3.6 (n) *Advertising falsely or misleadingly—Nature—Product:* § 3.6 (t) *Advertising falsely or misleadingly—Qualities or properties of product:* § 3.6 (x) *Advertising falsely or misleadingly—Results:* § 3.6 (y) *Advertising falsely or misleadingly—Safety:* § 3.71 (e) *Neglecting, unfairly or deceptively, to make material disclosure—Safety.* In connection with offer, etc., of respondents' "BonKora", or any other similar product, disseminating, etc., any advertisements by means of the United States mails, or in commerce, or by any means, to induce, etc., directly or indirectly, purchase in commerce, etc., of said product, which advertisements represent, directly or through inference, that their said preparation "BonKora" is a popular cocktail preparation; that it is a preparation which, if taken as directed, will relieve or overcome obesity or reduce excess fat without dieting; that the use of said preparation will reduce fat from designated parts of the body such as the hips, waist and bust and reduce the measurements of such parts of the body; that said preparation contains no dangerous drugs and may be taken repetitiously with safety; or which advertisements fail to reveal that said preparation should not be used by persons suffering from nausea, vomiting, abdominal pains or other symptoms of appendicitis; prohibited, subject to the provision, however, that if the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisements need contain only the cautionary statement: Caution, Use Only as Directed. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Sup. IV, sec. 45b) [Cease and desist order, Battle Creek Drugs, Inc., et al., Docket 4541, February 17, 1942]

*In the Matter of Battle Creek Drugs, Inc., a Corporation, and Consolidated Royal Chemical Corporation, a Corporation, Trading and Doing Business as Consolidated Drug Trade Products, and as Bonkora Company*

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C. on the 17th day of February, A. D. 1942.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents and a stipulation as to the facts entered into by counsel for respondents herein and counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to the facts and its conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That the respondents Battle Creek Drugs, Inc., a corporation, and Consolidated Royal Chemical Corporation, a corporation trading as Consolidated Drug Trade Products, and as BonKora Company, or under any other name, their officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their product now named BonKora or any other product containing the same or similar ingredients, whether sold under the same name or any other name, do forthwith cease and desist from:

(1) Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that their preparation "BonKora" is a popular cocktail preparation; that it is a preparation which, if taken as directed, will relieve or overcome obesity or reduce excess fat without dieting; that the use of said preparation will reduce fat from designated parts of the body such as the hips, waist and bust and reduce the measurements of such parts of the body; that said preparation contains no dangerous drugs and may be taken repetitiously with safety; or which advertisement fails to reveal that said preparation should not be used by persons suffering from nausea, vomiting, abdominal pains or other symptons of appendicitis: *Provided, however,* That if the directions for use, wherever they appear on the label, in the labeling, or both on the label and in the labeling, contain a warning of the potential dangers in the use of said preparation as hereinabove set forth, such advertisement need contain only the cautionary statement: Caution, Use Only As Directed;

(2) Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in Paragraph (1) hereof, or which fails to reveal the affirmative cautionary statement required in Paragraph (1) hereof.

*It is further ordered,* That respondents shall within sixty (60) days after service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 42-1628; Filed, February 24, 1942; 11:32 a. m.]

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[Docket No. 3418]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

IN THE MATTER OF THE HARDWOOD INSTITUTE, ET AL.

§ 3.7 *Aiding, assisting and abetting unfair or unlawful act or practice:* § 3.27 (b) *Combining or conspiring—To eliminate competition—In conspirators' goods:* § 3.27 (d) *Combining or conspiring—To enhance, maintain or unify prices.* In connection with offer, etc., in commerce, of hardwood lumber, or products thereof, and on the part of respondent Hardwood Institute, and twenty-one corporate respondents, and on the part of their representatives, officers, etc., and among other things, as in order set forth, entering into, carrying out, or aiding or abetting in the carrying out, or the continuing of any agreement, understanding, combination, or conspiracy or cooperation or concert of action (to produce harmonious individual action) between and among any two or more of said respondents or between any one or more of said respondents and any other persons, partnerships, or corporations, for the purpose or with the effect of restricting, restraining, or eliminating competition in price; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Sup. IV, sec. 45b) [Cease and desist order, The Hardwood Institute, et al., Docket 3418, February 20, 1942]

§ 3.7 *Aiding, assisting and abetting unfair or unlawful act or practice:* § 3.27 (b) *Combining or conspiring—To eliminate competition—In conspirators'*

*goods:* § 3.27 (d) *Combining or conspiring—To enhance, maintain or unify prices.* In connection with offer, etc., in commerce, of hardwood lumber, or products thereof, and on the part of respondent Hardwood Institute, and twenty-one corporate respondents, and on the part of their representatives, officers, etc., and among other things, as in order set forth, by cooperative or concerted action, or agreement or understanding between and among any two or more of said respondents, or between any one or more of said respondents and any other persons, partnerships or corporations, (a) fixing, establishing, or maintaining prices, terms or conditions of sale, or promising or attempting to adhere to prices, terms, and conditions of sale of hardwood lumber or products thereof so fixed; (b) adopting, maintaining, or using a method or system for calculating and quoting prices predicated upon the use of figures f. o. b. Wausau, Wis., or any other basing point, plus freight therefrom, for the purpose or with the effect of matching or making the same the delivered price quotations of any two or more sellers of hardwood lumber or the products thereof at any given destination; (c) preparing, calculating, or circulating a compilation or compilations of delivery charges, freight factors, or so-called freight rates for use by sellers of hardwood lumber or products thereof for the purpose or with the effect of making or aiding in making the same delivered price quotations on the part of any two or more sellers of hardwood lumber or the products thereof at any given destination; (d) quoting prices, terms, and conditions of sale determined under a method or system of basing point—delivered price—quotations for the purpose or with the effect of matching or making the delivered price quotations of any two or more sellers of hardwood lumber or the products thereof the same at any given destination; or quoting prices, terms, or conditions of sale f. o. b. point of production or shipment that are dependent on, related to, or determined by such method or system; (e) treating buyers and users of hardwood lumber and the products thereof in any unfair or discriminatory manner or differently by systematically demanding, charging, accepting, or receiving, as an incident to the use of any basing-point method or system or any freight equalization method or system of delivered price quoting, larger mill net sums and amounts for products equal in quality and quantity from buyers and users located at or near the respective places of production of the respondents, than from other buyers and users more distantly located freight-wise from such respective places of production or shipment, for the purpose or with the effect of matching or making the same the delivered price quotations on the part of any two or more sellers of hardwood lumber and the produces thereof at any given destination; (f) reporting, filing, or exchanging among themselves, or with other competing sellers of hardwood lumber or the products thereof, base or other price lists, or adhering or agreeing to adhere to any extent to the prices quoted or included in such lists or collaborating among themselves or with other competing sellers concerning any price quotations included in such lists; (g) the opening of books or other records for examination by a common agent, or the reporting, filing, or exchanging among themselves or with others through a common agent or otherwise, information regarding the sales of any individual seller of hardwood lumber or products thereof, including the prices at which such sales are made, for the purpose or with the effect of securing a collective or cooperative comparison, through a common agent or otherwise, of the prices therein with the price quotations previously announced by any seller of hardwood lumber or products thereof; (h) filing or exchanging among themselves or with others, through a common agent or otherwise, statistical or other intimate details of sales made by any one seller of hardwood lumber or products thereof for the purpose or with the effect of aiding or abetting in eliminating or restraining competition in the sale of hardwood lumber or the products thereof; (i) formulating, adopting or using price quotations, business practices, terms, or conditions of sale, including discounts or other amounts to be allowed wholesalers, retailers, or other tradesmen, for the purpose or with the effect of producing uniformity in such quotations, business practices, terms, and conditions of sale and discounts among competitors in their sale of or offers to sell hardwood lumber or the products thereof; and (j) discussing or collaborating in the course of meetings or otherwise, among themselves or with others, or cooperating among themselves or with others, for the purpose or with the effect of continuing or carrying out or aiding in the continuing or the carrying out of any of the methods or practices specified and set forth in the immediately preceding prohibitions lettered (a) to (i) inclusive; prohibited, subject to the provision, however, that prohibition (f) shall not be construed as a prohibition against a seller giving to a customer price lists on items involved in sales by such seller to such customer. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Sup. IV, sec. 45b) [Cease and desist order, The Hardwood Institute, et al., Docket 3418, February 20, 1942]

§ 3.7 *Aiding, assisting and abetting unfair or unlawful act or practice:* § 3.27 (b) *Combining or conspiring—To eliminate competition—In conspirators' goods:* § 3.27 (d) *Combining or conspiring—To enhance, maintain or unify prices.* In connection with offer, etc., in commerce, of hardwood lumber, or products thereof, and on the part of respondent Hardwood Institute, and twenty-one corporate respondents, and on the part of their representatives, officers, etc., and among other things, as in order set forth, (1) reporting, filing, or exchanging, among themselves or with other competing sellers of hardwood lumber or the products thereof, base or other price lists; and (2) opening books or other records for examination by a common agent, or reporting, filing, or exchanging among themselves or with others through a common agent or otherwise, information regarding the sales of any individual seller of hardwood lumber or products thereof, including the prices at which such sales are made, for the purpose or with the effect of securing a collective or cooperative comparison, through a common agent or otherwise, of prices with price quotations previously announced by any seller of hardwood lumber or products thereof; prohibited, subject to the provision, however, that said first prohibition shall not be construed as one against seller giving to a customer price lists on items involved in sales by such seller to such customer. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U.S.C., Sup. IV, sec. 45b) [Cease and desist order, The Hardwood Institute, et al., Docket 3418, February 20, 1942]

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 20th day of February, A. D. 1942.

*In the Matter of The Hardwood Institute, an Unincorporated Association; A. L. Osborn, Individually, and as Manager and Secretary of The Hardwood Institute; and The Antrim Iron Company, The Bay de Noquet Company, The Bonifas Gorman Company (Referred to in the Complaint as The Boniface Gorman Company), The Brownlee Company, The Edward Hines Lumber Company, William Bonifas Lumber Company (Referred to in the Complaint as William Boniface Lumber Company), Holt Lumber Company, Kinzel Lumber Company, Marathon Paper Mills Company, Menominee and Bay Shore Lumber Company, Northwestern Cooperage and Lumber Company, The Oconto Company, The Rib Lake Lumber Company, The Underwood Veneer Company, The Von Platen and Fox Company, The M. J. Wallrich Land and Lumber Company, Weidman Lumber Company, Roddis Lumber and Veneer Company, Sawyer-Goodman Company, I. Stephenson Company, Thunder Lake Lumber Company, The Wisconsin Land and Lumber Company, The Yawkey-Bissel Company, The Yawkey-Alexander Lumber Company, Corporations, Members of The Hardwood Institute*

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answers of respondents, testimony and other evidence taken before Robert S. Hall, a trial examiner of the Commission theretofore duly designated by it,

in support of and in opposition to the allegations of said complaint, and a stipulation as to certain facts entered into between Edward J. Dempsey, attorney for the respondents (except respondents A. L. Osborn, Kinzel Lumber Company, Menominee and Bay Shore Lumber Company and Northwestern Cooperage and Lumber Company), and W. T. Kelley, Chief Counsel for the Commission, which provided, among other things, that the Commission might proceed upon the entire record, including such statement of stipulated facts, to make its report, stating its findings as to the facts (including inferences which it might draw from the entire records, the admissions made by representatives of the respondents in the pleadings and as otherwise disclosed by the record, and by such statement of stipulated facts), and its conclusion based thereon, and might enter its order disposing of the proceeding without the presentation of further argument or the filing of additional briefs, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

*It is ordered,* That respondents The Hardwood Institute, an unincorporated association, and The Antrim Iron Company, The Bay de Noquet Company, The Bonifas Gorman Company, the Brownlee Company, The Edward Hines Lumber Company, William Bonifas Lumber Company, Holt Lumber Company, Marathon Paper Mills Company, The Oconto Company, The Rib Lake Lumber Company, The Underwood Veneer Company, The Von Platen and Fox Company, The M. J. Wallrich Land and Lumber Company, Weidman Lumber Company, Roddis Lumber and Veneer Company, Sawyer-Goodman Company, I. Stephenson Company, Thunder Lake Lumber Company, The Wisconsin Land and Lumber Company, The Yawkey-Bissel Company, and The Yawkey-Alexander Lumber Company, corporations, both separately and as representatives of each other, and said respondents' officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce among and between the several states of the United States and in the District of Columbia, of hardwood lumber or products thereof, do forthwith cease and desist from:

1. Entering into, carrying out, or aiding or abetting in the carrying out, or the continuing of any agreement, understanding, combination or conspiracy or cooperation or concert of action to produce harmonious individual action) between and among any two or more of said respondents or between any one or more of said respondents and any other persons, partnerships or corporations, for the purpose or with the effect of restricting, restraining or eliminating competition in price;

2. Doing and performing, by cooperative or concerted action, or agreement or understanding between and among any two or more of said respondents, or between any one or more of said respondents, and any other persons, partnerships or corporations, the following acts, practices or things:

(a) Fixing, establishing, or maintaining prices, terms or conditions of sale or promising or attempting to adhere to prices, terms and conditions of sale of hardwood lumber or products thereof so fixed;

(b) Adopting, maintaining or using a method or system for calculating and quoting prices predicated upon the use of figures f. o. b. Wausau, Wisconsin, or any other basing point, plus freight therefrom, for the purpose or with the effect of matching or making the same the delivered price quotations of any two or more sellers of hardwood lumber or the products thereof at any given destination;

(c) Preparing, calculating, or circulating a compilation or compilations of delivery charges, freight factors, or so-called freight rates for use by sellers of hardwood lumber or products thereof for the purpose or with the effect of making or aiding in making the same delivered price quotations on the part of any two or more sellers of hardwood lumber or the products thereof at any given destination;

(d) Quoting prices, terms and conditions of sale determined under a method or system of basing point—delivered price—quotations for the purpose or with the effect of matching or making the delivered price quotations of any two or more sellers of hardwood lumber or the products thereof the same at any given destination; or quoting prices, terms or conditions of sale f. o. b. point of production or shipment that are dependent on, related to, or determined by such method or systems;

(e) Treating buyers and users of hardwood lumber and the products thereof in an unfair or discriminatory manner or differently by systematically demanding, charging, accepting or receiving, as an incident to the use of any basing-point method or system or any freight equalization method or system of delivered price quoting, larger mill net sums and amounts for products equal in quality and quantity from buyers and users located at or near the respective places of production of the respondents, than from other buyers and users more distantly located freightwise from such respective places of production or shipment, for the purpose or with the effect of matching or making the same the delivered price quotations on the part of any two or more sellers of hardwood lumber and the products thereof at any given destination;

(f) Reporting, filing, or exchanging among themselves, or with other competing sellers of hardwood lumber or the products thereof, base or other price lists, or adhering or agreeing to adhere to any extent to the prices quoted or included in such lists, or collaborating among themselves or with other competing sellers concerning any price quotations included in such lists; Provided, this sub-paragraph (f) shall not be construed as a prohibition against a seller giving to a customer price lists on items involved in sales by such seller to such customer;

(g) The opening of books or other records for examination by a common agent, or the reporting, filing or exchanging among themselves or with others through a common agent or otherwise, information regarding the sales of any individual seller of hardwood lumber or products thereof, including the prices at which such sales are made, for the purpose or with the effect of securing a collective or cooperative comparison, through a common agent or otherwise, or the prices therein with the price quotations previously announced by any seller of hardwood lumber or products thereof;

(h) Filing or exchanging among themselves or with others, through a common agent or otherwise, statistical or other intimate details of sales made by any one seller of hardwood lumber or products thereof for the purpose or with the effect of aiding or abetting in eliminating or restraining competition in the sale of hardwood lumber or the products thereof;

(i) Formulating, adopting or using price quotations, business practices, terms, or conditions of sale, including discounts or other amounts to be allowed wholesalers, retailers, or other tradesmen, for the purpose or with the effect of producing uniformity in such quotations, business practices, terms and conditions of sale and discounts among competitors in their sale of or offers to sell hardwood lumber or the products thereof;

(j) Discussing or collaborating in the course of meetings or otherwise, among themselves or with others, or cooperating among themselves or with others, for the purpose or with the effect of continuing or carrying out or aiding in the continuing or the carrying out of any of the methods or practices specified and set forth in the immediately preceding subparagraphs lettered (a) to (i), inclusive;

3. Reporting, filing, or exchanging, among themselves or with other competing sellers of hardwood lumber or the products thereof, base or other price lists; Provided this paragraph 3 shall not be construed as a prohibition against a seller giving to a customer price lists on items involved in sales by such seller to such customer;

4. Opening of books or other records for examination by a common agent, or reporting, filing or exchanging among themselves or with others through a common agent or otherwise, information regarding the sales of any individual seller of hardwood lumber or products thereof, including the prices at which such sales are made, for the purpose or with the effect of securing a collective or cooperative comparison, through a common agent or otherwise, of prices with price quotations previously announced by any seller of hardwood lumber or products thereof.

*It is further ordered,* That said respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

The respondent corporations Kinzel Lumber Company, Menominee and Bay Shore Lumber Company and Northwestern Cooperage and Lumber Company having been dissolved: *It is further ordered,* That this proceeding be, and it hereby is, dismissed as to said respondents.

The individual respondent A. L. Osborn having died subsequent to the institution of this proceeding: *It is further ordered,* That this proceeding be, and it hereby is, dismissed as to said respondent.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 42-1629; Filed, February 24, 1942; 11:33 a. m.]

## TITLE 19—CUSTOMS DUTIES

## CHAPTER I—BUREAU OF CUSTOMS

[T.D. 50568]

### PART 4—APPLICATION OF CUSTOMS LAWS TO AIR COMMERCE

PRESQUE ISLE AIR BASE, PRESQUE ISLE, MAINE, DESIGNATED AS AN AIRPORT OF ENTRY FOR A PERIOD OF ONE YEAR [1]

FEBRUARY 20, 1942.

The Presque Isle Air Base, Presque Isle, Maine, is hereby designated as an airport of entry for civil aircraft and merchandise carried thereon arriving from places outside the United States, as defined in section 9 (b) of the Air Commerce Act of 1926 (U.S.C. title 49, sec. 179 (b)), for a period of one year from February 20, 1942. (Sec. 7 (b), 44 Stat. 572; 49 U.S.C. 177 (b)).

[SEAL] HERBERT E. GASTON, *Acting Secretary of the Treasury.*

[F. R. Doc. 42-1589; Filed, February 23, 1942; 11:54 a. m.]

[1] This document affects the tabulation in 19 CFR 4.13.

## TITLE 21—FOOD AND DRUGS

## CHAPTER I—FOOD AND DRUG ADMINISTRATION

### PART 170—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL TEA ACT

Pursuant to the authority of sections 2 and 3 of the Federal Tea Act (29 Stat. 604; 35 Stat. 163; as amended 41 Stat. 712; 21 U.S.C. 41), the following standards prepared and submitted by the Board of Tea Experts are hereby fixed and established as standards under the Tea Act for the year beginning May 1, 1942, and ending April 30, 1943. § 170.19 (b) is hereby amended to read as follows:

§ 170.19 *Tea standards.*

* * * * *

(b) The following standards prepared and submitted by the Board of Tea Experts are hereby fixed and established as standards under the Tea Act for the year beginning May 1, 1942, and ending April 30, 1943:

(1) Java (to be used for all fully fermented East India type teas).

(2) China Congou (to be used for all fully fermented teas of similar type or manufacture).

(3) China Gunpowder (to be used for all green [unfermented] teas).

(4) Canton Oolong (to be used for all oolong [semifermented] teas).

(5) Scented Canton (to be used for all scented teas).

These standards apply to tea shipped from abroad on or after May 1, 1942. Tea shipped prior to May 1, 1942, will be governed by the standards which became effective May 1, 1941. (Secs. 2, 3, 29 Stat. 605, 41 Stat. 712; 21 U.S.C. 42, 43)

[SEAL] PAUL V. MCNUTT, *Administrator.*

FEBRUARY 17, 1942.

[F. R. Doc. 42-1551; Filed, February 21, 1942; 10:29 a. m.]

# TITLE 26—INTERNAL REVENUE

## CHAPTER I—BUREAU OF INTERNAL REVENUE

### SUBCHAPTER B—ESTATE AND GIFT TAXES

[Regulations 105]

### PART 81—REGULATIONS RELATING TO ESTATE TAX


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#### INTRODUCTORY PROVISIONS

SEC. 800. [Part I, Subchapter A.] APPLICATION OF SUBCHAPTER.

The provisions of this subchapter shall apply only to estates of decedents dying after the date of the enactment of this title. Estate taxes in the case of decedents dying on or prior to the date of the enactment of this title shall not be affected by the provisions of this subchapter, but shall remain subject to the applicable provisions of the Revenue Act of 1926 and prior revenue acts, except as such provisions are modified by legislation enacted subsequent to the Revenue Act of 1926.

SEC. 801. [Part I, Subchapter A.] CLASSIFICATION OF PROVISIONS.

The provisions of this subchapter are herein classified and designated as—

Part I—Introductory provisions.

Part II—Citizens or residents of the United States.

Part III—Nonresidents not citizens of the United States.

Part IV—Supplemental provisions.

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. Part IV shall apply to the estates both of citizens or residents of the United States and nonresidents not citizens of the United States.

#### SCOPE OF REGULATIONS

§ 81.1 *Scope of regulations.* The regulations in this part relate and shall apply only to estate taxes imposed by chapter 3 of the Internal Revenue Code (53 Stat., Part 1) on the estates of decedents dying after February 10, 1939, the date of the enactment of the Code. They do not supersede or otherwise affect estate tax regulations (including Treasury decisions) applicable under any provision of law in effect prior to February 11, 1939. Such prior regulations remain in full force and effect and continue to apply to estate taxes on the estates of decedents dying prior to February 11, 1939.

Each section, subsection, or paragraph of the Internal Revenue Code set forth in the regulations in this part shall be considered as a part of the respective regulations sections to which it corresponds.*

*§§ 81.1 to 81.105, inclusive, issued under the authority contained in section 3791 of the Internal Revenue Code (53 Stat. 467; 26 U.S.C. 3791).

#### DEFINITION OF TERMS

SEC. 930. [Part IV. Subchapter A.] "EXECUTOR," "NET ESTATE," "MONTH," "COLLECTOR."

When used in this subchapter—

(a) The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

(b) The term "net estate" means the net estate as determined under the provisions of section 812 or 861;

(c) The term "month" means calendar month; and

(d) The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

RATES OF TAX

(Basic Estate Tax—Estates of Citizens or Residents of the United States)

SEC. 810. [Part II, Subchapter A.] RATE OF TAX.

A tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 812) shall be imposed upon the transfer of the net estate of every decedent, citizen or resident of the United States, dying after the date of the enactment of this title.

1 per centum of the amount of the net estate not in excess of $50,000;

2 per centum of the amount by which the net estate exceeds $50,000 and does not exceed $100,000;

3 per centum of the amount by which the net estate exceeds $100,000 and does not exceed $200,000;

4 per centum of the amount by which the net estate exceeds $200,000 and does not exceed $400,000;

5 per centum of the amount by which the net estate exceeds $400,000 and does not exceed $600,000;

6 per centum of the amount by which the net estate exceeds $600,000 and does not exceed $800,000;

7 per centum of the amount by which the net estate exceeds $800,000 and does not exceed $1,000,000;

8 per centum of the amount by which the net estate exceeds $1,000,000 and does not exceed $1,500,000;

9 per centum of the amount by which the net estate exceeds $1,500,000 and does not exceed $2,000,000;

10 per centum of the amount by which the net estate exceeds $2,000,000 and does not exceed $2,500,000;

11 per centum of the amount by which the net estate exceeds $2,500,000 and does not exceed $3,000,000;

12 per centum of the amount by which the net estate exceeds $3,000,000 and does not exceed $3,500,000;

13 per centum of the amount by which the net estate exceeds $3,500,000 and does not exceed $4,000,000;

14 per centum of the amount by which the net estate exceeds $4,000,000 and does not exceed $5,000,000;

15 per centum of the amount by which the net estate exceeds $5,000,000 and does not exceed $6,000,000;

16 per centum of the amount by which the net estate exceeds $6,000,000 and does not exceed $7,000,000;

17 per centum of the amount by which the net estate exceeds $7,000,000 and does not exceed $8,000,000;

18 per centum of the amount by which the net estate exceeds $8,000,000 and does not exceed $9,000,000;

19 per centum of the amount by which the net estate exceeds $9,000,000 and does not exceed $10,000,000;

20 per centum of the amount by which the net estate exceeds $10,000,000.

(Basic Estate Tax—Estates of Nonresidents not Citizens of the United States)

SEC. 860. [Part III, Subchapter A.] RATE OF TAX.

A tax equal to the sum of the percentages set forth in section 810 of the value of the net estate (determined as provided in section 861) shall be imposed upon the transfer of the net estate of every decedent nonresident not a citizen of the United States dying after the date of the enactment of this title.

(Additional Estate Tax—Estates of Citizens or Residents of the United States and Nonresidents not Citizens of the United States)

SEC. 935. [Subchapter B.] RATE OF TAX.

(a) In addition to the estate tax imposed by section 810 or 860, there shall be imposed upon the transfer of the net estate of every decedent dying after the date of the enactment of this title, whether a citizen or resident of the United States or a nonresident not a citizen of the United States, a tax equal to the excess of—

(1) the amount of a tentative tax computed under subsection (b) of this section, over

(2) the amount of the tax imposed by section 810, in the case of a citizen or resident of the United States, or 860, in the case of a nonresident not a citizen of the United States, computed without regard to the provisions of this subchapter.

(b) (As amended by section 401 (a) of the Revenue Act of 1941; effective September 21, 1941.) The tentative tax referred to in subsection (a) (1) of this section shall be the tentative tax shown in the following table:

| *If the net estate is—* | *The tentative tax shall be—* |
|---|---|
| Not over $5,000 | 3% of the net estate. |
| Over $5,000 but not over $10,000 | $150, plus 7% of excess over $5,000. |
| Over $10,000 but not over $20,000 | $500, plus 11% of excess over $10,000. |
| Over $20,000 but not over $30,000 | $1,600, plus 14% of excess over $20,000. |
| Over $30,000 but not over $40,000 | $3,000, plus 18% of excess over $30,000. |
| Over $40,000 but not over $50,000 | $4,800, plus 22% of excess over $40,000. |
| Over $50,000 but not over $60,000 | $7,000, plus 25% of excess over $50,000. |
| Over $60,000 but not over $100,000 | $9,500, plus 28% of excess over $60,000. |
| Over $100,000 but not over $250,000 | $20,700, plus 30% of excess over $100,000. |
| Over $250,000 but not over $500,000 | $65,700, plus 32% of excess over $250,000. |
| Over $500,000 but not over $750,000 | $145,700, plus 35% of excess over $500,000. |
| Over $750,000 but not over $1,000,000 | $233,200, plus 37% of excess over $750,000. |
| Over $1,000,000 but not over $1,250,000 | $325,700, plus 39% of excess over $1,000,000. |
| Over $1,250,000 but not over $1,500,000 | $423,200, plus 42% of excess over $1,250,000. |
| Over $1,500,000 but not over $2,000,000 | $528,200, plus 45% of excess over $1,500,000. |
| Over $2,000,000 but not over $2,500,000 | $753,200, plus 49% of excess over $2,000,000. |
| Over $2,500,000 but not over $3,000,000 | $998,200, plus 53% of excess over $2,500,000. |
| Over $3,000,000 but not over $3,500,000 | $1,263,200, plus 56% of excess over $3,000,000. |
| Over $3,500,000 but not over $4,000,000 | $1,543,200, plus 59% of excess over $3,500,000. |
| Over $4,000,000 but not over $5,000,000 | $1,838,200, plus 63% of excess over $4,000,000. |
| Over $5,000,000 but not over $6,000,000 | $2,468,200, plus 67% of excess over $5,000,000. |
| Over $6,000,000 but not over $7,000,000 | $3,138,200, plus 70% of excess over $6,000,000. |
| Over $7,000,000 but not over $8,000,000 | $3,838,200, plus 73% of excess over $7,000,000. |
| Over $8,000,000 but not over $10,000,000 | $4,568,200, plus 76% of excess over $8,000,000. |
| Over $10,000,000 | $6,088,200, plus 77% of excess over $10,000,000. |

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of $100,000 provided in section 812 (a), the exemption shall be $40,000.

SEC. 935. (b) (As enacted on February 10, 1939.) The tentative tax referred to in subsection (a) (1) of this section shall equal the sum of the following percentages of the value of the net estate:

Upon net estates not in excess of $10,000, 2 per centum.

$200 upon net estates of $10,000; and upon net estates in excess of $10,000 and not in excess of $20,000, 4 per centum in addition of such excess.

$600 upon net estates of $20,000; and upon net estates in excess of $20,000 and not in excess of $30,000, 6 per centum in addition of such excess.

$1,200 upon net estates of $30,000; and upon net estates in excess of $30,000 and not in excess of $40,000, 8 per centum in addition of such excess.

$2,000 upon net estates of $40,000; and upon net estates in excess of $40,000 and not in excess of $50,000, 10 per centum in addition of such excess.

$3,000 upon net estates of $50,000; and upon net estates in excess of $50,000 and not in excess of $70,000, 12 per centum in addition of such excess.

$5,400 upon net estates of $70,000; and upon net estates in excess of $70,000 and not in excess of $100,000, 14 per centum in addition of such excess.

$9,600 upon net estates of $100,000; and upon net estates in excess of $100,000 and not in excess of $200,000, 17 per centum in addition of such excess.

$26,600 upon net estates of $200,000; and upon net estates in excess of $200,000 and not in excess of $400,000, 20 per centum in addition of such excess.

$66,600 upon net estates of $400,000; and upon net estates in excess of $400,000 and not in excess of $600,000, 23 per centum in addition of such excess.

$112,600 upon net estates of $600,000; and upon net estates in excess of $600,000 and not in excess of $800,000, 26 per centum in addition of such excess.

$164,600 upon net estates of $800,000; and upon net estates in excess of $800,000 and not in excess of $1,000,000, 29 per centum in addition of such excess.

$222,600 upon net estates of $1,000,000; and upon net estates in excess of $1,000,000 and not in excess of $1,500,000, 32 per centum in addition of such excess.

$382,600 upon net estates of $1,500,000; and upon net estates in excess of $1,500,000 and not in excess of $2,000,000, 35 per centum in addition of such excess.

$557,600 upon net estates of $2,000,000; and upon net estates in excess of $2,000,000 and not in excess of $2,500,000, 38 per centum in addition of such excess.

$747,600 upon net estates of $2,500,000; and upon net estates in excess of $2,500,000 and not in excess of $3,000,000, 41 per centum in addition of such excess.

$952,600 upon net estates of $3,000,000; and upon net estates in excess of $3,000,000 and not in excess of $3,500,000, 44 per centum in addition of such excess.

$1,172,600 upon net estates of $3,500,000; and upon net estates in excess of $3,500,000 and not in excess of $4,000,000, 47 per centum in addition of such excess.

$1,407,600 upon net estates of $4,000,000; and upon net estates in excess of $4,000,000 and not in excess of $4,500,000, 50 per centum in addition of such excess.

$1,657,600 upon net estates of $4,500,000; and upon net estates in excess of $4,500,000 and not in excess of $5,000,000, 53 per centum in addition of such excess.

$1,922,600 upon net estates of $5,000,000; and upon net estates in excess of $5,000,000 and not in excess of $6,000,000, 56 per centum in addition of such excess.

$2,482,600 upon net estates of $6,000,000; and upon net estates in excess of $6,000,000 and not in excess of $7,000,000, 59 per centum in addition of such excess.

$3,072,600 upon net estates of $7,000,000; and upon net estates in excess of $7,000,000 and not in excess of $8,000,000, 61 per centum in addition of such excess.

$3,682,600 upon net estates of $8,000,000; and upon net estates in excess of $8,000,000

and not in excess of $9,000,000, 63 per centum in addition of such excess.

$4,312,600 upon net estates of $9,000,000; and upon net estates in excess of $9,000,000 and not in excess of $10,000,000, 65 per centum in addition of such excess.

$4,962,600 upon net estates of $10,000,000; and upon net estates in excess of $10,000,000 and not in excess of $20,000,000, 67 per centum in addition of such excess.

$11,662,600 upon net estates of $20,000,000; and upon net estates in excess of $20,000,000 and not in excess of $50,000,000, 69 per centum in addition of such excess.

$32,362,600 upon net estates of $50,000,000; and upon net estates in excess of $50,000,000, 70 per centum in addition of such excess.

(Defense Tax; Effective After June 25, 1940, and Before September 21, 1941)

SEC. 951. [Subchapter C, as added by section 206 of the Revenue Act of 1940.] DEFENSE TAX.

In the case of a decedent dying after the date of the enactment of the Revenue Act of 1940 and before the expiration of five years after such date, the total amount of tax payable under this chapter shall be 10 per centum greater than the amount of tax which would be payable if computed without regard to this section. For the purposes of this section, the tax computed without regard to this section shall be such tax, after the application of the credits provided for in section 813 and section 936.

SEC. 401. (b) [Revenue Act of 1941.] DEFENSE TAX REPEALED.—

Subchapter C of Chapter 3 of the Internal Revenue Code is repealed.

SEC. 401. (c) [Revenue Act of 1941; enacted September 20, 1941.] EFFECTIVE DATE.

Subsections (a) and (b) shall be effective only with respect to estates of decedents dying after the date of the enactment of this Act.

DESCRIPTION OF THE TAX

§ 81.2 *General description.* Federal estate taxation under the Internal Revenue Code (chapter 3), applicable to estates of decedents dying on or after February 11, 1939, consists of, first, the basic tax, second, the additional tax, and, third, if the decedent died after June 25, 1940, and before September 21, 1941, the defense tax. Prior estate tax statutes are applicable to the estates of decedents who died before February 11, 1939.

The basic estate tax is imposed under subchapter A (Part II, section 810, estates of citizens or residents of the United States, and Part III, section 860, estates of nonresidents not citizens of the United States). The additional estate tax is imposed under subchapter B (section 935). The defense tax, imposed under subchapter C (section 951), as added by the Revenue Act of 1940 and repealed by the Revenue Act of 1941, is applicable to estates of decedents who died after June 25, 1940, and before September 21, 1941.

A credit is authorized against the basic estate tax (not in excess of 80 per cent thereof) for estate, inheritance, legacy, or succession taxes paid a State, Territory, or the District of Columbia (or, if the decedent died after June 29, 1939, a possession of the United States). A specific exemption of $100,000 is authorized for the purpose of the basic estate tax in the case of a resident or citizen of the United States.

No credit is allowable against the additional estate tax for estate, inheritance, legacy, or succession taxes paid a State, Territory, the District of Columbia, or any possession of the United States. A specific exemption of $40,000 is authorized for the purpose of the additional estate tax in the case of a resident or citizen of the United States.

Credits for Federal gift taxes are, under certain conditions and limitations, allowable against both the basic and the additional estate taxes. No specific exemption is authorized if the decedent was a nonresident not a citizen of the United States.

The Federal estate tax is neither a property nor an inheritance tax. It is imposed upon the transfer of the entire net estate and not upon any particular legacy, device, or distributive share. The relationship of the beneficiary to the decedent has no bearing on the question of liability or the extent thereof. The transfer of property is taxable although it escheats to the State for lack of heirs.*

§ 81.3 *Gross estate.* In addition to the general provisions of subsection (a) of section 811 requiring the inclusion in the gross estate of property (except real property situated outside the United States) to the extent of the interest therein of the decedent, other subsections of section 811 more specifically include in the gross estate for the purpose of the estate tax, as more fully explained hereafter in these regulations, certain transfers made during the decedent's life without an adequate and full consideration in money or money's worth, joint estates with right of survivorship, tenancies by the entirety, life insurance even though payable to beneficiaries other than the estate, property over which the decedent exercised a general power of appointment and dower or courtesy of the surviving spouse or statutory estate in lieu thereof.*

§ 81.4. *Net estate.* The term "net estate" has a distinct meaning in the statute, signifying the difference between the total value of the gross estate and the total amount of the authorized deductions. There is no basis for tax if the value of the gross estate does not exceed the total amount of the authorized deductions, but whether taxable or not, a return must be filed for every estate, unless in the case of a resident or citizen the value of the gross estate at the date of death does not exceed the specific exemption of $40,000.*

§ 81.5 *Definition of "resident" and "nonresident."* A resident is one who, at the time of his death, had his domicile in the United States; or one who was a citizen of the United States at the time of death and with respect to whose property any probate or administration proceedings are had in the United States Court for China. (See section 851.) A missionary who, at the time of death, was serving as such under a foreign missionary board of any religious denomination in the United States, will be presumed to have died a resident of the United States, if domiciled therein at the time of his or her commission and departure for such service, and not a nonresident merely by reason of his or her intention to remain permanently in such service. (See section 850.)

All persons not residents of the United States as above defined, or to whom the presumption just stated does not apply, are nonresidents.

Section 3797 (a) (9) of the Internal Revenue Code provides that (where not otherwise distinctly expressed or manifestly incompatible with the intent thereof) the term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

A citizen of the United States is a nonresident if his domicile is in Puerto Rico, the Philippine Islands, or otherwise outside the United States as defined in section 3797 (a) (9), whereas a subject or citizen of a foreign country is a resident if his domicile is in the United States; i. e., in any of the States, the Territory of Alaska or Hawaii, or the District of Columbia. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

Different provisions control the determination of the tax liability of the estates of citizens or residents of the United States and the estates of nonresidents not citizens of the United States.*

DETERMINATION OF TAX LIABILITY

§ 81.6 *Manner of determining liability.* The first step in the determination of tax liability is to ascertain the total value of the decedent's gross estate. (See §§ 81.20 to 81.28, inclusive, also § 81.49.) The second step is to determine the total amount of the deductions authorized and to subtract such total from the value of the gross estate in order to arrive at the value of the net estate. (See §§ 81.29 to 81.48, inclusive, and §§ 81.50 to 81.55, inclusive.) The third step is to compute the tax and any allowable credits. (See §§ 81.7, 81.8, and 81.9.)

If the decedent was a resident or citizen of the United States, a net estate computed with a specific exemption of $100,000 must be determined for the purpose of the basic estate tax, and another net estate computed with a specific exemption of $40,000 must be determined for the purpose of the additional estate tax.*

§ 81.7 *Rates and computation of tax.* Both the basic estate tax and the additional estate tax are computed in accordance with progressively graduated rates. The basic tax schedule provides rates from 1 per cent on the first $50,000 to 20 per cent on any amount in excess of $10,000,000. The additional tax schedule applicable to estates of decedents dying after September 20, 1941, provides rates from 3 per cent on the first $5,000 to 77 per cent on any amount in excess of $10,000,000. The additional tax schedule applicable to estates of decedents

dying on or before September 20, 1941, provides rates from 2 per cent on the first $10,000 to 70 per cent on any amount in excess of $50,000,000.

The gross basic tax is computed, in accordance with the basic tax schedule, on the value of the net estate determined for the purpose of the basic tax. The gross additional tax is ascertained by subtracting the gross basic tax from an amount computed, in accordance with the additional tax schedule applicable, on the value of the net estate determined for the purpose of the additional tax. In the case of a resident or citizen of the United States, the value of the net estate determined for the purpose of the basic tax differs from the value of the net estate determined for the purpose of the additional tax, since for the former a specific exemption of $100,000 is authorized while for the latter the amount of the specific exemption is $40,000.

The net basic tax is obtained by subtracting any authorized credits for gift, estate, and inheritance taxes from the amount of the gross basic tax. The net additional tax is obtained by subtracting any further authorized credit for gift tax from the amount of the gross additional tax. The total estate tax payable is the sum of the net basic tax and the net additional tax, unless the decedent died after June 25, 1940, and before September 21, 1941. The defense tax, applicable if the decedent died after June 25, 1940, and before September 21, 1941, is obtained by computing 10 per cent of the total of the net basic and net additional taxes. If the decedent died within such period, the sum of the net basic and net additional taxes, plus the defense tax, is the total estate tax payable.

There is provided below a table for the computation of the estate tax imposed by the provisions of the Code, together with an explanation thereof:

*Table for computation of estate tax*

| (A) | (B) | (1) For basic estate tax | | (2) For additional estate tax (tentative tax—total gross basic and additional taxes). In effect prior to September 21, 1941 | | (3) For additional estate tax (tentative tax—total gross basic and additional taxes). In effect after September 20, 1941 | |
|---|---|---|---|---|---|---|---|
| Net estate equaling— | Net estate not exceeding— | Tax on amount in column (A) | Rate of tax on excess over amount in column (A) | Tax on amount in column (A) | Rate of tax on excess over amount in column (A) | Tax on amount in column (A) | Rate of tax on excess over amount in column (A) |
| | | | *Per cent* | | *Per cent* | | *Per cent* |
| | $5,000 | | 1 | | 2 | | 3 |
| $5,000 | $10,000 | $50 | 1 | $100 | 2 | $150 | 7 |
| $10,000 | $20,000 | 100 | 1 | 200 | 4 | 500 | 11 |
| $20,000 | $30,000 | 200 | 1 | 600 | 6 | 1,600 | 14 |
| $30,000 | $40,000 | 300 | 1 | 1,200 | 8 | 3,000 | 18 |
| $40,000 | $50,000 | 400 | 1 | 2,000 | 10 | 4,800 | 22 |
| $50,000 | $60,000 | 500 | 2 | 3,000 | 12 | 7,000 | 25 |
| $60,000 | $70,000 | 700 | 2 | 4,200 | 12 | 9,500 | 28 |
| $70,000 | $100,000 | 900 | 2 | 5,400 | 14 | 12,300 | 28 |
| $100,000 | $200,000 | 1,500 | 3 | 9,600 | 17 | 20,700 | 30 |
| $200,000 | $250,000 | 4,500 | 4 | 26,600 | 20 | 50,700 | 30 |
| $250,000 | $400,000 | 6,500 | 4 | 36,600 | 20 | 65,700 | 32 |
| $400,000 | $500,000 | 12,500 | 5 | 66,600 | 23 | 113,700 | 32 |
| $500,000 | $600,000 | 17,500 | 5 | 89,600 | 23 | 145,700 | 35 |
| $600,000 | $750,000 | 22,500 | 6 | 112,600 | 26 | 180,700 | 35 |
| $750,000 | $800,000 | 31,500 | 6 | 151,600 | 26 | 233,200 | 37 |
| $800,000 | $1,000,000 | 34,500 | 7 | 164,600 | 29 | 251,700 | 37 |
| $1,000,000 | $1,250,000 | 48,500 | 8 | 222,600 | 32 | 325,700 | 39 |
| $1,250,000 | $1,500,000 | 68,500 | 8 | 302,600 | 32 | 423,200 | 42 |
| $1,500,000 | $2,000,000 | 88,500 | 9 | 382,600 | 35 | 528,200 | 45 |
| $2,000,000 | $2,500,000 | 133,500 | 10 | 557,600 | 38 | 753,200 | 49 |
| $2,500,000 | $3,000,000 | 183,500 | 11 | 747,600 | 41 | 998,200 | 53 |
| $3,000,000 | $3,500,000 | 238,500 | 12 | 952,600 | 44 | 1,263,200 | 56 |
| $3,500,000 | $4,000,000 | 298,500 | 13 | 1,172,600 | 47 | 1,543,200 | 59 |
| $4,000,000 | $4,500,000 | 363,500 | 14 | 1,407,600 | 50 | 1,838,200 | 63 |
| $4,500,000 | $5,000,000 | 433,500 | 14 | 1,657,600 | 53 | 2,153,200 | 63 |
| $5,000,000 | $6,000,000 | 503,500 | 15 | 1,922,600 | 56 | 2,468,200 | 67 |
| $6,000,000 | $7,000,000 | 653,500 | 16 | 2,482,600 | 59 | 3,138,200 | 70 |
| $7,000,000 | $8,000,000 | 813,500 | 17 | 3,072,600 | 61 | 3,838,200 | 73 |
| $8,000,000 | $9,000,000 | 983,500 | 18 | 3,682,600 | 63 | 4,568,200 | 76 |
| $9,000,000 | $10,000,000 | 1,163,500 | 19 | 4,312,600 | 65 | 5,328,200 | 76 |
| $10,000,000 | $20,000,000 | 1,353,500 | 20 | 4,962,600 | 67 | 6,088,200 | 77 |
| $20,000,000 | $50,000,000 | 3,353,500 | 20 | 11,662,600 | 69 | 13,788,200 | 77 |
| $50,000,000 | | 9,353,500 | 20 | 32,362,600 | 70 | 36,888,200 | 77 |

Column (A) of the table sets forth the net estates of specified amounts to which the taxes shown in the first subcolumn of each of the numbered columns relate. Column (B) indicates the respective maximum limits to which the rates shown in the second subcolumn of each of the numbered columns are applicable. Column (1) of the table sets forth the gross basic tax upon net estates of specified amounts and the rate for the gross basic tax upon the excess of such amounts. Column (2) of the table sets forth the total gross basic and additional taxes for net estates of specified amounts in the case of decedents dying prior to September 21, 1941, and the rate for the total gross basic and additional taxes upon the excess of such amounts. Column (3) of the table sets forth the total gross basic and additional taxes for net estates of specified amounts in the case of decedents dying on or after September 21, 1941, and the rate for the total gross basic and additional taxes upon the excess of such amounts.

An illustration of the table's use is as follows: The net estate for the basic estate tax amounts to $1,240,00. By reference to the table it will be seen that the specified amount in column (A) nearest to the value of the decedent's net estate but less than such value is $1,000,000. The tax upon this amount as indicated in column (1) opposite $1,000,000 in column (A) is $48,500. Upon the remainder of the net estate, $240,000, the tax is computed at the rate of 8 percent set out in the second subcolumn of column (1) opposite $1,000,000 in column (A). The tax on this remainder is, consequently, $19,200. The following result is thus obtained:

| | | |
|---|---|---|
| Tax on | $1,000,000= | $48,500 |
| Tax on | 240,000= | 19,200 |
| Total | 1,240,000 | 67,700 |

*Example (1)* (estate subject to both the basic tax and the additional tax, and involving credit for State inheritance tax). A resident decedent died July 15, 1939, leaving a net estate of the value of $210,000 after deducting the specific exemption of $100,000 allowed by section 812 (a). The tax shown in the first subcolumn of column (1) of the table on a net estate equaling $200,000 is $4,500. As $210,000 exceeds $200,000 and falls below $400,000, the tax on the excess of $10,000 is computed at the rate of 4 per cent, the rate shown in the second subcolumn of column (1). The $400 tax on such excess added to $4,500 gives $4,900, the gross basic tax computed under section 810. (Credit for gift tax is not involved in this example.) It will be assumed that the maximum amount of credit, $3,920, or 80 per cent of $4,900, is allowed for inheritance tax. The net basic tax is the difference between $4,900 and $3,920, or $980. For the purpose of the additional tax, the decedent's net estate after deducting the specific exemption of $40,000 is $270,000. The total gross basic and additional taxes shown in the first subcolumn of column (2) on a net estate equaling $200,000 is $26,600. As $270,000 exceeds $200,000 and falls below $400,000, the total gross taxes on the excess of $70,000 is computed at 20 per cent, the rate shown in the second subcolumn of column (2). The total gross taxes on such excess is, consequently, $14,000. The $14,000 added to the $26,600 gives $40,600, the total gross basic and additional taxes computed upon the net estate of $270,000 at the rates set forth under section 935. The difference between the total gross taxes, $40,600, and the gross basic tax, $4,900, is $35,700, the gross additional tax. As in this example no credit for gift tax is involved, the amount of the gross additional tax is the same as the net additional tax. The net basic tax, $980, added to the net additional tax,

$35,700, results in a total estate tax payable of $36,680. A tabulation of this example is as follows:

| | |
|---|---|
| Gross basic tax | $4,900 |
| Credit for gift tax | 0 |
| Gross basic tax, less credit for gift tax | 4,900 |
| Credit for estate or inheritance tax | 3,920 |
| Net basic tax | 980 |
| Total gross taxes (basic and additional taxes) | 40,600 |
| Gross basic tax | 4,900 |
| Gross additional tax | 35,700 |
| Credit for gift tax | 0 |
| Net additional tax | 35,700 |
| Total estate tax payable | 36,680 |

*Example* (2) (estate subject only to the additional tax imposed by section 935). The gross estate of a resident decedent who died August 1, 1939, amounts to $85,000. Deductions for administration expenses and claims against the estate are allowed in the amount of $10,000, leaving $75,000 before the deduction of the specific exemption authorized by section 812 (a). As that exemption is $100,000, it is apparent that the estate is not subject to the basic tax under section 810. However, as the specific exemption authorized by subsection (c) of section 935 is only $40,000, the estate is subject to the additional tax imposed by that section. For the purpose of such additional tax the net estate amounts to $35,000. The tax shown in the first subcolumn of column (2) of the table on a net estate of $30,000 is $1,200. As $35,000 exceeds $30,000 and falls below $40,000, the tax on the excess of $5,000 is computed at 8 per cent, the rate shown in the second subcolumn of column (2). The tax on such excess is, consequently, $400. The $400 added to the $1,200 gives $1,600, the tax computed upon the net estate of $35,000 at the rates prescribed by section 935. Inasmuch as, in this example, the estate is not subject under section 810 to the basic tax, $1,600 is the gross additional tax under section 935. As credit for gift tax is not involved in this example, the gross additional tax is the same as the net additional tax. It will be noted that credit for estate or inheritance taxes is not allowable against the additional tax imposed by section 935.

*Example* (3) (estates subject to both the basic tax and the additional tax, and involving credits for State inheritance tax and for gift tax). The value of the gross estate of a resident decedent who died April 15, 1940, is $400,000 and the value of the net estate for the purpose of the basic tax is $225,000. The gross basic tax computed on that net estate is $5,500. (See illustration for use of table in computing the tax.) On January 15, 1940, the decedent, in contemplation of death, transferred certain real estate to his daughter as a gift. The value of the real estate as of the date of the gift, and as of the time of death, was $144,000. As the result of this gift, a gift tax was paid in the amount of $7,200 on a net gift of $100,000 after deducting an exclusion of $4,000 and the $40,000 specific exemption allowed by provisions of the gift tax chapter. As the value of the transferred real estate is included in the decedent's gross estate, a credit for gift tax is allowed against the gross basic tax in such amount as does not exceed an amount which bears the same ratio to the gross basic tax, $5,500, as the value at which the taxable gift ($144,000 less the gift tax exclusion of $4,000) is included in the gross estate bears to the value of the entire gross estate. (See section 81.8.) This ratio, which is ascertained by dividing $140,000 by $400,000, is 0.35. The credit for gift tax is, therefore, allowed in the amount which results from multiplying $5,500 by 0.35, or $1,925. The gross basic tax $5,500, less the credit for gift tax, is $3,575. It will be assumed that State inheritance taxes paid equal or exceed the maximum amount of the credit allowable therefor (80 per cent of the difference between the gross basic tax and the gift tax credit). Accordingly, $2,860 is allowed as the credit for State inheritance taxes. The difference between $3,575 and $2,860 is $715, which is the net basic tax.

The net estate for the purpose of the additional tax is $285,000. The total gross basic and additional taxes computed in accordance with the table are $43,600. The difference between such total gross taxes and $5,500, the gross basic tax, is $38,100, the gross additional tax. The credit for gift tax against such gross additional tax (1) cannot exceed an amount which bears the same ratio to the gross additional tax as the value at which the taxable gift is included in the gross estate bears to the value of the entire gross estate ($38,100, the gross additional tax, multiplied by 0.35 equals $13,335), and (2) cannot exceed the difference between the total amount of the gift tax paid and the credit for gift tax allowed against the gross basic tax. The credit here allowed is $7,200 less $1,925, or $5,275. A tabulation of this example is as follows:

| | |
|---|---|
| Gross basic tax | $5,500 |
| Credit for gift tax | 1,925 |
| Gross basic tax, less gift tax credit | 3,575 |
| Credit for estate or inheritance tax | 2,860 |
| Net basic tax | 715 |
| Total gross taxes (basic and additional taxes) | 43,600 |
| Gross basic tax | 5,500 |
| Gross additional tax | 38,100 |
| Credit for gift tax | 5,275 |
| Net additional tax | 32,825 |
| Total estate tax payable (net basic and additional taxes) | 33,540 |

*Example* (4) (estate subject to the basic tax, the additional tax, and the defense tax, and involving credits for State inheritance tax and for gift tax). Assume the same facts stated in example (3) except that the date of the decedent's death is July 15, 1940. To the total net basic and additional taxes of $33,540 is added the defense tax of 10 per cent thereof, $3,354, resulting in a total estate tax payable of $36,894.

If the decedent died after September 20, 1941, the date of the enactment of the Revenue Act of 1941, column (3) instead of column (2) of the table must be used in computing the total gross basic and additional taxes, and the defense tax is not applicable to such an estate.*

CREDITS AGAINST ESTATE TAX

(GIFT TAX CREDIT)

(Credit Against Basic Tax)

SEC. 813. [Part II, Subchapter A.] CREDITS AGAINST TAX.

(a) *Gift tax*—(1) *Revenue Act of 1924.* In case a tax has been imposed under section 319 of the Revenue Act of 1924, 43 Stat. 313, as amended by section 324 of the Revenue Act of 1926, 44 Stat. 86, upon any gift, and thereafter upon the death of the donor the amount thereof is required by any provision of this subchapter to be included in the gross estate of the decedent then there shall be credited against and applied in reduction of the estate tax, which would otherwise be chargeable against the estate of the decedent under the provisions of this subchapter, an amount equal to the tax paid with respect to such gift; and in the event the donor has in any year paid the tax imposed by said section 319 with respect to a gift or gifts which upon the death of the donor must be included in his gross estate and a gift or gifts not required to be so included, then the amount of the tax which shall be deemed to have been paid with respect to the gift or gifts required to be so included shall be that proportion of the entire tax paid on account of all such gifts which the amount of the gift or gifts required to be so included bears to the total amount of gifts in that year.

(2) (As amended by Joint Resolution, approved March 17, 1941, Public Law 18, Seventy-seventh Congress, effective as of February 11, 1939.) *Revenue Act of 1932 or Chapter 4.* (A) If a tax has been paid under chapter 4 or under Title III of the Revenue Act of 1932, 47 Stat. 245, on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this subchapter, then there shall be credited against the tax imposed by section 810 or 860 the amount of the tax paid under chapter 4 or under Title III of the Revenue Act of 1932 with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 810 or 860 as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate.

(B) For the purposes of paragraph (A), the amount of tax paid for any year under chapter 4 or under Title III of the Revenue Act of 1932 with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

(Credit Against Additional Tax)

SEC. 936. [Subchapter B.] CREDITS AGAINST TAX.

* * * * *

(b) (as amended by Joint Resolution, approved March 17, 1941, Public Law 18, Seventy-seventh Congress, effective as of Febru-

ary 11, 1939)* (1) If a tax has been paid under chapter 4 or under Title III of the Revenue Act of 1932, 47 Stat. 245, on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this subchapter, then there shall be credited against the tax imposed by section 935 the amount of the tax paid under chapter 4 or under Title III of the Revenue Act of 1932 with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit (A) shall not exceed an amount which bears the same ratio to the tax imposed by section 935 as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate, and (B) shall not exceed the amount by which the gift tax paid under chapter 4 or under Title III of the Revenue Act of 1932 with respect to so much of the property as constituted the gift as is included in the gross estate, exceeds the amount of the credit under section 813 (a) (2).

(2) For the purposes of paragraph (1), the amount of tax paid for any year under chapter 4 or under Title III of the Revenue Act of 1932 with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

(INHERITANCE TAX CREDIT)

SEC. 813 [Part II, Subchapter A.] CREDITS AGAINST TAX.

* * * * *

(b) (as amended by section 403 of the Revenue Act of 1939, effective as of June 30, 1939, and by Joint Resolution, approved March 17, 1941, Public Law 18, Seventy-seventh Congress, effective as of February 11, 1939) *Estate, succession, legacy, and inheritance taxes.* The tax imposed by section 810 or 860 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia or any possession of the United States, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by this subsection shall not exceed 80 per centum of the tax imposed by section 810 or 860 (after deducting from such tax the credits provided by section 813(a)(2)), and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 821 or 864, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Board of Tax Appeals within the time prescribed in section 871, then within such four-year period or before the expiration of 60 days after the decision of the Board becomes final.

(2) If, under section 822(a)(2) or section 871(h), an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such four-year period or before the date of the expiration of the period of the extension.

Refund based on the credit may (despite the provisions of sections 910 to 912, inclusive), be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

SEC. 936. [Subchapter B.] CREDITS AGAINST TAX.

(a) The credit provided in section 813(b) (80 per centum credit), shall not be allowed in respect of such additional tax.

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 813. [Part II, Subchapter A.] CREDITS AGAINST TAX.

* * * * *

(b) (as originally enacted) *Estate, succession, legacy, and inheritance taxes.* The tax imposed by section 810 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by this subsection shall not exceed 80 per centum of the tax imposed by section 810 (after deducing from such tax the credits provided by section 813 (a) (2)), and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 821 or 864, except that—

* * * * *

SEC. 403. Revenue Act of 1939. CREDITS AGAINST ESTATE TAX OF TAX PAID TO POSSESSIONS.

(a) Section 813 (b) of the Internal Revenue Code (relating to the 80 per centum credit for estate, legacy, succession, and inheritance taxes paid) is amended by inserting after "District of Columbia," the following: "or any possession of the United States."

(b) The amendment made by subsection (a) shall be applicable only with respect to estates of decedents dying after the date of the enactment of this Act.

§ 81.8 *Credit for gift tax.* The estate is entitled, with certain limitations, to credit against the estate tax for Federal gift tax paid in respect of property included in the gross estate.

(a) *Credit against the basic tax imposed by section 810 or section 860.* Credit against the basic tax as authorized by section 813 (a) (2) for Federal gift tax paid on gifts made by the decedent cannot exceed an amount which bears the same ratio to the gross basic tax as the value of the property which was included for the purpose of the gift tax and also included in the gross estate bears to the value of the entire gross estate. In computing this ratio, the value of such property is the value determined for the purpose of the gift tax or the value determined for the purpose of the estate tax, whichever is the lower. In accordance with section 813 (a) (1) of the Internal Revenue Code, credit for the entire amount of gift tax paid under the Revenue Act of 1924 in respect of property included in the gross estate is allowed against the basic tax.

(b) *Credit against the additional tax imposed by section 935.* Credit against the additional tax as authorized by section 936 for Federal gift tax paid on gifts made by the decedent cannot exceed an amount which bears the same ratio to the gross additional tax as the value of the property which was included for the purpose of the gift tax and also included in the gross estate bears to the value of the entire gross estate. In computing this ratio, the value of such property is the value determined for the purpose of the gift tax or the value determined for the purpose of the estate tax, whichever is the lower. Furthermore, the credit cannot exceed the difference between the total amount of such gift tax paid and the amount of the credit therefor against the gross basic tax imposed by section 810 or section 860. No credit for gift tax paid under the Revenue Act of 1924 is allowed against the additional tax imposed by section 935.

Property included for the purpose of the gift tax and also included in the gross estate does not embrace any portion of the gift excluded under the provisions of the statute imposing the gift tax, and due allowance must be made for any such exclusions when computing the credit in accordance with the limitations set forth in the foregoing paragraphs (a) and (b). For example: A donor, in contemplation of death, transferred property valued at $100,000 to his five children subsequent to the effective date of the gift tax imposed by chapter 4 of the Internal Revenue Code, and paid the resulting tax. The property is thereafter included in his gross estate for the purpose of the estate tax imposed by the Internal Revenue Code at a value of $90,000. As the total value of the property at the time of the gift was $100,000 and the amount of $20,000 was excluded under the provisions of section 1003 (b) (2), the amount of $80,000, or four-fifths of the property, was included for the purpose of the gift tax. As the total value of the property determined for the purpose of the estate tax is $90,000, the value of four-fifths thereof is $72,000. Since $72,000 is the lower of the two values ($80,000 and $72,000), this amount is used in computing the ratio.

If only a part of the property, included for the purpose of a gift tax imposed upon transfers made during a certain calendar year, is also included in the decedent's gross estate for the purpose of the estate tax, the gift tax paid in respect of such a part of the property is an amount which bears the same ratio to the total gift tax paid for such calendar year as the value of such part of the property bears to the total amount of the net gifts (computed without deduction of the specific exemption) for such year. For the purpose of computing this proportion the values finally determined for the purpose of the gift tax will control, irrespective of the values determined for the purpose of the estate tax.

If all of the property, included for the purpose of a gift tax imposed upon transfers made during a certain calendar year, is included in the decedent's gross estate for the purpose of the estate tax, the gift tax paid in respect of the property included in the gross estate is the amount of the gift tax paid for that calendar year.

*Example.* On May 15, 1940, a resident donor gave to his son personal property valued at $52,000, donated cash of $50,000 to a charitable organization, and, in contemplation of death, transferred to his wife real property valued at $100,000. The total amount of gifts for the year for the purpose of the gift tax was $190,000, the amount of $4,000 for each

of the three donees being excluded from the total gifts under the provisions of chapter 4 of the Internal Revenue Code. After deducting $40,000 specific exemption and $46,000 for the gift to the charitable organization, the net gifts amounted $104,000. The gift tax of $7,710 on the net gifts was paid. The donor later died and the value of the real property transferred in contemplation of death was included in his gross estate for the purpose of the estate tax. The gift tax paid in respect of the property included in the gross estate is an amount which bears the same ratio to $7,710 as $96,000 bears to $144,000 or $5,140. Note that $96,000 is the portion of the real property subject to gift tax ($100,000 less the excluded $4,000) and that $144,000 is the amount of the net gifts computed without deduction of the specific exemption, $40,000.

The credit is allowable even though the gift tax is paid by the executor after the decedent's death and the amount of the gift tax is deductible from the gross estate as a debt of the decedent.

For a further illustration of the computation of gift tax credit, see example (3) in § 81.7.*

§ 81.9 *Credit for estate, inheritance, legacy, or succession taxes.* Under certain conditions a credit is authorized against the basic Federal estate tax for estate, inheritance, legacy, or succession taxes actually paid with respect to the estate of the decedent to any State or Territory or the District of Columbia. If the decedent died after June 29, 1939, the credit against the basic Federal estate tax, is, under the same conditions, authorized by section 813 (b) of the Internal Revenue Code, as amended by section 403 of the Revenue Act of 1939, for estate, inheritance, legacy, or succession taxes paid to any State or Territory, the District of Columbia, or any possession of the United States. The credit is limited to 80 per cent of such Federal estate tax, after deduction of the credit allowed, if any, against such tax for Federal gift taxes paid. No credit for payment of estate, inheritance, legacy, or succession taxes is allowed against the additional estate tax imposed by section 935. The credit is limited to the amount of the estate, inheritance, legacy, or succession taxes paid to any State, Territory, possession of the United States, or the District of Columbia in respect of property included in the gross estate of the decedent for Federal estate tax purposes.

The credit is also limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return, required by section 821 or 864 except as otherwise provided in this paragraph. If a petition was filed with the Board of Tax Appeals for the redetermination of a deficiency within the time prescribed by section 871 (a) (see § 81.73), the credit is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the expiration of 60 days after the decision of the Board becomes final, whichever period is the longer. If an extension of time has been granted for payment of the tax shown on the return or of a deficiency under section 822 (a) (2) or section 871 (h), the credit is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the date of the expiration of the extension, whichever period is the longer. Should the executor, in accordance with the provisions of sections 925 and 926, elect to postpone the payment of the Federal estate tax attributable to a reversionary or remainder interest, the credit allowable against the basic tax attributable to such interest is limited to estate, inheritance, legacy, or succession taxes attributable to such interest as are actually paid to any State or Territory or the District of Columbia (or, if the decedent died after June 29, 1939, to any possession of the United States) and credit therefor claimed prior to the expiration of 60 days after the termination of the precedent interest. (See section 927 of the Internal Revenue Code and § 81.79 (b) of these regulations.)

Refund based on the credit, despite the provisions of sections 910, 911, and 912, will be made if claim therefor is filed within the period provided for filing claim for credit. Such refunds will be made without interest.

Before the Commissioner allows any credit for any estate, inheritance, legacy, or succession taxes, there must be submitted to him the following:

(a) Certificate of the proper officer of the taxing State, Territory, District of Columbia, or possession of the United States showing: (1) the total amount of tax imposed (before adding interest and penalties and before allowing discount); (2) the amount of discount allowed; (3) the amount of penalties and interest imposed or charged; (4) the total amount actually paid in cash; and (5) the date of payment.

(b) A certificate of the above-mentioned officer showing whether (1) a claim for refund of such taxes or any part thereof is pending and (2) whether a refund of such taxes or any part thereof has been authorized. If any refund has been made, the date, the amount thereof, and a description of the property or interest in respect to which such refund was made must be shown in the certificate.

The evidence described above should be filed with the return, but if that is not convenient or possible, then it should be submitted as soon thereafter as practicable.

The Commissioner may require the submission of such additional proof as is deemed necessary to establish the right to the credit. For example, he may require an itemized list of the property in respect to which such taxes were imposed by the State, Territory, District of Columbia, or possession of the United States, certified by the officer having custody of the records pertaining to such taxes, and an affidavit of the executor stating whether any litigation has been instituted, or appeal taken, or any such action is designed or contemplated, either by him or, to his knowledge, by any beneficiary or other person, the final determination of which may affect the amount of such taxes.

If, subsequent to the allowance of a credit by the Commissioner, a refund is made of any such estate, inheritance, legacy, or succession taxes, the executor, or if the refund is made after the executor is discharged, then any person or persons to whom the refund is made, is required to advise the Commissioner of the date of the refund and the amount thereof, to furnish the Commissioner with a description of the property or interest in respect of which the refund was made, and to pay the Federal estate tax, if any, due as a result of such refund, together with interest.*

GROSS ESTATE—VALUATION

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(j) *Optional valuation.* If the executor so elects upon his return (if filed within the time prescribed by law or prescribed by the Commissioner in pursuance of law), the value of the gross estate shall be determined by valuing all the property included therein on the date of the decedent's death as of the date one year after the decedent's death, except that (1) property included in the gross estate on the date of death and, within one year after the decedent's death, distributed by the executor (or, in the case of property included in the gross estate under subsection (c), (d), or (f) of this section, distributed by the trustee under the instrument of transfer), or sold, exchanged, or otherwise disposed of, shall be included at its value as of the time of such distribution, sale, exchange, or other disposition, whichever first occurs, instead of its value as of the date one year after the decedent's death, and (2) any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time. No deduction under this subchapter of any item shall be allowed if allowance for such item is in effect given by the valuation under this subsection. Wherever in any other subsection or section of this chapter, reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this subsection, then for the purposes of the deduction under section 812 (d) or section 861 (a) (3), any bequest, legacy, devise, or transfer enumerated therein shall be valued as of the date of decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date one year after the decedent's death (substituting the date of sale or exchange in the case of property sold or exchanged during such one-year period).

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

§ 18.10 *Valuation of property*—(a) *General.* The value of every item of property includible in the gross estate is the fair market value thereof at the time of the decedent's death; or, if the executor elects in accordance with the provisions of § 81.11, it is the fair market value thereof at the date therein prescribed or such value adjusted as therein set forth. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. The fair market value of a particular kind of property includible in the gross estate is not to be determined by a forced sale price. Such value is to be determined by ascertaining as a basis the fair market value as of the applicable valuation date of each unit of the property. For example, in the case of shares of stock or bonds, such unit of property is a share or a bond. All relevant facts and elements of value as of the applicable valuation date should be considered in every case.

(b) *Real estate.* The property should not be returned at the local assessed value thereof unless such value represents the fair market value as of the applicable valuation date. (See § 81.12 for the manner of listing and describing real estate.)

(c) *Stocks and bonds.* The value of stocks and bonds, within the meaning of the Internal Revenue Code, is the fair market value per share or bond on the applicable valuation date.

In the case of stocks and bonds listed on a stock exchange the mean between the highest and lowest quoted selling prices on the valuation date shall be considered as the fair market value per share or bond. If there were no sales on the valuation date, such value shall be determined by taking the mean between the highest and lowest sales on the nearest date before and the nearest date after the valuation date (both such nearest dates being within a reasonable period), and by prorating the difference between such mean prices to the valuation date, and by adding or subtracting, as the case may be, such prorated portion of the difference to or from the mean price obtaining on such nearest date before the valuation date. For example, assume that sales of stock nearest the valuation date (June 15) occurred two days before (June 13) and three days after (June 18) and that on such days the mean sale prices per share were $10 and $15, respectively. The price of $12 shall be taken as representing the fair market value of a share of such stock as of the valuation date. If, however, on June 13 and June 18 the mean sale prices per share were $15 and $10, respectively, the price of $13 shall be taken as representing the fair market value of a share of such stock as of the valuation date. If the security was listed on more than one exchange, the records of the exchange where the security is principally dealt in should be employed. In valuing listed stocks and bonds the executor should observe care to consult accurate records to obtain values as of the applicable valuation date.

In the case of stocks and bonds which are not listed upon an exchange, but are dealt in through brokers, or have a market, the fair market value shall be determined by taking the mean between the highest and lowest selling prices as of the valuation date; or, if there were no sales on that date, such value shall be determined by taking the mean between the highest and lowest sales on the nearest date before and the nearest date after the valuation date (both such nearest dates being within a reasonable period), and by prorating the difference between such mean prices to the valuation date, and by adding or subtracting, as the case may be, such prorated portion of the difference to or from the mean price obtaining on such nearest date before the valuation date. If quotations are obtained from brokers, or evidence as to the sale of securities is obtained from the officers of the issuing companies, the executor should preserve in his files the letters furnishing such quotations or evidence of sale for inspection when the return is verified by an investigating officer.

If actual sales are not available during a reasonable period beginning before and ending after the valuation date, the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the nearest date before and the nearest date after the valuation date (both such nearest dates being within a reasonable period), and by prorating the difference between such mean prices to the valuation date, and by adding or subtracting, as the case may be, such prorated portion of the difference to or from the mean price obtaining on such nearest date before the valuation date.

If actual sale prices or quoted bona fide bid and asked prices are available on a date within a reasonable period prior to the valuation date, but if no actual sale prices or bona fide bid and asked prices are available on a date within a reasonable period after the valuation date, or vice versa, then the mean between such highest and lowest available sale prices or bid and asked prices may be taken as the value.

If actual sales or bona fide bid and asked prices are not available, then, in the case of corporate or other bonds, the value is to be arrived at by giving consideration to the soundness of the security, the interest yield, the date of maturity, and other relevant factors, and in the case of shares of stock, upon the basis of the company's net worth, earning power, dividend-paying capacity, and all other relevant factors having a bearing upon the value of the stock. Complete financial and other data upon which the valuation is based should be submitted with the return.

In cases in which it is established that the value per bond or share of any security determined on the basis of selling or bid and asked prices as herein provided does not reflect the fair market value thereof, then some reasonable modification of such basis or other relevant facts and elements of value shall be considered in determining fair market value.

The full value of securities pledged to secure an indebtedness of the decedent should be included in the gross estate. If the decedent had a trading account with a broker, all securities belonging to the decedent and held by the broker at the date of death must be included at their fair market value as of the applicable valuation date. Securities purchased on margin for the decedent's account and held by a broker should also be returned at their fair market value as of the applicable valuation date. The amount of the decedent's indebtedness to a broker or other person with whom securities were pledged will be allowed as a deduction from the gross estate in accordance with §§ 81.29, 81.36, and 81.52. (See § 81.12 for manner of listing and describing stocks and bonds.)

(d) *Interest in business.* Care should be taken to arrive at an accurate valuation of any business in which the decedent was interested, whether as partner or proprietor. A fair appraisal as of the applicable valuation date should be made of all the assets of the business, tangible and intangible, including good will, and the business should be given a net value equal to the amount which a willing purchaser, whether an individual or corporation, would pay therefor to a willing seller in view of the net value of the assets and the demonstrated earning capacity. Special attention should be given to fixing an adequate figure for the value of the good will of the business in all cases in which the decedent has not agreed, for an adequate and full consideration in money or money's worth, that his interest therein shall pass at his death to his surviving partner or partners.

The factors hereinbefore stated relative to the valuation of other property, if applicable, will be considered in determining the valuation of an interest in a business held as proprietor or partner. All evidence bearing upon such valuation should be submitted with the return, including copies of reports in any case in which examinations of the business have been made by accountants, engineers, or any technical experts as of or near the applicable valuation date.

(e) *Notes, secured and unsecured.* The value of notes, whether secured or unsecured, will be presumed to be the amount of unpaid principal, plus interest, unless the executor establishes a lower value, or it is shown that they are worthless. However, items of interest should be separately listed on the estate tax return. Unless returned at face value, together with accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount because of the interest rate, or date of maturity, or other cause, or that it is uncollectible, either in whole or in part, by reason of the insolvency of the party or parties liable, or for other cause, and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

(f) *Cash on hand or on deposit.* The amount of cash belonging to the decedent, either in his possession at the date of death or in the possession of another, or deposited with a bank, should be included. If bank checks outstanding at

the time of the decedent's death, given in discharge of bona fide, legal obligations of the decedent incurred for an adequate and full consideration in money or money's worth, and not as transfers coming within the provisions of section 811 (c) or (d) are subsequently honored by the bank and charged to the account, the balance remaining may be returned, provided the payments effected thereby are not claimed as deductions from the gross estate.

(g) *Household and personal effects.* All household and personal effects of the decedent should be included at the price which a willing buyer would pay to a willing seller. A room by room itemization is desirable. All the articles should be named specifically, except that a number of articles contained in the same room, none of which has a value in excess of $50, may be grouped. A separate value should be given for each article named. The executor may furnish, in lieu of an itemized list, a sworn statement, in duplicate, setting forth the aggregate value of the property as appraised by a competent appraiser, or appraisers of recognized standing and ability, or by a dealer or dealers in the class of personalty involved.

If, however, there are included among the household and personal effects articles having marked artistic or intrinsic value of a total value in excess of $2,000, such as jewelry, silverware, paintings, etchings, engravings, antiques, books, statuary, vases oriental rugs, collections of coins and stamps, the appraisal of an expert or experts, under oath, should be filed with the return, Form 706, accompanied by the affidavit, in duplicate, of the executor as to the completeness of the itemized list of such property and of the disinterested character and the qualifications of the appraiser or appraisers.

If it is desired to effect distribution or sale of any portion of the household or personal effects in advance of the investigation by an officer of the Bureau of Internal Revenue, information to that effect should be given to the internal revenue agent in charge. The statement to the internal revenue agent in charge should be accompanied by a verified appraisal of such property and an affidavit of the executor as to the completeness of the list of such property and the qualifications of the appraiser, as already referred to, but such an appraisal and affidavit need not be in duplicate. If a personal inspection by an officer of the Bureau is not deemed necessary, the executor will be so advised. This procedure is designed to facilitate disposition of such property and to obviate future expense and inconvenience to the estate by affording the Commissioner an opportunity to make an investigation should one be deemed necessary prior to sale or distribution. (For location of the offices of the internal revenue agents in charge and the territory embraced in each division, see Appendix[1].)

If expert appraisers are employed care should be taken to see that they are reputable and of recognized competency to appraise the particular class of property involved. In the appraisal, books in sets by standard authors should be listed in separate groups. In listing paintings having artistic value, the size, subject, and artist's name should be stated. In the case of oriental rugs, the size, make, and general condition should be given. Sets of silverware should be listed in separate groups. Groups or individual pieces of silverware should be weighed and the weights given in troy ounces. In arriving at the value of silverware, the appraisers should take into consideration its antiquity, utility, desirability, condition, and obsolescence.

(h) *Other property.* Any property not specifically treated in this section should be valued in accordance with the rule laid down in paragraph (a) of this section. Live stock, farm machinery, harvested and growing crops should be itemized and the value of each item separately returned.

(i) *Annuities, life, remainder, and reversionary interests.* (1) If the executor adopts the option set forth in § 81.11, any annuity, life, remainder, or reversionary interest includible in the gross estate should be valued as of the date of the decedent's death in accordance with the provisions of this section and then such value should be adjusted as explained in § 81.11 for any difference in value between the date of death and the applicable subsequent date due to causes other than mere lapse of time. If the executor does not adopt the option set forth in § 81.11, the value of any such interest should be computed as hereinafter prescribed without such further adjustment for any decrease or increase in the value of the property subsequent to the date of death.

(2) The value of an annuity contract issued by a company regularly engaged in the selling of contracts of that character is established through the sale by that company of comparable contracts.

(3) All other future payments are to be discounted upon the basis of compound interest at the rate of 4 per cent a year. If the time of payment or of payments is dependent upon the continuation of, or upon the termination of a life or of lives, the Actuaries' or Combined Experience Table of Mortality, as extended, and established actuarial principles are to be used in the computation of the present worth. For the purpose of the computation the age of a person is to be taken as the age of that person at his nearest birthday. Table A, a part of this section, gives factors applicable to a case in which only one life is involved. (See paragraphs (4) to (8), inclusive.) Table B, a part of this section, gives factors applicable to a case in which only a term-certain is involved. (See paragraphs (9) to (11), inclusive.) If the time of payment or of payments is dependent upon the continuation of, or termination of more than one life, or there is a term-certain concurrent with one or more lives, a special computation in accordance with the first two sentences of this paragraph is necessary. A case requiring a special computation may be stated to the Commissioner who will furnish the applicable factor, provided such request is made sufficiently in advance of the due date of the return. Such request must fully disclose all relevant facts. The date of birth of each person, the duration of whose life may affect the value of the interest, should be established by affidavit.

(4) If the decedent had a remainder interest in property subject to the life estate of another, the present worth of the remainder interest at the time of death should be obtained by multiplying the value of the property at the time of death by the figure in column 3 of Table A opposite the number of years nearest to the actual age of the life tenant.

*Example.* The decedent was entitled to receive property worth $50,000 upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the time of the decedent's death was 31 years 5 months old. By reference to Table A, it is found that the figure in column 3, opposite 31 years, is 0.31262. The present worth of the remainder interest at the date of death is, therefore, $15,631 ($50,000 multiplied by 0.31262).

(5) In case the decedent was entitled to receive an annuity of a definite amount during the lifetime of another person, payable at the end of annual periods, the present worth at the time of the decedent's death must be computed upon the basis of the value of a life annuity at the age of the other person. The amount payable annually should be multiplied by the figure in column 2 of Table A opposite the number of years in column 1 nearest to the actual age of the other person.

*Example.* The decedent received under the terms of his father's will an annuity of $10,000 for the life of his elder brother. The brother at the decedent's death was 40 years 8 months old. By reference to Table A, the figure in column 2 opposite 41 years, the number nearest to the brother's actual age, is found to be 14.86102. The present worth of the annuity at the date of the decedent's death is, therefore, $148,610.20.

(6) In the case of an annuity under which the decedent was entitled to receive during the life of another payments at the end of each semiannual, quarterly, or monthly period, the value of the annuity is to be determined by multiplying the aggregate amount to be paid within a year by the figure in column 2 of Table A opposite the number of years in column 1 nearest the actual age of the person whose life measures the duration of the annuity, and then multiplying the product by 1.01820 for monthly payments, by 1.01488 for quarterly payments, or by 1.00990 for semiannual payments.

*Example.* If, in the example given in paragraph (5), the annuity is payable in semiannual installments of $5,000 at the end of each semiannual period, the aggregate annual amount, $10,000, should be multiplied by the factor 14.86102, and the product should be multiplied by 1.00990. The present worth of the annuity at the date of death is, therefore, $150,081.44 ($10,000×14.86102×1.00990).

(7) If the first payment of an annuity for the life of an individual is to be paid at once, the value of the annuity is the

[1] Filed as part of the original document.

sum of the first payment plus the present worth of a similar annuity, the first payment of which is not to be made until the end of the first period.

*Example.* The decedent was entitled to receive an annuity of $50 a month payable during the life of another. The decedent died on the day a payment was due. At the date of the decedent's death the person whose life measures the duration of the annuity was 50 years of age. The value of the annuity at the date of decedent's death is $50 plus the product of $50×12×12.47032 (see Table A)×1.01820 (see preceding paragraph (6)), or $7,668.38 [$50 plus ($50×12×12.47032×1.01820)].

(8) If the decedent was entitled to receive the entire income of certain property during the life of another person, or was entitled to the use of nonincome-producing property during the life of another person, a hypothetical annuity at a rate of 4 per cent of the value of the property should be made the basis of the calculation. A provision for the payment of income in semiannual, quarterly, or monthly installments does not affect the value to be assigned to the life interest.

*Example.* The decedent was entitled to receive the income from a fund of $100,000 during the life of a person 41 years old. The value of a hypothetical annuity of $4,000, dependent upon the life of such a person, is indicated by the table to be $59,444.08 ($4,000 multiplied by 14.86102).

(9) If the decedent was entitled to receive property at the end of a specified number of years, Table B or an extension thereof should be used.

*Example.* The decedent, who was entitled to receive $100,000 at a certain date, died 30 years prior to such date. The value of his right is the product of $100,000 multiplied by 0.308319, the factor in column 3, Table B, opposite 30 years in column 1.

(10) In the case of an annuity under which the decedent was entitled during a term-certain to receive payments at the end of each semiannual, quarterly, or monthly period, the value of the annuity is to be determined by multiplying the aggregate amount to be paid within a year by the applicable factor in column 2 of Table B and the product is to be multiplied by 1.01820 for monthly payments, by 1.01488 for quarterly payments, or by 1.00990 for semiannual payments.

*Example.* The decedent was an annuitant for a term-certain, being entitled to $1,000 annually payable in installments of $500 at the end of each semiannual period. A semiannual payment of $500 had been made just before the death of the decedent and there remained 20 payments to be made over a period of 10 years. The value of the annuity as of the date of the decedent's death is the product of $500×2×8.11089 (see Table B)×1.00990, or $8,191.19.

(11) If the first payment of an annuity for a definite number of years is to be paid at once, the applicable factor is the product of the factor shown in Table B multiplied by 1.02154 for monthly payments, by 1.02488 for quarterly payments, by 1.02990 for semiannual payments, or by 1.04 for annual payments.

*Example.* The decedent was the beneficiary of an annuity of $50 a month. On the day a payment was due, the decedent died. There were 300 payments to be made, including the payment due. The value of the annuity as of the date of decedent's death is the product of $50×12×15.62208 (see Table B)×1.02154, or $9,575.15 ($50×12×15.62208×1.02154).

TABLE A—*Table, single life, 4 per cent, showing the present worth of an annuity, or a life interest, and of a reversionary interest*

| 1<br>Age | 2<br>Annuity, or present value of $1 due at the end of each year during the life of a person of specified age | 3<br>Reversion, or present value of $1 due at the end of the year of death of a person of specified age |
|---|---|---|
| | *Annuity* | *Reversion* |
| 0 | $14.72829 | $0.39507 |
| 1 | 17.30771 | .29586 |
| 2 | 18.69578 | .24247 |
| 3 | 19.15901 | .22465 |
| 4 | 19.41226 | .21491 |
| 5 | 19.55301 | .20950 |
| 6 | 19.61731 | .20703 |
| 7 | 19.62502 | .20673 |
| 8 | 19.61097 | .20727 |
| 9 | 19.53413 | .21022 |
| 10 | 19.45359 | .21332 |
| 11 | 19.36943 | .21656 |
| 12 | 19.28184 | .21993 |
| 13 | 19.19065 | .22344 |
| 14 | 19.09590 | .22708 |
| 15 | 18.99764 | .23086 |
| 16 | 18.89569 | .23478 |
| 17 | 18.79010 | .23884 |
| 18 | 18.68070 | .24305 |
| 19 | 18.56751 | .24740 |
| 20 | 18.45038 | .25191 |
| 21 | 18.32932 | .25656 |
| 22 | 18.20416 | .26138 |
| 23 | 18.07471 | .26636 |
| 24 | 17.94097 | .27150 |
| 25 | 17.80274 | .27682 |
| 26 | 17.65984 | .28231 |
| 27 | 17.51224 | .28799 |
| 28 | 17.35968 | .29386 |
| 29 | 17.20225 | .29991 |
| 30 | 17.03961 | .30617 |
| 31 | 16.87176 | .31262 |
| 32 | 16.69846 | .31929 |
| 33 | 16.51964 | .32617 |
| 34 | 16.33503 | .33327 |
| 35 | 16.14437 | .34060 |
| 36 | 15.94759 | .34817 |
| 37 | 15.74227 | .35599 |
| 38 | 15.53421 | .36407 |
| 39 | 15.31722 | .37241 |
| 40 | 15.09295 | .38104 |
| 41 | 14.86102 | .38996 |
| 42 | 14.62122 | .39918 |
| 43 | 14.37356 | .40871 |
| 44 | 14.11860 | .41852 |
| 45 | 13.85713 | .42857 |
| 46 | 13.58958 | .43886 |
| 47 | 13.31698 | .44935 |
| 48 | 13.03942 | .46002 |
| 49 | 12.75716 | .47088 |
| 50 | 12.47032 | .48191 |
| 51 | 12.17919 | .49311 |
| 52 | 11.88408 | .50446 |
| 53 | 11.58531 | .51595 |
| 54 | 11.28325 | .52757 |
| 55 | 10.97789 | .53931 |
| 56 | 10.66982 | .55116 |
| 57 | 10.35931 | .56310 |
| 58 | 10.04630 | .57514 |
| 59 | 9.73131 | .58726 |
| 60 | 9.41474 | .59943 |
| 61 | 9.09765 | .61163 |
| 62 | 8.78052 | .62383 |
| 63 | 8.46412 | .63600 |
| 64 | 8.14888 | .64812 |
| 65 | 7.83552 | .66017 |
| 66 | 7.52476 | .67212 |
| 67 | 7.21699 | .68397 |
| 68 | 6.91298 | .69565 |
| 69 | 6.61301 | .70719 |
| 70 | 6.31716 | .71857 |
| 71 | 6.02612 | .72976 |
| 72 | 5.74003 | .74077 |
| 73 | 5.45928 | .75157 |

TABLE A—*Table, single life, 4 per cent, showing the present worth of an annuity, or a life interest, and of a reversionary interest*—Continued

| 1<br>Age | 2<br>Annuity, or present value of $1 due at the end of each year during the life of a person of specified age | 3<br>Reversion, or present value of $1 due at the end of the year of death of a person of specified age |
|---|---|---|
| | *Annuity* | *Reversion* |
| 74 | $5.18402 | $0.76216 |
| 75 | 4.91463 | .77251 |
| 76 | 4.65125 | .78264 |
| 77 | 4.39383 | .79254 |
| 78 | 4.14286 | .80220 |
| 79 | 3.89868 | .81159 |
| 80 | 3.66071 | .82074 |
| 81 | 3.42900 | .82965 |
| 82 | 3.20268 | .83830 |
| 83 | 2.98024 | .84691 |
| 84 | 2.76106 | .85534 |
| 85 | 2.54366 | .86371 |
| 86 | 2.32795 | .87200 |
| 87 | 2.11384 | .88024 |
| 88 | 1.90116 | .88842 |
| 89 | 1.69107 | .89650 |
| 90 | 1.48540 | .90441 |
| 91 | 1.28432 | .91214 |
| 92 | 1.09024 | .91961 |
| 93 | .90647 | .92667 |
| 94 | .73687 | .93320 |
| 95 | .58435 | .93906 |
| 96 | .46182 | .94378 |
| 97 | .36698 | .94742 |
| 98 | .24038 | .95229 |
| 99 | .00000 | .96154 |

TABLE B—*Table showing the present worth at 4 per cent of an annuity for a term-certain, and of a reversionary interest postponed for a term-certain*

| 1<br>Number of years | 2<br>Present worth of an annuity of $1, payable at the end of each year, for a certain number of years | 3<br>Present worth of $1, payable at the end of a certain number of years |
|---|---|---|
| | *Annuity* | *Reversion* |
| 1 | $0.96154 | $0.961538 |
| 2 | 1.88609 | .924556 |
| 3 | 2.77509 | .888996 |
| 4 | 3.62989 | .854804 |
| 5 | 4.45182 | .821927 |
| 6 | 5.24214 | .790314 |
| 7 | 6.00205 | .759918 |
| 8 | 6.73274 | .730690 |
| 9 | 7.43533 | .702587 |
| 10 | 8.11089 | .675564 |
| 11 | 8.76047 | .649581 |
| 12 | 9.38507 | .624597 |
| 13 | 9.98565 | .600574 |
| 14 | 10.56312 | .577475 |
| 15 | 11.11839 | .555265 |
| 16 | 11.65229 | .533908 |
| 17 | 12.16567 | .513373 |
| 18 | 12.65929 | .493628 |
| 19 | 13.13394 | .474642 |
| 20 | 13.59032 | .456387 |
| 21 | 14.02916 | .438834 |
| 22 | 14.45111 | .421955 |
| 23 | 14.85684 | .405726 |
| 24 | 15.24696 | .390121 |
| 25 | 15.62208 | .375117 |
| 26 | 15.98277 | .360689 |
| 27 | 16.32958 | .346816 |
| 28 | 16.66306 | .333477 |
| 29 | 16.98371 | .320651 |
| 30 | 17.29203 | .308319 |

*

§ 81.11 *Optional valuation date.* In general, the object of subsection (j) of section 811 is to make provision whereby the amount of tax otherwise payable may be lessened when, within the year following the decedent's death, the gross estate has suffered a shrinkage in its aggregate value.

The executor may, by an election upon his return, Form 706, if filed within the time prescribed by law or prescribed by the Commissioner in pursuance of law, have the property which was included in the gross estate on the date of the decedent's death valued as of the applicable dates, as follows:

(a) Any property distributed, sold, exchanged, or otherwise disposed of within one year after the decedent's death, valued as of the date of such distribution, sale, exchange, or other disposition, whichever first occurs;

(b) Any property not distributed, sold, exchanged, or otherwise disposed of within such 1-year period, valued as of the date one year after the date of decedent's death;

(c) Any property, interest, or estate which is affected by mere lapse of time, valued as of the date of decedent's death; except that an adjustment is to be made for any difference in its value, not due to such lapse of time, as of the date one year after the date of decedent's death, or as of the date of its distribution, sale, exchange, or other disposition, whichever date first occurs.

Property "distributed" is limited to distributions thereof by the executor, or by the trustee in the case of property included in the gross estate under subsection (c), (d), or (f) of section 811. Distribution may be effected by the entry of the order or decree of distribution, or, if there is no such order or decree, by the segregation or separation of the property from the estate or the trust, or by the actual paying over or delivery of the property to the person entitled thereto by the will, or under the law, or by the terms of the trust.

The sale, exchange, or other disposition, to which subsection (j) refers, may be one made by the executor, or by the trustee of property included in the gross estate under subsection (c), (d), or (f) of section 811, or by any other person to whom the property had not been distributed by the executor or by such a trustee, or to whom it had not passed from the gross estate as the result of a sale, exchange, or other disposition, as, for example, a sale, exchange, or other disposition by an heir, devisee, donee, or grantee to whom the decedent in his lifetime transferred the property, or by the survivor of the decedent if the property had been held by them subject to the right of survivorship.

Property, in the case of a sale, exchange, or other disposition within the 1-year period, is to be valued as of the date when it ceases to form a part of the gross estate, that is, the date when the title passes as the result of a sale, exchange, or other disposition. The terms "distributed," "sold," "exchanged," and "otherwise disposed of" comprehend all possible ways by which property may be separated or passed from the gross estate. Thus, money on hand at decedent's death which is thereafter used in the payment of the funeral expenses, or in settlement of claims against the estate, or is invested, falls within the term "otherwise disposed of."

In valuing the gross estate under the optional valuation method, all of the property interests existing at the date of death which are a part of the gross estate as determined under the subsections of section 811 constitute the property to be valued as of one year after the date of the decedent's death, or as of the date of the decedent's death, or as of some intermediate date. Such property is hereinafter referred to as "included property." "Included property" as of the date of the decedent's death remains "included property" for the purpose of valuing the gross estate under the optional valuation method even though it is changed in form during the optional valuation period by being actually received, or disposed of, in whole or in part, by the estate. However, property earned or accrued (whether received or not) after the decedent's death and during the optional valuation period with respect to any property interest existing at the date of death, which does not represent a form of "included property" itself or the receipt thereof, is to be excluded in valuing the gross estate at the subsequent valuation date and is hereinafter referred to as "excluded property." Among the items of "included property" to be valued in accordance with these principles are the following:

(1) *Interest-bearing obligations.* Interest-bearing obligations, such as bonds and notes, may, at the date of death, comprise two elements of "included property," the principal of the obligation itself and interest accrued to the date of death, and each is to be separately valued as of the applicable valuation date. The bond or note is to be valued as of the applicable valuation date without regard to accrued interest. Interest accrued after the date of death and prior to the subsequent valuation date constitutes "excluded property." However, any part payment of principal made between the date of death and the subsequent valuation date, or any advance payment of interest for a period after the subsequent valuation date made during the optional valuation period which has the effect of reducing the value of the principal obligation as of the subsequent valuation date, will be included in the gross estate, and valued as of the date of such payment.

(2) *Leased property.* The principles applicable with respect to interest-bearing obligations also apply to leased realty or personality included in the gross estate with the obligation to pay rent reserved. Both the realty or personalty itself and the rents accrued to the date of death constitute "included property," and each is to be separately valued as of the applicable valuation date. Any rent accrued after the date of death and prior to the subsequent valuation date is "excluded property." The principle applicable with respect to interest paid in advance also applies to advance payments of rent.

(3) *Noninterest-bearing obligations.* In the case of noninterest-bearing obligations sold at a discount, such as Treasury bills, the principal obligation and the discount amortized to the date of death are property interests existing at the date of death and constitute "included property." The obligation itself is to be valued thereafter at the subsequent valuation date without regard to any further increase in value due to amortized discount. The additional discount amortized after death and during the optional valuation period is the equivalent of interest accruing during that period and is, therefore, not to be included in the gross estate under the optional valuation method.

(4) *Stock of a corporation.* Shares of stock in a corporation and dividends declared to stockholders of record on or before the date of the decedent's death and not collected at the date of death constitute "included property" of the estate. Ordinary dividends out of earnings and profits, whether in cash or in shares of the corporation or in other property, declared to stockholders of record after the date of the decedent's death are "excluded property" and are not to be valued under the optional valuation method. If, however, dividends are declared to stockholders of record after the date of the decedent's death with the effect that the shares of stock at the subsequent valuation date do not reasonably represent the same "included property" of the gross estate as existed at the date of the decedent's death, such dividends are "included property" except to the extent that such dividends are out of earnings of the corporation after the date of the decedent's death. For example, if a corporation makes a distribution in complete or partial liquidation to stockholders of record during the optional valuation period, the amount of such distribution received on stock included in the gross estate is itself "included property," except to the extent that the distribution was out of earnings and profits since the date of the decedent's death. Another example is where a corporation, in which the decedent owned 50 percent of the shares and which possessed at the date of the decedent's death accumulated earnings and profits equal to its paid-in capital, distributed all of its accumulated earnings and profits as a cash dividend to shareholders of record during the optional valuation period. In such a case the amount of the dividends received on stock includible in the gross estate will be included in the gross estate under the optional valuation method.

The operation of this section may be further illustrated by the following example in which the death of the decedent will be taken to have occurred on January 1, 1940:

| Description | Subsequent valuation date | Value under option | Value at date of death |
|---|---|---|---|
| Bond, par value $1,000, bearing interest at 4 percent payable quarterly on Feb. 1, May 1, Aug. 1, and Nov. 1. Bond distributed to legatee on Mar. 1, 1940 | Mar. 1, 1940 | $1,000.00 | $1,000.00 |
| Interest coupon of $10 attached to bond and not cashed at date of death although due and payable Nov. 1, 1939. Cashed by executor on Feb. 1, 1940 | Feb. 1, 1940 | 10.00 | 10.00 |
| Interest accrued from Nov. 1, 1939, to Jan. 1, 1940, collected on Feb. 1, 1940 | Feb. 1, 1940 | 6.67 | 6.67 |
| Real estate. Not disposed of within year following death. Rent of $300 due at the end of each quarter, Feb. 1, May 1, Aug. 1, and Nov. 1 | Jan. 1, 1941 | 11,000.00 | 12,000.00 |
| Rent due for quarter ending Nov. 1, 1939, but not collected until Feb. 1, 1940 | Feb. 1, 1940 | 300.00 | 300.00 |
| Rent accrued for November and December, 1939, collected on Feb. 1, 1940 | Feb. 1, 1940 | 200.00 | 200.00 |
| Common stock, X Corporation, 500 shares, not disposed of within year following decedent's death | Jan. 1, 1941 | 47,500.00 | 50,000.00 |
| Dividend of $2 per share declared Dec. 10, 1939, and paid on Jan. 10, 1940, to holders of record on Dec. 30, 1939 | Jan. 10, 1940 | 1,000.00 | 1,000.00 |

Properties, interests, or estates which are affected by mere lapse of time include patents, estates for the life of a person other than the decedent, remainders, reversions, and other like properties, interests, or estates. The phrase "affected by mere lapse of time" has no reference to obligations for the payment of money, whether or not interest-bearing, the value of which changes with the passing of time. However, such an obligation, like any other property, may become affected by lapse of time when made the subject of a bequest or transfer which itself is creative of an interest or estate so affected.

The date of valuation of any property, interest, or estate so affected is, as prescribed in subsection (j), the date of decedent's death, but with an adjustment to be made of the value then obtaining, which adjustment, while disregarding any later increase or decrease in value due solely to lapse of time, adds to or subtracts from the value at death any difference between that value and the value as of the date one year after decedent's death, or the applicable intermediate date, if, and to the extent that, such difference was due to a cause or causes other than lapse of time. Accordingly, in the valuation of any property, interest, or estate affected by lapse of time, the difference between its value at decedent's death and its value as of the later date must be analyzed to determine the portion of such difference attributable to other cause or causes, and that portion only is to be applied in adjusting the value as of the date of the decedent's death. If, for example, the decedent owned a patent which on the date of his death had an unexpired term of 10 years and a value of $100,000, and if the patent was sold 6 months after the decedent's death, at which time, because of the lapse of time and other causes, only $65,000 was realized therefor, the value would be determined as follows:

| | |
|---|---|
| Value of patent on date of decedent's death | $100,000 |
| Difference between value on date of death and date of sale ($100,000 minus $65,000) | 35,000 |
| Portion of such difference due to the 6 months elapsing between date of death and date of sale (one-half of 10 percent of $100,000) | $5,000 |
| Portion of difference due to causes other than lapse of time | 30,000 |
| Adjusted value of patent | 70,000 |

Or, to give another example, it may supposed that the decedent was entitled to receive property (which at the time of his death was worth $50,000) upon the death of another person who was entitled to the income therefrom for life and who was 31 years old at the time of the decedent's death. The value at decedent's death of his remainder interest would, as explained in § 81.10 (i) of these regulations, be $15,631, and if, due to economic conditions, the property declined in value and became worth $40,000 one year after the date of decedent's death, the value of the remainder interest would be determinable in the following manner:

| | |
|---|---|
| Value of remainder interest at decedent's death ($50,000 times factor (0.31262) shown opposite age 31 in column 3 of Table A, section 81.10) | $15,631.00 |
| Value of remainder interest one year after decedent's death ($40,000 times factor (0.31929) shown in Table A, for age 32) | 12,771.60 |
| Net difference due in part to decline in value of the property and in part to increase in the value of the remainder interest due to lapse of time | 2,859.40 |
| Elimination of the increase due to lapse of time ($50,000 times the difference between the factor for age 32 and the factor for age 31, or 0.00667) | 333.50 |
| Portion of the difference in value due to the decline in value of the property | 3,192.90 |
| Value of remainder interest at decedent's death | 15,631.00 |
| Less portion of difference not due to lapse of time | 3,192.90 |
| Adjusted value of remainder interest | 12,438.10 |

(The amount of the adjustment may be computed more readily by multiplying the decline in the value of the property ($10,000) by the factor (0.31929) applicable to the later date.)

Deductions authorized under sections 812 and 861 are limited to the extent that allowance thereof is not, in effect, given in the valuing of the gross estate. Property passing by decedent's will, or passing by a transfer made by the decedent in his lifetime (if the transfer was such as to require the property transferred to be included in the gross estate) to or for any such public, charitable, or religious uses as are described in section 812 (d) or in section 861 (a) (3), is deductible at its value as of the date of the decedent's death, subject, however, to adjustment for any difference in value one year after such death, or at the date of the sale or exchange in the case of property sold or exchanged during such 1-year period. But no such adjustment may take into account any difference in value due to lapse of time or to the occurrence or nonoccurrence of a contingency.

The election of the executor to have the gross estate valued in accordance with the method authorized by section 811 (j), in order to be effective, must be made on the return filed within 15 months from the decedent's death or within the period of any extension of time granted under the provisions of §§ 81.69 or 81.70 of these regulations. Unless the executor makes such election, all property included in the gross estate must be valued as of the date of the decedent's death. In no case may the election be exercised, or a previous election changed, after the expiration of the time for the filing of the return. The election applies to all the property included in the gross estate on the date of the decedent's death. It cannot be applied only to a portion of such property.

In every case where the election is exercised, the return, Form 706, must set forth (1) an itemized description of all property included in the gross estate on the date of the decedent's death, together with the value of each item as of that date, (2) an itemized disclosure of all distributions, sales, exchanges, and other dispositions of any of the property during the 1-year period after the decedent's death, together with the dates thereof, and (3) the value of each item of property determined in accordance with the provisions of subsection (j). Interest and rents accrued at the date of the decedent's death and dividends declared to stockholders of record on or before the date of the decedent's death and not collected at such date shall be separately shown. All the information indicated by Form 706 must be supplied. Statements as to distributions, sales, exchanges, and other dispositions of the property within the 1-year period must be supported by evidence. If the court makes an order or decree of distribution during that period, a certified copy thereof must be submitted as part of the evi-

dence. The Commissioner may require the submission of such additional evidence as is deemed necessary.*

§ 81.12 *Description of property listed on return.* In listing upon the return the property constituting the gross estate (other than household and personal effects, as to which see § 81.10 (g)), the description thereof should be such that the property may be readily identified. Thus, a legal description should be given of each parcel of real estate, and, if located in a city, the name of street and number, its area, and, if improved, a short statement of the character of the improvements. Description of bonds should include number held, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number if there is more than one issue, the exchange upon which listed, or the principal business office of the corporation, if unlisted. Description of stocks should include number of shares, whether common or preferred, and, if preferred, what issue thereof, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office and State in which incorporated and the date of incorporation. If a listed security, state principal exchange upon which sold. Description of notes should include name of maker, date on which given, date of maturity, amount of principal, amount of principal unpaid, rate of interest and whether simple or compound, date to which interest has been paid and amount of unpaid interest. Description of land contracts received should include name of vendee, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal and accrued interest, interest rate and date prior to decedent's death to which interest had been paid.

Description of bank accounts should disclose name and address of depository, amount on deposit, whether a checking, savings, or a time-deposit account, rate of interest, if any payable, amount of interest accrued and payable, and serial number. Description of life insurance should give the name of the insurer, number of policy, name of the beneficiary, and the amount of the proceeds. For every policy of life insurance listed on the return, the executor must procure a statement by the company on Form 712 and file it with the collector. (See § 81.28.) In describing an annuity, the name and address of the grantor of the annuity should be given, or, if the annuity is payable out of a trust or other funds, such a description as will fully identify it. If the annuity is payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of a person other than the decedent, the date of birth of such person should be stated. Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, and rate of interest to which subject, and by stating whether any payments have been made thereon, and, if so, when and in what amounts.*

GROSS ESTATE—GENERAL

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

(a) *Decedent's interest.* To the extent of the interest therein of the decedent at the time of his death;

* * * * *

SEC. 802. [Part II, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

§ 81.13 *Property of decedent at time of death.* It is designed by the foregoing provisions of the Internal Revenue Code that there shall be included in the gross estate all property of the decedent, whether real or personal, tangible or intangible, the beneficial ownership of which was in the decedent at the time of his death, except real property situated outside the United States.

All real property situated in the United States and owned by the decedent at the date of his death is included in the gross estate, whether the decedent was a resident or a nonresident, a citizen or not a citizen, and whether the property came into the possession and control of the executor or administrator or passed directly to heirs or devisees. All personal property owned by the decedent at the date of his death is included in the gross estate, regardless of its situs. However, in the case of a decedent who was a nonresident not a citizen, only the property situated in the United States is included in the net estate and property situated outside the United States need not be disclosed unless deductions are claimed or such information is specifically requested. (See §§ 81.52, 81.53, 81.54, and 81.66.) As to the situs of the personal property of decedents who were nonresidents not citizens, see § 81.50.

A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of such part of it as is not designed for the interment of the decedent or members of his family. Property subject to homestead or other exemptions under local law must be included in the gross estate. Notes or other claims held by the decedent should be included, though they are canceled by his will. As to the valuation of notes and claims, see § 81.10 (e).

Interest and rents accrued at the date of the decedent's death and dividends declared to stockholders of record on or before the date of the decedent's death and not collected at such date constitute part of the gross estate.

Various statutory provisions, which exempt bonds, notes, bills, and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation, are not applicable to the estate tax, since this tax is an excise tax on the transfer, and is not a tax on the property transferred. In case the decedent was a nonresident who was not a citizen and not engaged in business in the United States, bonds, notes, and certificates of indebtedness of the United States, beneficially owned by such decedent should not be included; however, bonds, notes, and certificates of indebtedness of the United States, issued on or after March 1, 1941, which such decedent beneficially owned, should be included in the gross estate.*

GROSS ESTATE—DOWER AND CURTESY

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(b) *Dower or curtesy interests.* To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy;

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

§ 81.14 *Dower and curtesy.* The above provisions of the Internal Revenue Code include in the gross estate dower and curtesy and all interests created by statute in lieu thereof, although the estate or interest so created may differ in character from dower or curtesy. The effect of the provision is to require the inclusion of the full value of the property, without deduction of the value of the interest of the surviving husband or wife, and without regard to the time when the right to such an interest arose.*

GROSS ESTATE—TRANSFERS BY DECEDENT DURING LIFETIME

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(c) *Transfers in contemplation of, or taking effect at death.* To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or

money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter;

(d) *Revocable transfers.*—(1) *Transfers after June 22, 1936.* To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death;

(2) *Transfers on or prior to June 22, 1936.* To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona-fide sale for an adequate and full consideration in money or money's worth. Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph;

(3) *Date of existence of power.* For the purposes of this subsection the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(4) *Relinquishment of power in contemplation of death.* The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of $5,000, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter.

* * * * *

(i) *Transfers for insufficient consideration.* If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subsections (c), (d), and (f) is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

* * * * *

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

* * * * *

(b) (5) * * * For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 302. (c) Revenue Act of 1926 (as originally enacted) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Where within two years prior to his death but after the enactment of this Act and without such a consideration the decedent has made a transfer or transfers, by trust or otherwise, of any of his property, or an interest therein, not admitted or shown to have been made in contemplation of or intended to take effect in possession or enjoyment at or after his death, and the value or aggregate value, at the time of such death, of the property or interest so transferred to any one person is in excess of $5,000, then, to the extent of such excess, such transfer or transfers shall be deemed and held to have been made in contemplation of death within the meaning of this title. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death but prior to the enactment of this Act, without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

Joint Resolution of March 3, 1931 (Public, No. 131, Seventy-first Congress):

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the first sentence of subdivision (c) of section 302 of the Revenue Act of 1926 is amended to read as follows:

To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, including a transfer under which the transferor has retained for his life or any period not ending before his death (1) the possession or enjoyment of, or the income from, the property or (2) the right to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

SEC. 803. Revenue Act of 1932.

(a) Section 302 (c) of the Revenue Act of 1926, as amended by the Joint Resolution of March 3, 1931, is amended to read as follows:

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title.

SEC. 302. (d) Revenue Act of 1926 (as originally enacted). To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death but after the enactment of this Act without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of $5,000, then, to the extent of such excess, such relinquishment or relinquishments shall be deemed and held to have been made in contemplation of death within the meaning of this title;

SEC. 401. REVENUE ACT of 1934.

Section 302 (d) of the Revenue Act of 1926 is amended to read as follows:

(d) (1) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

(2) For the purposes of this subdivision the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(3) The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of $5,000, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

SEC. 805. REVENUE ACT of 1936.

(a) Section 302 (d) (1) of the Revenue Act of 1926, as amended, is amended to read as follows:

(d) (1) To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death.

(b) Except in the case of transfers made after the date of the enactment of this Act, no interest of the decedent of which he has made a transfer shall be included in the gross estate under such section 302 (d) (1) unless it was includible under such section before its amendment by this section.

§ 81.15 *Transfers during life.* The following classes of transfers made by the decedent prior to his death, whether in trust or otherwise, if not constituting bona fide sales for an adequate and full consideration in money or money's worth, are subject to the tax: (1) transfers in contemplation of death (see § 81.16); (2) transfers conditioned upon the decedent's death (see § 81.17); (3) transfers under which the decedent reserved or retained (in whole or in part) the use, possession, rents, or other income or enjoyment of the transferred property, for his life, or for a period not ascertainable without reference to his death, or for a period of such duration as to evidence an intention that it should extend to his death; including also the reservation or retention of the use, possession, rents, or other income, the actual enjoyment of which was to await the termination of a transferred precedent interest or estate (see § 81.18); (4) transfers under which the decedent retained the right, either alone or in conjunction with another person or persons, to designate who should possess or enjoy the property or the income therefrom (see § 81.19); and (5) transfers under which the enjoyment of the transferred property was subject at decedent's death to a change through the exercise, either by the decedent alone or in conjunction with another person or persons, of a power to alter, amend, revoke, or terminate, or where such a power was relinquished in contemplation of decedent's death (see §§ 81.20 and 81.21).

The value of transferred property includible in the gross estate is the value thereof at the date of decedent's death, or if the executor has duly elected pursuant to the provisions of section 811 (j) to have the value of the gross estate determined as of the dates therein prescribed, then the value will be that as of the applicable date or dates so prescribed (see § 81.11). If a portion only of the property was so transferred as to come within the terms of the statute, only a corresponding proportion of the value of the property should be included in ascertaining the value of the gross estate. If the transferee has made additions to the property, or betterments, the enhanced value of the property due thereto should not be included.

To constitute a bona fide sale for an adequate and full consideration in money or money's worth the transfer must have been made in good faith, and the price must have been an adequate and full equivalent reducible to a money value. If the price was less than such a consideration, only the excess of the fair market value of the property (as of the date of decedent's death, or as of the applicable date under such an election as is mentioned in the last preceding paragraph) over the price received by the decedent should be included in ascertaining the value of the gross estate. For the purposes of the tax a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in decedent's property or estate, is not to any extent a consideration in money or money's worth.

In case a transfer, by trust or otherwise, was made by a written instrument, duplicate copies thereof should be filed with the return. If of public record, one of the copies should be certified; if not of record, one copy should be verified. If the decedent was a nonresident, only one copy, certified or verified, need be filed.

All transfers made by the decedent during his life of an amount of $5,000 or more, except bona fide sales for an adequate and full consideration in money or money's worth, must be disclosed in the return, whether the executor regards such transfers as subject to the tax or not. If the executor believes that such a transfer is not subject to the tax, a brief statement of the pertinent facts should be made.*

§ 81.16 *Transfers in contemplation of death.* Transfers in contemplation of death made by the decedent after September 8, 1916, other than bona fide sales for an adequate and full consideration in money or money's worth, must be included in the gross estate. A transfer in contemplation of death is subject to the tax although the decedent parted absolutely and immediately with his title to, and possession and enjoyment of, the property.

The phrase "contemplation of death," as used in the statute, does not mean, on the one hand, that general expectation of death such as all persons entertain, nor, on the other, is its meaning restricted to an apprehension that death is imminent or near. A transfer in contemplation of death is a disposition of property prompted by the thought of death (though it need not be solely so prompted). A transfer is prompted by the thought of death if it is made with the purpose of avoiding the tax, or as a substitute for a testamentary disposition of the property, or for any other motive associated with death. The bodily and mental condition of the decedent and all other attendant facts and circumstances are to be scrutinized to determine whether or not such thought prompted the disposition.

Any transfer without an adequate and full consideration in money or money's worth, made by the decedent within two years of his death, of a material part of his property in the nature of a final disposition or distribution thereof, is, unless shown to the contrary, deemed to have been made in contemplation of death.

If the executor contends that the value of a transfer of $5,000 or more made by the decedent subsequent to September 8, 1916, should not be included in the gross estate because he considers that such transfer was not made in contemplation of death, he should file sworn statements with the return, in duplicate, of all the material facts and circumstances, including those directly or indirectly indicating the decedent's motive in making the transfer and his mental and physical condition at that time, and one copy of the death certificate.

The fact that a gift was made as an advancement to be taken into account upon the final distribution of the decedent's estate is not, in and of itself, determinative of its taxability. (See § 81.15.)*

§ 81.17 *Transfers conditioned upon survivorship.* The statutory phrase, "a transfer * * * intended to take effect in possession or enjoyment at or after his death," includes a transfer by the decedent prior to his death (other than a bona fide sale for an adequate and full consideration in money or money's worth) whereby and to the extent that the beneficial title to the property transferred (if the transfer was in trust), or the legal title thereto (if the transfer was otherwise than in trust), is not to pass from the decedent to the donee unless the decedent dies before the donee or another person, or its passing is otherwise conditioned upon decedent's death; or, if title passed to the donee it is to be defeated and the property is to revert to the decedent as his own should he survive the donee or another person, or the reverting of the property to the decedent is conditioned upon some other contingency terminable by his death. In such instances, it is immaterial whether the decedent's interest arose by implication of law or by the express terms of the instrument of transfer. Since in such transfers the decedent's death is requisite to a termination of his interest in the property, it is unimportant whether his interest be denominated a reversion or a possibility of reverter, and whether the interest of the donee be contingent or vested subject to be divested, and the tax will apply, unless otherwise provided in the next succeeding paragraph, without

regard to the time when the transfer was made, whether before or after the enactment of the Revenue Act of 1916. Thus, upon a transfer by a decedent of property in which an estate for life is given to one and an estate in remainder to another, but with a provision added that the estate in remainder shall revest in the decedent should he survive the owner of the life estate, there is to be included, in determining the value of the decedent's gross estate following his death, the value as of the date of his death of the estate in remainder, if the life estate is then outstanding. The value of the outstanding life estate is not to be included in determining the value of the gross estate, unless that estate had been transferred in contemplation of the decedent's death, or otherwise as to render it a part of the gross estate. If by reason of an election by the executor the valuation of the gross estate is governed by the provisions of § 81.11, adjustments in the values of such transferred estates may be required. (See § 81.15.)

Where the transfer was made during the period between November 11, 1935 (that being the date upon which the Supreme Court of the United States rendered its decisions in the cases of *Helvering* v. *St. Louis Union Trust Co.* (296 U. S., 39) and *Becker* v. *St. Louis Union Trust Co.* (296 U. S., 48)), and January 29, 1940 (that being the date upon which such Court rendered its decisions in *Helvering* v. *Hallock* and companion cases (309 U. S., 106)), and the Commissioner, whose determination therein shall be conclusive, determines that such transfer is classifiable with the transfers involved in such two cases decided on November 11, 1935, rather than with the transfer involved in the case of *Klein* v. *United States* (283 U. S., 231), previously decided by such Court, then the property so transferred shall not be included in the decedent's gross estate under the provisions of this section, if the following condition is also met: Such transfer shall have been finally treated for all gift tax purposes, both as to the calendar year of such transfer and subsequent calendar years, as a gift in an amount measured by the value of the property undiminished by reason of a provision in the instrument of transfer by which the property, in whole or in part, is to revert to the decedent should he survive the donee or another person, or the reverting thereof is conditioned upon some other contingency terminable by decedent's death.*

§ 81.18 *Transfers with possession or enjoyment retained.* Except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the gross estate embraces (section 811 (c)) all property transferred by the decedent, whether in trust or otherwise, if he retained or reserved the use, possession, right to the income, or other enjoyment of the transferred property, and if the transfer was made—

(1) At any time after 10:30 p. m., eastern standard time, March 3, 1931, and such retention or reservation is for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period; or

(2) At any time after 5 p. m., eastern standard time, June 6, 1932, and such retention or reservation is for any period mentioned in (1) or for any period not ascertainable without reference to his death.

A reservation for a "period not ascertainable without reference to his death" may be illustrated by a reservation of the right to receive, in quarterly payments, the income of the transferred property where none of the income between the last quarterly payment and decedent's death was to be received by him or his estate; or by a reservation of a life estate following a precedent estate for life or a term of years.

The use, possession, right to the income, or other enjoyment of the property will be considered as having been retained by or reserved to the decedent to the extent that during any such period it is to be applied towards the discharge of a legal obligation of the decedent, or otherwise for his pecuniary benefit.

If such retention or reservation is of a part only of the use, possession, income, or other enjoyment of the property, then only a corresponding proportion of the value of the property should be included in determining the value of the gross estate. (See § 81.51.)*

§ 81.19 *Transfers with right retained to designate who shall possess or enjoy.* The Internal Revenue Code (section 811 (c) provides that, except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the gross estate shall embrace all property transferred by the decedent, whether in trust or otherwise, if there is retained by or reserved to him for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or for a period not ascertainable without reference to his death, the right either alone or in conjunction with any other person or persons to designate the person or persons who shall possess or enjoy the transferred property, or the income thereof.

This provision of the Internal Revenue Code covers, in the main, transfers to which also apply the provisions of certain other subsections of section 811. Thus, to the extent that the enjoyment of the transferred property is subject to any change through the exercise of a power by the decedent alone or in conjunction with any other person or persons to alter, amend, revoke, or terminate, the provisions of section 811 (d) and of § 81.20 will apply. Or, if the decedent reserved to himself a general power of appointment and the property passed in his lifetime or by his will pursuant to the exercise of such power, the property may be required by section 811 (f) to be included in the gross estate, and in such case the provisions of § 81.24 will apply without regard to when such power was created.

A transfer of the kind dealt with in this section, when not also falling within the provisions of some other subsection of section 811, requires the inclusion of the transferred property within the gross estate, if the transfer was made—

(1) At any time after 10:30 p. m., eastern standard time, March 3, 1931, and the right to so designate was retained by or reserved to the decendent alone for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period; or

(2) At any time after 5 p. m., eastern standard time, June 6, 1932, and the right to so designate was retained by or reserved to the decedent alone or in conjunction with any other person or persons for decedent's life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or for any period not ascertainable without reference to his death.

If the retention or reservation of the right described pertains to a part only of the transferred property, or to a part only of the income therefrom, then only a corresponding proportion of the value of the transferred property is includible in determining the value of the gross estate.

The right to so designate will be treated as having been retained or reserved if at the time of the transfer there was an understanding, either expressed or implied, that such right would later be created or conferred. (See § 81.15.)*

§ 81.20 *Transfers with power to change the enjoyment*—(a) *Transfers included.* Subsection (d) of section 811 embraces a transfer by trust or otherwise (if not amounting to a bona fide sale for an adequate and full consideration in money or money's worth) when at the time of decedent's death the enjoyment of the transferred property, or some part thereof or interest therein, was subject to any change through a power exercisable either by the decedent alone, or by him in conjunction with some other person or persons, to alter, or amend, or revoke, or terminate. (See § 81.15.)

The addition to subdivision (d) (1) of the Revenue Act of 1926, by section 805 of the Revenue Act of 1936, of the phrase to the effect that it is not material in what capacity the power was subject to exercise by the decedent or by the other person or persons in conjunction with the decedent (which phrase is also embodied in subsection (d) (1) of section 811 of the Internal Revenue Code), is considered merely declaratory of the meaning of the subdivision prior to the addition of the phrase.

The second phrase added to this subdivision of the Revenue Act of 1926 by amendment in 1936 (also embodied in section 811 (d) (1) of the Internal Revenue Code), namely, "without regard to when or from what source the decedent acquired such power," is not considered declaratory of the meaning of the subdivision prior to the amendment in a case

in which no one of the powers enumerated in the subdivision was reserved at the time of the making of the transfer, but one or more thereof were conferred subsequent thereto (whatever the source from which conferred) without any understanding, expressed or implied, had in connection with the making of the transfer that such power or powers should be later conferred.

The third change made in the subdivision by the Revenue Act of 1936 (which is also embodied in subsection (d)(1) of section 811 of the Internal Revenue Code) consists of the addition of the words "or terminate" following the words "to alter, amend, revoke." Such addition is considered but declaratory of the meaning of the subdivision prior to the amendment. A power to terminate capable of being so exercised as to revest in the decedent the ownership of the transferred property or an interest therein, or as otherwise to inure to his benefit or the benefit of his estate, is, to that extent, the equivalent of a power to "revoke," and when otherwise so exercisable as to effect a change in the enjoyment, is the equivalent of a power to "alter."

(b) *Taxability.* The property or any interest therein transferred as described in paragraph (a) shall be included in the gross estate if it comes within any one of the following paragraphs:

(1) If the transfer was made prior to the enactment of the Revenue Act of 1924 (4:01 p. m., eastern standard time, June 2, 1924), and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the transferred property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons some or all of whom held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the power and to the extent of any adverse interest which was not substantial.

(2) If the transfer was made after the enactment of the Revenue Act of 1924 (4:01 p. m., eastern standard time, June 2, 1924) and before the amendment of the subdivision by the Revenue Act of 1936 became effective (June 23, 1936), and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

(3) If the transfer was made after June 22, 1936 (the date of the enactment of the Revenue Act of 1936), and the power was either reserved at the time of the transfer or later created or conferred, without regard to the source from which the power was acquired, and whether exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

As used in this and in the next succeeding section, the expression "reserved at the time of the transfer" refers to a power to which the transfer was subject when made, whether the power arose by implication of law or by the express terms of the instrument of transfer, and which continued to the date of decedent's death (see the paragraph next following as to the conditions under which the power will be considered as existent at decedent's death) to be exercisable by decedent alone or by him in conjunction with some other person or persons, and includes any understanding, expressed or implied, had in connection with the making of the transfer that the power should later be created or conferred.

The power to alter, amend, revoke, or terminate will be considered to have existed on the date of the decedent's death, though the exercise of the power was subject to a precedent giving of notice, or though the alteration, amendment, revocation, or termination would take effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice had been given or the power had been exercised, or though the exercise of the power was restricted to a particular time which had not arrived, or the happening of a particular event which had not occurred, at decedent's death. In determining the value of the gross estate in such cases the full value of the property transferred subject to the power should be discounted for the period required to elapse between the date of decedent's death and the date upon which the alteration, amendment, revocation, or termination could take effect. (See § 81.10 (i) (3).)

The provisions of this section do not apply to a transfer if the power may be exercised only with the consent of all parties having an interest, vested or contingent, in the transferred property, and if the power adds nothing to the rights of the parties as conferred by the applicable local law.*

§ 81.21 *Power relinquished in contemplation of death.* If the decedent had previously held, either alone or in conjunction with another person or persons, a power to alter, amend, revoke, or terminate a transfer made by him, and the power was subsequently relinquished in contemplation of the decedent's death (the relinquishment not amounting to a bona fide sale for an adequate and full consideration in money or money's worth), then to the extent that the transferred property or any interest therein had been subject to such relinquished power it is to be included in the gross estate if coming within any one of the following paragraphs:

(a) If the transfer was made prior to the enactment of the Revenue Act of 1924 (4:01 p. m., eastern standard time, June 2, 1924), and the power was reserved at the time of the transfer and was relinquished after the enactment of the Revenue Act of 1916 (September 8, 1916), and the power was exercisable by the decedent alone or in conjunction with a person or persons having no substantial adverse interest or interests in the transferred property, or if exercisable in conjunction with a person having a substantial adverse interest or with several persons some or all of whom held such an adverse interest, then to the extent of any interest or interests held by a person or persons not required to join in the exercise of the power and to the extent of any adverse interest which was not substantial.

(b) If the transfer was made after the enactment of the Revenue Act of 1924 (4:01 p. m., eastern standard time, June 2, 1924) and before the amendment of the subdivision by the Revenue Act of 1936 became effective (June 23, 1936), and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

(c) If the transfer was made after June 22, 1936 (the date of the enactment of the Revenue Act of 1936), and the power was either reserved at the time of the transfer or later created or conferred without regard to the source from which the power was acquired, and whether exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest. If the transfer was made after June 22, 1936, and the person or persons, in conjunction with whom the decedent could exercise the power, relinquished the power in contemplation of the decedent's death and thereby extinguished the power, the transfer is includible in the decedent's gross estate.

If the relinquishment be not admitted or shown to have been in contemplation of decedent's death, but occurred within two years prior to such death, and affected the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value in excess of $5,000 (as of the date of decedent's death, or as of the applicable date under such an election as is referred to in the second paragraph of § 81.15) then, to the extent of such excess, the relinquishment will be deemed, unless shown to the contrary, to have been in contemplation of decedent's death. (See § 81.15.)*

GROSS ESTATE—PROPERTY HELD JOINTLY

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the

value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(e) *Joint interests.* To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided,* That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further,* That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants.

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SEC. 812. [Part II, Subchapter A.] NET ESTATE.

* * * * *

(b) (5) * * * For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

§ 81.22 *Property held jointly or by the entirety.* The foregoing provisions of the Internal Revenue Code extend to joint ownerships wherein the right of survivorship exists, regardless of when such ownerships were created. They specifically reach property held jointly by the decedent and any other person or persons, or by the decedent and spouse as tenants by the entirety, or deposited with any person or institution carrying on a banking business in the name of the decedent and any other person and payable to either or the survivor, provided the decedent contributed toward the acquisition of the property so held or deposited, or acquired it by gift, bequest, devise, or inheritance. Section 811 (e) applies to all classes of property, whether real or personal, in case the survivor takes the entire interest therein by right of survivorship and no interest therein forms a part of the decedent's estate for purposes of administration. It has no reference to property held by the decedent and any other person or persons as tenants in common.*

§ 81.23 *Taxable portion.* The entire property is prima facie a part of the decedent's gross estate. But it is not the intent of the statute that there should be so included a greater part or proportion thereof than is represented by an outlay of funds, which, in the first instance, were decedent's own, or more than a fractional part equal to that of the other joint owner should neither have parted with any consideration in its acquirement. Facts which in a given case bring it within any one of the exceptions enumerated in the statute may be submitted by the executor.

Whether the entire property, or only a part, or none of it, enters into the make-up of the gross estate depends upon the following considerations: (1) So much of the property (whether the whole, or a part thereof) as originally belonged to the other joint owner, and which at no time in the past had been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth, forms no part of the decedent's gross estate. (2) If the facts are otherwise the same as in (1), but the decedent paid to such other joint owner a consideration for the interest by him (the decedent) acquired in the property, then such portion of the property, proportionate to the consideration so paid, constitutes a part of the gross estate. (3) If the property, or a part thereof, or a part of the consideration wherewith it was acquired, had at any time been acquired by the other joint owner from the decedent as a gift, or for less than an adequate and full consideration in money or money's worth, then such portion of the entire property, proportionate to the consideration, if any, which in the first instance was paid from such other joint owner's own funds, forms no part of the gross estate. (4) If the property was acquired by the decedent and his or her surviving spouse as tenants by the entirety by gift, bequest, devise, or inheritance, then only one-half of the property becomes a part of the gross estate. (5) If the property was acquired by the decedent and the other joint owner as joint tenants by gift, bequest, devise, or inheritance, and their interests are not otherwise specified or fixed by law, then only one-half of the property is a part of the gross estate; or, if so acquired by the decedent and two or more persons, and the interests of the several joint tenants are not otherwise determinable, then the decedent and the other joint tenants surviving him shall be deemed the owners of equal fractional parts, and only one of such fractional parts is to be included in the gross estate.

The following are given as illustrative: (*a*) If the decedent furnished the entire purchase price, the entire property should be included in the gross estate; (*b*) if the decedent furnished a part only of the purchase price, only a corresponding portion of the property should be so included; (*c*) if the decedent, prior to the acquisition of the property by himself and the other joint owner, gave the latter a sum of money which later constituted such other joint owner's entire contribution to the purchase price of the property, the entire property should be included; (*d*) if the other joint owner, prior to the acquirement of the property, received from the decedent, for less than an adequate and full consideration in money or money's worth, property which thereafter became, as such, or in a converted form, part of the purchase price of the property, the value of the property to be included is to be reduced proportionately to the consideration furnished by the other joint owner in the original transaction; (*e*) if the decedent furnished no part of the purchase price, no part of the property should be included; (*f*) if the decedent and spouse acquired the property by will as tenants by the entirety, one-half of the property should be included.

For the purposes of the estate tax, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other martial rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.*

GROSS ESTATE—PROPERTY PASSING UNDER POWER OF APPOINTMENT

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(f) *Property passing under general power of appointment.* To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of or intended to take effect in possession or enjoyment at or after his death, or (3) by deed under which he has retained for his life or any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and

* * * * *

(i) *Transfers for insufficient consideration.* If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subsections (c), (d), and (f) is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

* * * * *

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

(b) (5). * * * For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth".

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of non-residents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

SEC. 302. (f) Revenue Act of 1926 (as originally enacted). To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and * * *

SEC. 302. (f) Revenue Act of 1926 (as amended by section 803 (b) of the Revenue Act of 1932). To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of or intended to take effect in possession or enjoyment at or after his death, or (3) by deed under which he has retained for his life or any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and * * *

§ 81.24 *Property passing under general power of appointment.* Property passing under a general power of appointment must be included in the gross estate of the person exercising the power (known as the donee, or appointor), if the power is exercised by will. It should also be so included if the power is exercised by deed or other instrument either (1) in contemplation of death, (2) with the intent that the transfer shall take effect in possession or enjoyment at or after the death of the donee of the power, (3) with the retention or reservation by the decedent of the use, possession, right to the income, or other enjoyment of the transferred property, or (4) with the retention or reservation by the decedent of the right to designate the person or persons who shall possess or enjoy the transferred property or the income thereof. (For description of such transfers and the taxability thereof with reference to when made and when the death occurred, see §§ 81.16, 81.17, 81.18, and 81.19.) The statute, however, does not require inclusion in the gross estate of the appointed property in the case of a bona fide sale thereof by the donee of the power for an adequate and full consideration in money or money's worth.

Only property passing under a general power should be included. Ordinarily a general power is one to appoint to any person or persons in the discretion of the donee of the power, or, however limited as to the persons or objects in whose favor the appointment may be made, is exercisable in favor of the donee, his estate, or his creditors. Duplicate copies of the instrument granting the power and of the instrument by which the power was exercised, one of each to be certified or verified, must be filed with Form 706 in all cases, unless the decedent was a nonresident, in which case only one copy of each instrument, certified or verified, is required. The copies must be filed even though it is contended that the power was a limited one and the property passing thereunder is not returned for tax.*

GROSS ESTATE—INSURANCE

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * *

(g) *Proceeds of life insurance.* To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

§ 81.25 *Taxable insurance.* Section 811 (g) of the Internal Revenue Code provides for the inclusion in the gross estate of insurance taken out by the decedent upon his own life, as follows: (a) All insurance receivable by, or for the benefit of, the estate; (b) all other insurance to the extent that it exceeds in the aggregate $40,000.

The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies operating under the lodge system. Insurance receivable by beneficiaries other than the estate is considered to have been taken out by the decedent where he paid, either directly or indirectly, all the premiums or other consideration wherewith the insurance was acquired, whether or not he made the application. Such insurance is not considered to have been so taken out, even though the application was made by the decedent, if no part of the premiums or other consideration was paid either directly or indirectly by him. Where a portion of the premiums or other consideration was actually paid by another and the remaining portion by the decedent, either directly or indirectly, such insurance is considered to have been taken out by the latter in the proportion that the payments therefor made by him bear to the total amount paid for the insurance.

Life insurance not includible in the gross estate under the provisions of subsection (g) of section 811 and §§ 81.26, 81.27, or this section of these regulations may, depending upon the facts of the particular case, be includible under some other subsection of section 811 and the sections of these regulations pertaining thereto, such as subsection (c) in the case of insurance taken out by the decedent prior to January 10, 1941, the date of Treasury Decision 5032, and also transferred by him prior to such date in contemplation of death.*

§ 81.26 *Insurance in favor of the estate.* The Internal Revenue Code requires the inclusion in the gross estate of all insurance receivable by the executor or administrator or payable to the decedent's estate, and all insurance which is in fact receivable by, or for the benefit of, the estate. It includes insurance effected to provide funds to meet the estate tax, and any other taxes, debts, or charges which are enforceable against the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the beneficiary, to use the proceeds in payment of such taxes, debts, or charges. The full amount of the proceeds so receivable, without the benefit of any exemption, forms a part of the gross estate, though all the premiums or other consideration wherewith the insurance was acquired may have been paid by a person other than the decedent. If the decedent procured insurance in favor of another person or corporation as collateral security for a loan or other accommodation, the insurance is considered to be receivable for the benefit of the estate. The amount of the loan outstanding at decedent's death will be deductible in determining the net estate, and the interest thereon will be deductible in accordance with the provisions of § 81.36.*

§ 81.27 *Insurance receivable by other beneficiaries.* The amount in excess of $40,000 of the aggregate proceeds of all insurance on the decedent's life not receivable by or for the benefit of his estate must be included in his gross estate, as follows:

(a) To the extent to which such insurance was taken out by the decedent upon his own life (see § 81.25) after January 10, 1941, the date of Treasury Decision 5032, and

(b) To the extent to which such insurance was taken out by the decedent upon his own life (see § 81.25) on or before January 10, 1941, and with respect to which the decedent possessed any of the legal incidents of ownership at any time after such date or, in the case of a decedent dying on or before such date, at the time of his death.

Legal incidents of ownership in the policy include, for example, the right of the insured or his estate to its economic benefits, the power to change the beneficiary, to surrender or cancel the policy, to assign it, to revoke an assignment, to pledge it for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc. The insured possesses a legal incident of ownership if

his death is necessary to terminate his interest in the insurance, as, for example, if the proceeds would become payable to his estate, or payable as he might direct, should the beneficiary predecease him.

The estate is entitled to only one exemption of $40,000 upon insurance receivable by beneficiaries other than the estate. For instance, if the decedent left life insurance otherwise includible under the provisions of this section and payable to three such beneficiaries in amounts of $10,000, $40,000, and $50,000 (total, $100,000), the full amount should be listed on the return and therefrom subtracted the $40,000 exemption as provided in the appropriate schedule of Form 706. The word "beneficiaries," as used in reference to this $40,000 exemption, means persons entitled to the actual enjoyment of the insurance money.

*Example.* Insurance on the life of the decedent who died after the date of Treasury Decision 5032 totaled $200,000. It was payable to his son as beneficiary and the decedent never possessed any of the legal incidents of ownership therein. Premiums aggregating $100,000 were paid for the insurance, of which the decedent paid $50,000 before the date of Treasury Decision 5032 and $30,000 after that date. The remaining premiums of $20,000 were paid by the son. The extent to which the insurance was taken out by the decedent after the date of the Treasury decision is the proportion of $200,000 that the amount of the premiums paid by him after such date, $30,000, bears to the total amount of the premiums paid for the insurance, $100,000. Such proportion is three-tenths of $200,000, or $60,000. As the decedent possessed none of the legal incidents of ownership in the insurance at any time after the date of the Treasury decision, $100,000 of the insurance, the extent to which it was taken out by the decedent before such date

$$\left(\frac{50{,}000\times\$200{,}000}{100{,}000}\right),$$

is excluded from the gross estate. The amount of $40,000, the extent to which the insurance was not taken out by the decedent

$$\left(\frac{20{,}000\times\$200{,}000}{100{,}000}\right),$$

is also excluded from the gross estate. The amount of the insurance taken out by the decedent after the date of the Treasury decision, $60,000, is reduced by $40,000, the special insurance exemption, and the amount of the insurance included in the gross estate is $20,000.*

§ 81.28 *Valuation of insurance.* The amount to be returned if the policy is payable to or for the benefit of the estate is the amount receivable. If the proceeds of a policy are payable to a beneficiary other than the estate, and not to or for the benefit of the estate, the amount to be listed in the appropriate schedule of the return is the full amount receivable. (For taxable portion see § 81.27.) In case the proceeds of a policy are made payable to the beneficiary in the form of an annuity for life or for a term of years, there should be listed in the appropriate schedule of the return the one sum payable at death under an option which could have been exercised either by the insured or by the beneficiary, or if no option was granted, the sum used by the insurance company in determining the amount of the annuity.

With respect to each policy there should be filed a certificate, Form 712, from the insurance company showing the following:

(a) The face amount of the policy.

(b) The amount of any indebtedness to the company which reduced the amount otherwise payable.

(c) The amount of accumulated dividends.

(d) The amount of postmortem dividends.

(e) Any other facts affecting the value. (See next paragraph.)

(f) The value as of the date of death of the insured of the benefits payable under the policy.

In the case of any policy providing for deferred payments (other than payments measured by the facts disclosed under (a), (b), (c), and (d) above), the certificate should include the following information:

(g) The provisions with respect to the deferred payments or to the installments.

(h) The amounts of the deferred payments or installments.

(i) If the number of installments to be paid may be measured by the life of any individual, the date of birth of such individual.

(j) The amount applied by the insurance company as a single premium representing the purchase of the installment benefits.

(k) The basis (Mortality Table and rate of interest) employed by the insurance company in valuing the installment benefits.*

GROSS ESTATE—RETROACTIVE PROVISIONS

SEC. 811. [Part II, Subchapter A.] GROSS ESTATE.

* * * * *

(h) *Prior interests.* Except as otherwise specifically provided therein, subsections (b), (c), (d), (e), (f), and (g) shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after February 26, 1926.

* * * * *

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

DEDUCTIONS—ESTATES OF CITIZENS OR RESIDENTS ADMINISTRATION EXPENSES, CLAIMS, ETC.

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

* * * * *

(b) *Expenses, losses, indebtedness, and taxes.* Such amounts—

(1) for funeral expenses,

(2) for administration expenses,

(3) for claims against the estate,

(4) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and

(5) reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent,

as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. There shall also be deducted losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return.

For the purposes of this subchapter, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."

* * * * *

SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of $100,000 provided in section 812 (a), the exemption shall be $40,000.

§ 81.29 *Deduction of administration expenses, claims, etc.* In order to be deductible under the foregoing provisions of the Internal Revenue Code, the item must fall within one of the several classes of deductions specifically enumerated therein, and must also, except in the case of deductible losses during the administration of the estate, be one the payment of which out of the estate is authorized by the laws of the jurisdiction under which the estate is being administered. Unless both of these conditions exist the item is not deductible. If the item is not one of those described it is not deductible merely because payment is allowed by the local law. If the amount which may be expended for the particular purpose is limited by the local law no deduction in excess of such limitation is permissible. If a claim against the estate, an unpaid mortgage, or an indebtedness is founded upon a promise or agreement, the deduction therefor is limited to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth. A relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

An item may be entered on the return for deduction though the exact amount thereof is not then known, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. In the event the amount of the liability was unascertainable at the time of final audit of the return by the Commissioner, and, as a consequence, deduction was not allowed therefor in such audit, and subsequently the amount of the liability is ascertained, relief may be sought as provided by §§ 81.73 and 81.96.*

§ 81.30 *Effect of court decree.* The decision of a local court as to the amount of a claim or administration expense will ordinarily be accepted if the court passes upon the facts upon which deductibility depends. If the court does not pass upon such facts, its decree will, of course, not be followed. For example, if the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing the validity and amount of the claim. The decree will not necessarily be accepted even though it purports to decide the facts upon which deductibility depends. It must appear that the court actually passed upon the merits of the case. This will be presumed in all cases of an active and genuine contest. If the result reached appears to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. If the decree was rendered by consent, it will be accepted, provided the consent was a bona fide recognition of the validity of the claim—not a mere cloak for a gift—and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, if given by all parties having an interest adverse to the claimant. The decree will not be accepted if it is at variance with the law of the State; as, for example, an allowance made to an executor in excess of that prescribed by statute.*

§ 81.31 *Funeral expenses.* An executor may deduct such amounts for funeral expenses as are actually expended by him and, under the laws of the local jurisdiction, are payable out of the decedent's estate. A reasonable expenditure by the executor for a tombstone, monument, or mausoleum, or for a burial lot, either for the decedent or his family, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.*

§ 81.32 *Administration expenses.* The amounts deductible from the gross estate as "administration expenses" are such expenses as are actually and necessarily incurred in the administration of the estate; that is, in the collection of assets, payment of debts, and distribution among the persons entitled. The expenses contemplated in the law are such only as attend the settlement of an estate by the legal representative preliminary to the transfer of the property to individual beneficiaries or to a trustee, whether such trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; and (3) miscellaneous expenses. Each of these classes is considered separately in §§ 81.33 to 81.35, inclusive.*

§ 81.33 *Executor's commissions.* The executor or administrator, in filing the return, may deduct his commissions in such an amount as has actually been paid, or in an amount which at the time of such filing it is reasonably expected will be paid, but no deduction may be taken if no commissions are to be collected. In case the amount of the commissions has not been fixed by decree of the proper court, the deduction will be allowed on the final audit of the return, provided: (1) That the Commissioner is reasonably satisfied that the commissions claimed will be paid; (2) that the amount entered as a deduction is within the amount allowable by the laws of the jurisdiction wherein the estate is being administered; and (3) that it is in accordance with the usually accepted practice in said jurisdiction to allow such an amount in estates of similar size and character. If the deduction is disallowed in whole or in part on final audit, the disallowance will be subject to modification as the facts may later require. If the deduction is allowed in advance of payment and payment is thereafter waived, it shall be the duty of the executor to notify the Commissioner and to pay the resulting tax, together with interest. Executors should note that the commissions received as compensation for their services constitute taxable income and that the amounts received or receivable by them as such compensation are cross-referenced for income-tax purposes.

A bequest or devise to the executor in lieu of commissions is not deductible. If, however, the decedent fixed by his will the compensation payable to the executor for services to be rendered in the administration of the estate, deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice.

Amounts paid as trustees' commissions do not constitute expenses of administration and are not deductible, whether received by the executor acting in the capacity of a trustee or by a separate trustee as such.*

§ 81.34 *Attorney's fees.* The executor or administrator, in filing the return, may deduct such an amount of attorney's fees as has actually been paid, or in an amount which at the time of such filing it is reasonably expected will be paid. If on the final audit of a return the fees claimed have not been awarded by the proper court and paid, the deduction will, nevertheless, be allowed, provided the Commissioner is reasonably satisfied that the amount claimed will be paid and that it does not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate and the local law and practice. If the deduction is disallowed in whole or in part on final audit, the disallowance will be subject to modification as the facts may later require.

Attorney's fees incurred by beneficiaries incident to litigation as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are properly charged against the beneficiaries personally and are not administration expenses.*

§ 81.35 *Miscellaneous administration expenses.* This includes such expenses as court costs, surrogates' fees, accountants' fees, appraisers' fees, clerk hire, etc. Expenses necessarily incurred in preserving and distributing the estate are deductible, including the cost of storing or maintaining property of the estate, if it is impossible to effect immediate distribution to the beneficiaries. Expenses for preserving and caring for the property may not include outlays for additions or improvements; nor will such expenses be allowed for a longer period than the executor is required to retain the property. A brokerage fee for selling property of the estate is deductible if the sale is necessary in order to pay the decedent's debts, the expenses of administration, or to effect distribution. Other expenses attending the sale are deductible, such as the fees of an auctioneer, if it is reasonably necessary to employ one.*

§ 81.36 *Claims against the estate.* The amounts that may be deducted under this heading are such only as represent personal obligations of the decedent existing at the time of his death, whether or not then matured, and interest thereon which had accrued at the time of death. Only interest accrued at the date of the decedent's death is allowable even though the executor, in accordance with the provisions of section 811 (j) of the Internal Revenue Code, elects to have the gross estate valued as of a date or dates subsequent to the decedent's death. Only claims enforceable against the decedent's estate may be deducted. If the claim is founded upon a promise or agreement, the deduction therefor is limited to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth. Thus, a pledge or a subscription, evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible only to the extent that liability therefor was contracted bona fide and for an adequate and full consideration in cash or its equivalent. Liabilities imposed by law or arising out of torts are deductible. See § 81.29 as to the relinquishment or promised relinquishment of dower and other marital interests.*

§ 81.37 *Taxes.* The deduction for property taxes is limited to such taxes as accrued prior to the decedent's death. Property taxes must, in order to be deductible, constitute enforceable obliga-

tions of the decedent existing at the time of death.

Unpaid taxes upon income received during the decedent's lifetime are deductible but taxes upon income received after death are not deductible. No estate, succession, legacy, or inheritance tax is deductible.*

§ 81.38 *Unpaid mortgages.* Deduction is allowed of the full unpaid amount of a mortgage upon, or of an indebtedness in respect of, any property of the gross estate, including interest which had accrued thereon at the time of death, provided the value of the property, undiminished by the amount of the mortgage or indebtedness, is returned as part of the value of the gross estate. If decedent's estate is liable for the amount of the mortgage or indebtedness, the full value of the property subject to the mortgage or indebtedness must be included as part of the value of the gross estate; the amount of the mortgage or indebtedness being in such case allowed as a deduction. But if decedent's estate is not so liable, only the value of the equity of redemption (or value of the property, less the indebtedness) need be returned as part of the value of the gross estate. In no case may the deduction on account of the mortgage or indebtedness exceed the liability therefor contracted bona fide and for an adequate and full consideration in money or money's worth. Only interest accrued at the date of the decedent's death is allowable even though the executor, in accordance with the provisions of section 811(j) of the Internal Revenue Code, elects to have the gross estate valued as of a date or dates subsequent to the decedent's death. Inasmuch as real property situated outside of the United States does not form a part of the gross estate, no deduction may be taken of any mortgage thereon or any indebtedness in respect thereof.*

§ 81.39 *Losses from casualties or theft.* There may be deducted under this heading losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualties, or from theft, if such losses are not compensated for by insurance or otherwise. Such losses are not deductible if, at the time of the filing of the estate tax return, they have been claimed as a deduction for income tax purposes in an income tax return. If the loss is partly compensated for, the excess of the loss over such compensation may be deducted. Losses not of the nature described are not deductible. In order to be deductible a loss must occur during the settlement of the estate. If a loss with respect to an asset occurs after distribution thereof to the distributee it may not be deducted.*

§ 81.40 *Support of dependents.* The support of dependents of the decedent during the settlement of the estate is deductible pursuant to the following rules:

(a) In order to be deductible, the allowance must be authorized by the laws of the jurisdiction in which the estate is being administered, and not in excess of what is reasonably required.

(b) The allowance for which deduction may be made is limited to support during the settlement of the estate. Any allowance for a more extended period is not deductible.

(c) There must be an actual disbursement from the estate to the dependents, but after payment has been made the right of deduction is not affected by the fact that the dependents do not expend the entire amount for their support during the settlement of the estate.*

DEDUCTIONS—PROPERTY PREVIOUSLY TAXED

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

* * * * *

(c) (as amended by Joint Resolution, approved March 17, 1941, Public Law 18, Seventy-seventh Congress, effective as of February 11, 1939) *Property previously taxed.* An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under chapter 4, or under Title III of the Revenue Act of 1932, 47 Stat. 245, or an estate tax imposed under this subchapter, the Revenue Act of 1926, 44 Stat. 69, or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor.

Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this subsection shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under subsections (a), (b) and (d) as the amount otherwise deductible under this subsection bears to the value of the decedent's gross estate. Where the property referred to in this subsection consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

* * * * *

SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of $100,000 provided in section 812 (a), the exemption shall be $40,000.

§ 81.41 *Deduction of the value of transfers previously taxed.* If there is included in the decedent's gross estate property received by him by gift from any person within five years prior to his death, or received by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or property acquired in exchange for property so received, the Internal Revenue Code authorizes a deduction in respect thereof, subject to the following conditions and limitations, namely:

(a) *Conditions.* (1) The property respecting which the deduction is sought must have been received by the decedent as a gift within five years prior to his death, or received by him by gift, bequest, devise, or inheritance from a prior decedent who died within five years of the decedent's death.

(2) The property must be identified either as the same property which the decedent so received or as property acquired in exchange therefor.

(3) The property must have formed a part of the gross estate, situated in the United States, of such prior decedent, or have been included in the total amount of the donor's gifts made within five years prior to the decedent's death.

(4) An estate tax by or on behalf of the estate of such prior decedent, or a gift tax by or on behalf of the donor, must have actually been paid (the mere filing of a return for such estate or donor not being sufficient).

(5) No such deduction, in respect of the property or property given in exchange therefor, must have been allowable in determining the value of the net estate of the prior decedent.

(b) *Limitations.* (1) The deduction is limited to the value of the property, or the aggregate value of such property if more than one item, as finally determined for the purpose of the gift tax or for the purpose of the prior estate tax, or to the value of such property or aggregate items thereof (or property acquired in exchange therefor) included in the decedent's gross estate, whichever is the lower.

(2) The deduction, as limited in (1), is reduced by the total amount paid prior to the decedent's death on any mortgage or other lien on the property previously taxed, provided such mortgage or other lien was deducted in determining the estate tax of the prior decedent or the gift tax of the donor.

(3) The deduction is further reduced on account of the deductions allowed under subsections (a), (b), and (d) of section 812. The amount of this further reduction is that proportion of such deductions which the amount otherwise deductible for property previously taxed bears to the value of the decedent's gross estate.

Property included in the total amount of gifts of a donor for the purpose of the gift tax and also included in the donee's gross estate does not embrace any portion of the gifts excluded under the provisions of section 1003 (b) of the Internal Revenue Code or corresponding provisions of prior gift tax statutes, and due allowance must be made for any such exclusions when computing the deduction for property previously taxed.

For example: A donor gave his daughter a house and lot valued at $24,000, of which only $20,000 was included in the total amount of his gifts for the purpose of the gift tax. This property is included in the daughter's gross estate at a value of $18,000. As only 20,000/24,000 of the property was included for the purpose of the gift tax, in accordance with the third condition previously set forth in this section, the amount of the property previously taxed which is also included in the daughter's gross estate is 20,000/24,000×$18,000 or $15,000.

The application of this section may be illustrated by the following example:

*Example.* The decedent died June 15, 1940. The value of his gross estate for the purpose of the estate tax is $1,000,000, of which $200,000 is the value of insurance in excess of $40,000 payable to beneficiaries other than the estate, $600,000 is the value of property previously taxed, and $200,000 is the value of stocks and bonds not so taxed. The property previously taxed was inherited from the decedent's father, who died on June 1, 1939. The tax on the father's estate was paid. The property previously taxed may be set forth as follows:

| | Decedent's estate | Prior estate |
|---|---|---|
| Item 1 | $150,000 | $100,000 |
| Item 2 | 40,000 | 85,000 |
| Item 3 | 110,000 | 125,000 |
| Item 4 | 130,000 | 120,000 |
| Item 5 | 90,000 | 115,000 |
| Item 6 | 80,000 | 50,000 |
| Total | 600,000 | 595,000 |

Item 1, $150,000, is specifically bequeathed to a charitable organization free of estate, inheritance, legacy, or succession taxes. Administration expenses and debts of the decedent amount to $150,000. At the time of the father's death there was an unpaid mortgage of $60,000 on item 5 which was deducted in determining the estate tax liability of the father's estate. This mortgage was entirely paid before the son's death.

The deduction for property previously taxed is limited to the aggregate value of the items constituting such property as finally determined in the case of the prior decedent or donor, or to the aggregate value of such property included in the decedent's gross estate, whichever is the lower. Accordingly, the amount of the deduction for property previously taxed thus ascertained is $595,000. In accordance with (b) (2) of this section this deduction is reduced by $60,000, the amount paid in the discharge of the mortgage on item 5. The deduction thus reduced is $535,000.

The deduction is further reduced by a proportionate amount computed under the provisions of (b) (3) of this section. As the amount of the specific exemption authorized by subchapter A is greater than the amount of the specific exemption authorized by subchapter B, the amount so computed in determining the deduction for the purpose of the basic tax imposed by subchapter A differs from the amount so computed in determining the deduction for the purpose of the additional tax imposed by subchapter B.

In this example the deductions, except for property previously taxed, amount to $400,000, as follows: $150,000 for the charitable bequest, $150,000 for administration expenses and debts, and $100,000 for the specific exemption authorized by subchapter A. The proportionate amount by which the deduction for property previously taxed is further reduced for the purpose of the basic tax imposed by subchapter A is ascertained by multiplying the above mentioned $400,000 by 0.535, the ratio which the said $535,000 bears to the value of the gross estate, $1,000,000, and amounts to $214,000. The difference between $535,000 and $214,000 is $321,000, the amount in which the deduction for property previously taxed is allowable in determining the tax imposed by subchapter A. The total amount of the deductions, $721,000, subtracted from the value of the gross estate, $1,000,000, leaves a net estate of $279,000, the transfer of which is subject to the tax imposed by subchapter A.

Subchapter B provides for a specific exemption of $40,000. Accordingly, the deductions, other than the deduction for property previously taxed, allowable under that subchapter, amount to $340,000, and 0.535 of that amount is $181,900, the proportionate amount by which the deduction for property previously taxed is further reduced for the purpose of the additional tax. The difference between $533,000 and $181,900 is $353,100, the amount in which the deduction for property previously taxed is allowable in determining the additional tax. The total amount of the deductions, $693,100, subtracted from the value of the gross estate, $1,000,000, leaves a net estate of $306,900, the transfer of which is subject to the additional tax imposed by subchapter B.*

§ 81.42 *Property originally received.* If the property originally received from a donor or prior decedent is included in the decedent's gross estate, the executor must describe it fully and prove its identity.*

§ 81.43 *Property acquired in exchange.* The deduction for substituted property is not limited to property acquired by a single exchange of property received from the donor or the prior decedent, but extends to substituted property acquired by the process of exchange, whether through the medium of money or otherwise, irrespective of the number of conversions involved, including the proceeds of the sale or other disposition of property so received or acquired, as well as property acquired by purchase with the proceeds of the sale or other disposition of such property so long as such proceeds can be conclusively identified as such and clearly traced to the property originally so received.

The executor must describe and fully identify both the property originally received from the donor or the prior decedent and the substituted property for which deduction is claimed, giving the date and stating the nature of the transaction by which the substituted property was acquired, together with the name and address of the transferee. If the transaction was evidenced by written instrument of public record, precise reference to such record must be made, and if by instrument not of record, a verified copy thereof must be supplied. If there was no written instrument, there must be furnished the affidavit of one or more persons having personal knowledge of the matter, setting forth the facts in connection therewith.

The burden of identifying property as acquired in exchange for property included in the gross estate of the prior decedent for Federal estate tax purposes rests upon the executor.*

DEDUCTIONS—TRANSFERS FOR PUBLIC, CHARITABLE, RELIGIOUS, ETC., USES

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

* * * * *

(d) *Transfers for public, charitable, and religious uses.* The amount of all bequests, legacies, devises, or transfers to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. If the tax imposed by section 810, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law, of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. The amount of the deduction under this subsection for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

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SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of $100,000 provided in section 812 (a), the exemption shall be $40,000.

§ 81.44 *Transfers for public, charitable, religious, etc., uses.* Deduction may be taken of the value of all property transferred by will or by the decedent in his lifetime not to exceed the value of the transferred property required to be

included in the gross estate if in either case the property was transferred (1) to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes; or (2) to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), if no part of the net earnings of the corporation or association inures to or is payable to or for the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; or (3) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, if such transfers, legacies, bequests, or devises are to be used by such trustee, trustees, fraternal society, order, or association exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

If a trust is created for both a charitable and a private purpose, deduction may be taken of the value of the beneficial interest in favor of the former only insofar as such interest is presently ascertainable, and hence severable from the interest in favor of the private use. § 81.10 indicates the principles to be applied in the computation of the present worth of deferred uses, but such computation will not be made by the Commissioner on behalf of the executor. Thus, if money or property is placed in trust to pay the income to an individual during his life, or for a term of years, and then to pay or deliver the principal to the charitable corporation, or to apply it to a charitable purpose, the present value of the remainder is deductible. To determine the present value of such remainder, use the appropriate factor in column 3 of Table A or B of § 81.10. If the present worth of a remainder bequeathed for a charitable use is dependent upon the termination of more than one life, or in any other manner rendering inapplicable Table A or B of § 81.10, the claim for the deduction must be supported by a full statement, in duplicate, of the computation of the present worth made, in accordance with the principle set forth in § 81.10, by one skilled in actuarial computations.

The deduction is not limited, in the estates of citizens or residents, to transfers to domestic corporations or associations, or to trustees for use within the United States.

If under the terms of the will, or the law of the jurisdiction wherein the estate is administered, or the law of the jurisdiction imposing the particular tax, the Federal estate tax, or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any bequest, legacy, or devise deductible under section 812 (d), the sum deductible is the amount of such bequest, legacy, or devise so reduced. Thus, if $50,000 is bequeathed for a charitable purpose and is subjected to a State inheritance tax of $5,000, the amount deductible is $45,000; or if a life estate is bequeathed to an individual with remainder over to a charitable corporation, and by the local law the legacy tax upon the life estate is taken out of the corpus with the result that the charitable corporation will be entitled to receive only the amount of the fund less the tax, the deduction is limited to the present worth, as of the date of the testator's death, of the remainder of the fund so reduced; or if the testator bequeaths his residuary estate, or a portion thereof, to charity, and his will contains a direction that certain inheritance taxes, otherwise payable from legacies in respect of which they were laid, shall be payable out of such residuary estate, the deduction may not exceed the bequest to charity thus reduced pursuant to the direction of the will; or if a residuary estate, or a portion thereof, be bequeathed to charity, and by the local law the Federal estate tax is payable out of the residuary estate, the deduction may not exceed that portion of the residuary estate bequeathed to charity as reduced by the Federal estate tax. The statute in effect provides that the deduction shall be based on the amount actually available for charitable uses, that is, the amount of the fund remaining after the payment of all death taxes. The return should fully disclose the computation of the amount to be deducted. If such amount is dependent upon the amount of any death tax which has not been paid before the filing of the return, Form 706, there should be submitted with the return a computation of such tax.

If as the result of a controversy involving a charitable bequest or devise, the charitable organization assigns or surrenders a part thereof pursuant to a compromise agreement in settlement of such controversy, the amount so assigned or surrendered is not deductible as a bequest or devise to such charitable organization.*

§ 81.45 *Religious, charitable, scientific, and educational corporations.* A corporation or association to which a transfer for a religious, charitable, scientific, or educational purpose was made must meet four tests: (1) It must be organized and operated for one or more of the specified purposes; (2) it must be organized and operated exclusively for such purposes; (3) no part of its net earnings shall inure to or be paid to or for the benefit of private stockholders or individuals; and (4) no substantial part of its activities shall be carrying on propaganda, or otherwise attempting, to influence legislation.

The estate is not deprived of the right to deduct the value of property so transferred by reason of the fact that private individuals are the recipients of the benefits which the corporation or association dispenses. Such right is, however, lost if any part of the net earnings of the corporation or association inures to or is payable to or for the benefit of a private stockholder or individual.*

§ 81.46 *Conditional bequests.* If as of the date of decedent's death the transfer to charity is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that charity will not take is so remote as to be negligible. If an estate or interest has passed to or is vested in charity at the time of decedent's death and such right or interest woud be defeated by the performance of some act or the happening of some event which appeared to have been highly improbable at the time of decedent's death, the deduction is allowable.

If the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power.*

§ 81.47 *Proof required.* In establishing the right of the estate to this deduction, the executor must submit:

(a) Duplicate copies of the will of the decedent, and of the order admitting the will to probate, one copy of each of which should be certified, if the deduction is claimed of property transferred by such will. Duplicate copies of any instrument in writing by which the decedent made a transfer of property in his lifetime the value of which is required by the statute to be included in his gross estate, if the deduction is claimed of property so transferred. If the instrument is of record one copy thereof should be certified, and if not of record, one copy should be verified. The certified or verified copy should be forwarded by the collector to the Commissioner.

(b) An affidavit by the executor stating whether any action has been instituted to have interpreted or to contest the will or any provision thereof affecting the charitable deduction claimed and whether, according to his information and belief, any such action is designed or contemplated.

(c) Such other documents or evidence as may be requested by the Bureau.*

SPECIFIC EXEMPTION

SEC. 812. [Part II, Subchapter A.] NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

(a) *Exemption.* An exemption of $100,000;

* * * * *

SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of $100,000 provided in section 812 (a), the exemption shall be $40,000.

§ 81.48 *Specific exemption.* A specific exemption should be deducted in determining the net estate of a citizen or resident of the United States. The specific exemption deductible in determining the net estate upon which the basic tax is imposed by section 810 of the Internal

Revenue Code (subchapter A) is $100,000. The specific exemption deductible in determining the net estate of a citizen or resident upon which the additional tax is imposed by section 935 of the Internal Revenue Code (subchapter B) is $40,000. No specific exemption is authorized in the case of the estate of a nonresident not a citizen.*

ESTATES OF NONRESIDENTS NOT CITIZENS

SEC. 862. [Part III, Subchapter A.] PROPERTY WITHIN THE UNITED STATES.

For the purpose of this subchapter—

(a) *Stock in domestic corporation.* Stock in a domestic corporation owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States; and

(b) *Revocable transfers and transfers in contemplation of death.* Any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of section 811 (c) or (d), shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death.

SEC. 863. [Part III, Subchapter A.] PROPERTY WITHOUT THE UNITED STATES.

The following items shall not, for the purpose of this subchapter, be deemed property within the United States:

(a) *Proceeds of life insurance.* The amount receivable as insurance upon the life of a nonresident not a citizen of the United States; and

(b) *Bank deposits.* Any moneys deposited with any person carrying on the banking business, by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of this death.

SEC. 850. [Part II, Subchapter A.] MISSIONARIES IN FOREIGN SERVICE.

Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

SEC. 851. [Part II, Subchapter A.] CITIZENS WITH ESTATES IN CHINA.

The term "resident" as used in this subchapter includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China.

§ 81.49 *Gross estate.* The gross estate of a nonresident not a citizen is made up in the same way as that of a citizen or resident of the United States. For computation of the net estate of a nonresident not a citizen, see § 81.51. For meaning of the terms "residents" and "nonresidents," and of the presumption applying as to the residence of missionaries, see § 81.5.*

§ 81.50 *Situs of property.* Real estate, tangible personal property, and the written evidence of intangible personal property which is treated as being the property itself are within the United States if physically situated therein. For example, a bond for the payment of money is not within the United States unless physically situated therein. Stock of a domestic corporation, however, constitutes property within the United States, irrespective of where the certificates thereof are physically located.

Intangible personal property the written evidence of which is not treated as being the property itself constitutes property within the United States if consisting of a property right issuing from or enforceable against a resident of the United States or a domestic corporation (public or private), if not subject to the exceptions prescribed in section 863 (a) and (b). Under the provisions of that section the amount receivable as insurance upon the life of a decedent who was a nonresident not a citizen, and moneys deposited by or for such a decedent, who was not engaged in business in the United States at the time of his death, with any person carrying on the banking business, shall not be deemed property within the United States.

Property of which the decedent has made a transfer taxable under the provisions of § 81.15 is deemed to be situated in the United States if so situated either at the time of the transfer or at the time of the decedent's death. (See §§ 81.15 to 81.21, inclusive.)*

DEDUCTIONS—ESTATES OF NONRESIDENTS NOT CITIZENS

SEC. 861. [Part III, Subchapter A.] NET ESTATE.

(a) *Deductions allowed.* For the purpose of the tax the value of the net estate shall be determined, in the case of a nonresident not a citzen of the United States, by deducting from the value of that part of his gross estate (determined as provided in section 811), which at the time of his death is situated in the United States.—

(1) *Expenses, losses, indebtedness, and taxes.* That proportion of the deductions specified in subsection (b) of section 812 which the value of such part bears to the value of his entire gross estate, wherever situated.

(2) (as amended by Joint Resolution, approved March 17, 1941, Public Law 18, Seventy-seventh Congress, effective as of February 11, 1939) *Property previously taxed.* An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under chapter 4, or under Title III of the Revenue Act of 1932, 47 Stat. 245, or an estate tax imposed under this subchapter, the Revenue Act of 1926, 44 Stat. 69, or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1) and (3) of this subsection as the amount otherwise deductible under this paragraph bears to the value of that part of the decedent's gross estate which at the time of his death is situated in the United States. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

(3) *Transfers for public, charitable, and religious uses.* The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. If the tax imposed by section 860, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(b) *Condition of allowance of deductions.* No deduction shall be allowed in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 864 the value at the time of his death of that part of the gross estate of such nonresident not situated in the United States.

SEC. 935. [Subchaper B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, * * *.

§ 81.51 *Net estate.* The Internal Revenue Code imposes the tax upon the transfer of only the portion of the estate of a nonresident not a citizen that was situated in the United States. In determining the net estate, the deductions specifically authorized for this class of cases may be taken from the portion of the gross estate situated in the United States.*

§ 81.52 *Deductions of administration expenses, claims, etc.* In estates of non-

residents not citizens, deductions from the gross estate may be taken, subject to the limitations set forth in §§ 81.29 to 81.40, inclusive, and to the limitations hereinafter stated, for the following: Funeral expenses; administration expenses; claims against the estate; unpaid mortgages; losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualties, or from theft, if such losses are not compensated for by insurance or otherwise; and amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent. It is immaterial whether the amounts to be deducted were incurred or expended within or without the United States, but certain limitations are imposed which do not apply to estates of residents or citizens, namely:

(a) Only that proportion of the aggregate thereof is deductible which the value of that part of the gross estate situated (within the meaning of the statute) in the United States, bears to the value of the entire gross estate, wherever situated. (See § 81.55.)

(b) No deduction whatever may be taken unless the executor includes in the return the value of that part of the gross estate not situated in the United States. Such part of the gross estate must be valued as of the date of the decedent's death; or, if the option authorized by section 811 (j) is exercised, such part must be valued in accordance with the provisions of § 81.11.

In order that the Bureau may properly pass upon the items claimed as deductions, the executor should submit a certified copy of the schedule of liabilities, claims against the estate, and expenses of administration filed under the foreign death-duty act; or, if no such schedule was filed, a certified copy of the schedule of such liabilities, claims, and expenses filed with the foreign court in which administration was had; or, if items of deduction allowable under section 861 (a) (1) were not included in either such schedule, or if no such schedules were filed, then the affidavit of the foreign executor setting forth the facts relied upon as entitling the estate to the benefit of the particular deduction or deductions.*

§ 81.53 *Deduction of the value of property previously taxed.* The right to deduct the value of property received by a decedent who was a nonresident not a citizen by gift from any person within five years prior to his death, or by gift, bequest, devise, or inheritance from any person who died within five years prior to his death, or the value of property acquired in exchange for property so received, is governed by the same rules as those applying to estates of citizens or residents (§§ 81.41 to 81.43, inclusive), subject to the three following exceptions:

(1) The deduction is not available to any extent unless the executor includes in the return the value of that part of the gross estate not situated in the United States. Such part of the gross estate must be valued as of the date of the decedent's death; or, if the option authorized by section 811 (j) is exercised, such part must be valued in accordance with the provisions of § 81.11.

(2) The property for which the deduction is claimed must be included in that part of the gross estate situated in the United States at the time of the decedent's death.

(3) Instead of the amount of the deduction being reduced in accordance with the third limitation set forth under § 81.41 (b), the amount of the deduction is reduced by the proportion of the total other deductions, allowed under paragraphs (1) and (3) of subsection (a) of section 861, which the amount otherwise deductible for property previously taxed bears to the value of the part of the gross estate situated in the United States at the time of the decedent's death.*

§ 81.54 *Deduction of value of transfers for public, charitable, religious, etc., uses.* The right to deduct the value of property transferred by nonresidents not citizens for public, religious, charitable, scientific, literary, or educational purposes is governed by the same rules as those applying to estates of citizens or residents (§§ 81.44 to 81.47, inclusive), subject, however, to the two following exceptions:

(a) The right is limited to transfers to corporations and associations created or organized in the United States, or to trustees for use within the United States.

(b) The right is available only if the executor includes in the return the value of that part of the gross estate not situated in the United States. Such part of the gross estate must be valued as of the date of the decedent's death; or, if the option authorized by section 811 (j) is exercised, such part must be valued in accordance with the provisions of § 81.11.

Instead of duplicate copies of the documents specified in § 81.47, only one copy is required to be filed.*

§ 81.55 *Determination of net estate.* The following example will show the manner of determining the net estate of a nonresident not a citizen. The gross estate, wherever situated, amounts to $1,000,000, of which $200,000 represents the value of the property having its situs within the United States (the term "United States" including not only the several States, but also the Territories of Alaska and Hawaii, and the District of Columbia). The funeral expenses, administration expenses, and claims against the estate aggregate $150,000, and there are charitable bequests, for use within the United States, amounting to $25,000. Hence the property situated within the United States constitutes 20 per cent of the entire gross estate wherever situated, and a like percentage of the $150,000 is $30,000. The following result is accordingly obtained:

| | |
|---|---|
| Gross estate within the United States | $200,000 |
| 20 percent of $150,000 | 30,000 |
| Charitable bequests for use within the United States | 25,000 |
| | 55,000 |
| Net estate | 145,000 |

For the manner of computing the tax on the net estate, see § 81.7.*

§ 81.56 *Payment of tax.* The provisions relating to credits (see §§ 81.8 and 81.9) and to rates and payment of the tax are the same in estates of nonresidents not citizens and of residents or citizens. The Internal Revenue Code provides that the executor shall pay the tax. If there is no executor or administrator appointed, qualified, and acting within the United States, every person in either the actual or constructive possession of any property of the decedent is constituted by the Internal Revenue Code as executor for the purpose of tax payment, and is liable for the tax to the extent of the property so in his possession. (See §§ 81.75 to 81.82, inclusive.) All checks, drafts, or money orders should be made payable to the order of the collector of internal revenue.*

PRELIMINARY NOTICE—ESTATES OF CITIZENS OR RESIDENTS

SEC. 820. [Part II, Subchapter A.] EXECUTOR'S NOTICE.

The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935 (c).

SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of $100,000 provided in section 812 (a), the exemption shall be $40,000.

§ 81.57 *When notice required.* A preliminary notice is required to be filed in the case of every citizen or resident whose gross estate exceeded $40,000 in value at the date of death. The value of the gross estate at the date of death governs with respect to the filing of the notice regardless of whether the value of the gross estate is, at the executor's election, finally determined as of a date subsequent to the date of death pursuant to the provisions of section 811 (j). The notice must be filed in duplicate within two months after the decedent's death or within two months after the executor has qualified. In the case of a resident, it must be filed with the collector in whose district the decedent had his domicile at the time of death. In the case of a nonresident citizen, it must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district, or, if no part of the gross estate was situated in the United States, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. If there

is doubt as to whether the gross estate exceeded $40,000, the notice should be filed as a matter of precaution in order to avoid the possibility of penalties attaching.*

§ 81.58 *Notice by executor or administrator.* The duly qualified executor or administrator is required to file such preliminary notice on Form 704, copies of which may be obtained from the collector, within two months after qualifying as such, if notice has not already been filed. The primary purpose of the notice is to advise the Government of the existence of taxable estates, and filing should not be delayed beyond the two months' period because of uncertainty as to the exact value of the assets. The filing of the notice within the prescribed period is mandatory, and the estimate of the gross estate called for by the notice should be the best approximation of value which can be made within the time allowed. The instructions upon the back of the form should be read carefully before executing the notice. The signature of one executor or administrator upon Form 704 is sufficient. For penalties for delinquency in filing notice, or for filing a false or fraudulent notice, see §§ 81.88, 81.89, and 81.91.*

§ 81.59 *Notice by others than duly qualified executor or administrator.* The term "executor" embraces any person in actual or constructive possession of any property of the decedent at or after the time of the latter's death, if within two months after the decedent's death no executor or administrator qualifies. The notice on Form 704 must be filed by such persons in every case in which an executor or administrator has not duly qualified within such period. If, within the period mentioned, an executor or administrator qualifies, the duty of filing the notice devolves upon him, and all other persons are relieved therefrom.*

PRELIMINARY NOTICE—ESTATES OF NONRESIDENTS NOT CITIZENS

SEC. 820. [Part II, Subchapter A.] EXECUTOR'S NOTICE.

The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector.

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

§ 81.60 *Estates of nonresidents not citizens; preliminary notice.* In estates of nonresidents not citizens, notice on Form 705, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any collector of internal revenue, is required if any part of the gross estate was situated (see § 81.50) in the United States. The notice must be filed, in duplicate, by every appointed, qualified, and acting executor or administrator within the United States with the collector of internal revenue of the district in which such part of the gross estate was situated, or, if such part of the gross estate was situated in more than one district, it must be filed with the collector for the second district of New York or with such collector as the Commissioner may designate. The notice is necessary if any part of the decedent's gross estate was situated, within the meaning of the statute, in the United States, regardless of the value of that part of the entire gross estate. If no executor or administrator has qualified, notice must be filed within two months after the date of death by every person in either the actual or constructive possession of any property of the decedent so within the United States at or after the time of his death. If such person has no knowledge of the decedent's death within two months following its occurrence, he should file the notice immediately upon obtaining such knowledge. The term "person in actual or constructive possession of any property of the decedent" (section 930) includes, among others, the decedent's agents and representatives; safe-deposit companies, warehouse companies, and other custodians of property in this country; brokers holding, as collateral, securities belonging to the decedent or investment funds owned by the decedent, and debtors of the decedent in this country. As to any moneys deposited by or for a decedent of this class with any person, corporation, or association carrying on the banking business, no notice is required, unless, however, the decedent was engaged in business in the United States at the time of his death.*

§ 81.61 *Information return by corporation or transfer agent.* Upon notification from the Bureau of Internal Revenue a corporation (organized or created in the United States), or its transfer agent will be required to file a return disclosing the following information pertaining to stocks or bonds registered in the name of a nonresident decedent (regardless of citizenship): (1) Name of decedent as registered; (2) date of death, residence, place of death, and names and addresses of executors, attorneys, or other representatives, within and without the United States, if known; and (3) a description of the securities and the number of shares or bonds and the par values. Treasury Department Form 714, which will be supplied by the Bureau upon request, may be used for the return.*

§ 81.62 *Transfer certificates.* Certificates permitting the transfer of property of nonresident decedents (regardless of citizenship) without liability will be issued by the Commissioner when he is satisfied that the tax imposed upon the estate, if any, has been fully discharged or provided for. The tax will be considered fully discharged for the purpose of the issuance of a transfer certificate only when investigation has been completed and payment of the tax, including any deficiency finally determined, has been made. If the tax liability has not been fully discharged transfer certificates may be issued permitting the transfer of particular items of property without liability upon the filing with the Commissioner of such security as he may require. No domestic corporation or its transfer agent should transfer stock registered in the name of a nonresident decedent without first requiring a transfer certificate covering all of the decedent's stock of the corporation and showing that such transfer may be made without liability. Banks, trust companies, and others in actual or constructive possession of property of nonresident decedents should require transfer certificates before transferring such property. However, a transfer certificate need not be required for bonds owned by a decedent who was a nonresident not a citizen if it is known that such bonds were not physically situated in the United States at the time of death. Corporations, transfer agents, banks, trust companies, or other custodians can insure avoidance of liability for tax and penalties only by demanding and receiving transfer certificates, as herein provided, prior to transfer of property of nonresident decedents.

The requirements of this and the preceding section do not apply if there is an executor or administrator appointed, qualified, and acting within the United States.*

THE RETURN—ESTATES OF CITIZENS OR RESIDENTS

SEC. 821. [Part II, Subchapter A.] RETURNS.

(a) *Requirement*—(1) *Returns by executor.* In all cases where the gross estate at the death of a citizen or resident exceeds the amount of the specific exemption provided in section 812 (a), the executor shall make a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death; (2) the deductions allowed under section 812; (3) the value of the net estate of the decedent as defined in section 812; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(2) *Returns by beneficiaries.* If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

(3) *Cross reference.* For provision requiring a return where the gross estate exceeds $40,000, see section 937.

(b) *Time for filing.* The return required of the executor under subsection (a) shall be filed at such times and in such manner as may be required by regulations made pursuant to law.

(c) *Place for filing.* The return required of the executor under subsection (a) shall be filed with the collector of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a

citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935 (c).

SEC. 935. [Subchapter B.] RATE OF TAX.

* * * * *

(c) For the purposes of this section the value of the net estate shall be determined as provided in subchapter A, except that in lieu of the exemption of $100,000 provided in section 812 (a), the exemption shall be $40,000.

§ 81.63 *When return required; date of filing.* A return on Form 706 is required in the case of every citizen or resident, whose gross estate, as defined in the statute, exceeded $40,000 in value at the date of death. The duty to file a return depends upon the value of the gross estate on the date of the decedent's death, regardless of any valuation as of a subsequent time that the executor may use by virtue of his election under subsection (j) of section 811, since such election may be made only upon the return. In the case of a resident, the return must be filed with the collector in whose district the decedent had his domicile at the time of death. In the case of a nonresident citizen, it must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district, or, if no part of the gross estate was situated in the United States, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. The return on Form 706 must be filed in duplicate within 15 months after the date of death. The due date is the day of the fifteenth calendar month after the decedent's death numerically corresponding to the day of the calendar month in which death occurred, except that, if there is no numerically corresponding day in such fifteenth month, the last day of such fifteenth month is the due date. For example, if the decedent died on August 31, 1939, the due date is November 30, 1940. If the due date for filing the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, the filing will not be regarded as delinquent should the return not be actually received by such officer until subsequent to that date. As to penalty for failure to file the return within the time prescribed, see § 81.89. As to loss of the option to have the property valued as of a date or dates subsequent to the decedent's death by failing to file the return within the time prescribed, see § 81.11.*

§ 81.64 *Persons liable for return.* The Internal Revenue Code provides that the duly qualified executor or administrator shall file the return. If there is more than one executor or administrator, the return must be made jointly by all. If no executor or administrator has been appointed, every person in actual or constructive possession of any property of the decedent is constituted by the Internal Revenue Code an executor for the purposes of the tax (section 930), and is required to make and file a return as provided by section 821. If, in any case, the executor is unable to make a complete return as to any part of the gross estate, he is required to give all the information he has as to such property, including a full description, and the name of every person holding a legal or beneficial interest in the property. If the executor is unable to make a return as to any property, the Internal Revenue Code requires that every person holding a legal or beneficial interest therein shall, upon notice from the collector, make return as to such part of the gross estate. For penalties for delinquency in filing return, or for filing a false or fraudulent return, see §§ 81.88, 81.89, and 81.91.*

§ 81.65 *Preparation of return.* The return must be made on Form 706, copies of which will be supplied by the collector upon application. It must be filed in duplicate under oath and contain an itemized inventory by schedule of the property constituting the gross estate and lists of the deductions under the appropriate schedules. The return must set forth (1) the value of the gross estate (see §§ 81.10–81.28), (2) the deductions allowed (see §§ 81.29–81.48), (3) the value of the net estate, and (4) the tax paid or payable thereon. The return must set forth (1) both the net estate determined in accordance with the provisions of subchapter A imposing the basic tax and the net estate for the purposes of the additional estate tax imposed by subchapter B and (2) the basic tax, the additional tax, and, when applicable, the defense tax. The amount payable upon the return is the total of the net basic and net additional taxes, unless the decedent died after June 25, 1940 and before September 21, 1941. If the decedent died within such period, the total tax payable is the total of such net taxes plus the defense tax. The instructions printed on the form should be carefully followed. All documents and vouchers used in preparing the return should be retained by the executor so as to be available for inspection whenever required. Duplicate copies of the will, if the decedent died testate, one of which should be certified, must be submitted with the return, together with copies of such other documents as are required in Form 706 and in the applicable sections of these regulations. There may also be filed in duplicate copies of any documents which the executor may desire to submit with the return in explanation thereof.

In every case of an estate of a nonresident citizen, the executor should file the following documents with the return: (1) A copy of the inventory of property and the schedule of liabilities, claims against the estate and expenses of administration filed with the foreign court of probate jurisdiction, certified by a proper official of such court; and (2) a copy of the return filed under the foreign inheritance, estate, legacy, or succession tax act, certified by a proper official of the foreign tax department, if the estate is subject to such a foreign tax.*

§ 81.66 *Supplemental data.* The Internal Revenue Code provides that the executor, in addition to filing notice and return, shall furnish such supplemental data as may be necessary to establish the correct tax (section 821). It is therefore the duty of the executor to furnish upon request copies of any documents in his possession relating to the estate, or on file in any court having jurisdiction over the estate, appraisal lists of any items included in the gross estate, copies of balance sheets or other financial statements relating to the value of stock, and any other information obtainable by him that may be found necessary in the determination of the tax. Failure to comply with such a request will render the executor liable to penalties (§ 81.90), and proceedings may be instituted in the proper court of the United States to secure compliance therewith (section 3633 (a)).

Persons having possession or control of any records or documents containing or supposed to contain any information concerning the estate, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the estate to the tax, shall, upon request of the Commissioner or any revenue agent or inspector designated by him for that purpose, make disclosure thereof. Failure on the part of any person to comply with such request will render him liable to penalties (§ 81.90), and compliance with the request may be enforced in the proper court of the United States (section 3633 (a)).*

THE RETURN—ESTATES OF NONRESIDENTS NOT CITIZENS

SEC. 864. [Part III, Subchapter A.] RETURNS.

(a) *Requirement*—(1) *Returns by executor.* In the case of the estate of every nonresident not a citizen of the United States any part of whose gross estate is situated in the United States, the executor shall make a return under oath in duplicate, setting forth (1) the value of that part of the gross estate of the decedent situated in the United States at the time of his death; (2) the deductions allowed under section 861; (3) the value of the net estate of the decedent as defined in section 861; (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(2) *Returns by beneficiaries.* If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

(b) *Time for filing.* The return required of the executor under subsection (a) shall be filed at such times and in such manner as may be required by regulations made pursuant to law.

(c) *Place for filing.* The return required of the executor under subsection (a) shall be filed with the collector of the district in

which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

SEC. 865. CROSS REFERENCE.

For missionaries in foreign service, see section 850.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, * * *.

§ 81.67 *Return of estates of nonresidents not citizens.* A return on Form 706, copies of which may be obtained from the Commissioner of Internal Revenue, Washington, D. C., or from any collector of internal revenue, is required in the case of every nonresident not a citizen any part of whose gross estate was situated (see § 81.50) in the United States. The return must set forth an itemized list of that part of the gross estate situated in the United States and the total value thereof (see § 81.51), the deductions claimed, if any (see §§ 81.52–81.54), the value of the net estate (see § 81.55), and the tax paid or payable thereon. The return must set forth the basic tax imposed by subchapter A (section 860), the additional tax imposed by subchapter B (section 935), and, if the decedent died after June 25, 1940, and before September 21, 1941, the defense tax imposed by subchapter C, as added by the Revenue Act of 1940. The return must be filed with the collector of internal revenue of the district in which such part of the gross estate was situated, or, if such part of the gross estate was situated in more than one district, it must be filed with the collector for the second district of New York, or with such collector as the Commissioner may designate. The return must be filed in duplicate and under oath within 15 months from the date of death, unless an extension is obtained pursuant to §§ 81.69 or 81.70. If the due date for filing the return falls on a Sunday or on a legal holiday, the due date for filing will be the day following such Sunday or legal holiday. If placed in the mails the return should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed, and postage paid, in ample time to reach the office of the collector on or before the due date, the filing will not be regarded as delinquent should the return not be actually received by such officer until subsequent to that date. As to penalty for failure to file the return within the time prescribed, see § 81.89. As to loss of the option to have the property valued as of a date or dates subsequent to the decedent's death by failing to file the return within the time prescribed, see § 81.11. The return should be made and filed by the executor or administrator appointed, qualified, and acting within the United States, or, if none, then by any person in actual or constructive possession of any property of the decedent situated in the United States, whatever its value. If the qualified executor or administrator is unable to make a complete return as to any part of the gross estate, he is required to give all the information available to him as to such part, including a description thereof and the name of every person holding a legal or beneficial interest therein. As to the meaning of the term "person in actual or constructive possession of any property of the decedent," see § 81.60.*

§ 81.68 *Supplemental data.* Pursuant to the provisions of section 864 (a) (1), with respect to furnishing supplemental data, if the decedent is a nonresident not a citizen, the executor is required to file with the return:

(a) A certified copy of the will, if decedent died testate, or, if the decedent left several wills to govern in different jurisdictions, a certified copy of each will.

(b) If any deductions are claimed, a copy of the inventory of property filed under the foreign death-duty act; or, if no such inventory was filed, a certified copy of the inventory filed with the foreign court of probate jurisdiction.

The Commissioner may require the documents specified in paragraph (b) regardless of whether deductions are claimed. For requirements dealing with the duty to furnish other documents or information relating to the tax liability of the estate, and penalties in connection therewith, see § 81.66.*

EXTENSION OF TIME FOR FILING RETURN

SEC. 3634. [Chapter 34.] EXTENSION OF TIME FOR FILING RETURNS.

If the failure to file a return (other than a return of income tax) or list at the time prescribed by law or by regulation made under authority of law is due to sickness or absence, the collector may allow such further time, not exceeding thirty days, for making and filing the return or list as he deems proper.

§ 81.69 *Extension of time by collector.* In case of sickness or absence, collectors are authorized to grant an extension of time for filing the return for a period not in excess of 30 days from the due date. No such extension of time may be granted unless the application therefor is received by the collector prior to the expiration of the period for which the extension is requested and authorized. An extension of time for filing the return does not in itself operate to extend the time for the payment of the tax, which is due and payable 15 months after the date of death. For extension of time of payment, see § 81.79.*

§ 81.70 *Extension of time by Commissioner.* In case it is impossible for the executor to file a reasonably complete return within 15 months from the date of death, the Commissioner may, upon written application submitted on or prior to the due date showing good and sufficient cause, grant an extension of time not to exceed 3 months from the due date. Before the expiration of the extension period granted a return as complete as possible must be filed. The return thus filed will be the return required by section 821 (a) (1) or 864 (a) (1) and any tax shown thereon will be the "amount determined by the executor as the tax" referred to in section 822 (a) (2), or the "amount shown as the tax by the executor upon his return" referred to in section 870 (1). Such return cannot thereafter be amended, although supplemental information may subsequently be filed that may result in a finally determined tax different from the amount shown as the tax by the executor upon his return. An extension of time for filing the return does not operate to extend the time for payment of the tax, which is due 15 months after the date of death. An extension of time in which to make payment of the tax may be secured as provided in § 81.79.*

DETERMINATION OF TAX BY COMMISSIONER

SEC. 824. [Part II, Subchapter A.] EXAMINATION OF RETURN AND DETERMINATION OF TAX.

As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 825. [Part II, Subschapter A.] DISCHARGE OF EXECUTOR FROM PERSONAL LIABILITY.

(a) *Application for discharge.* If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in sections 874 and 875) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(b) *Cross reference.* For continuance of lien upon the gross estate after discharge of executor, see section 827 (c).

SEC. 802. [Part I, Subchapter A.] APPLICATION OF PARTS.

Part II shall apply to the estates of citizens or residents of the United States and, except as otherwise provided, to the estates of nonresidents not citizens of the United States, subject to the exceptions and additional provisions contained in Part III. * * *

§ 81.71 *Examination of return and determination of tax by the Commissioner.* As soon as practicable after returns are filed, they will be examined and the amount of the tax determined by the Commissioner under such procedure as he may from time to time prescribe.

If the executor makes written application to the Commissioner for a determination of the tax and discharge from personal liability therefor, the Commissioner will, within one year after receipt of such application, or if the application is made before the return is filed then within one year after the return is filed, notify the executor of the amount of the tax, and upon payment thereof, the executor will be discharged from personal liability for any deficiency in the tax thereafter found to be due.*

§ 81.72 *Authorization of attorneys and others required.* If an attorney or other person asks a ruling on a question

of law arising in a specific case, the Commissioner will require satisfactory evidence of the right to obtain such ruling. Hypothetical questions cannot be answered.

In all cases in which information is sought regarding an estate, or an interview is asked, by an attorney or by an agent of the executor or administrator, the information or interview will be denied unless the attorney or agent presents a duly executed power of attorney from the executor or administrator authorizing the attorney or agent to act in his behalf. Powers of attorney should be filed in the office of the internal revenue agent in charge in which the case is under consideration.

No attorney or agent will be recognized as representing an estate or executor unless such attorney or agent is enrolled to represent claimants or others before the Treasury Department. For regulations governing enrollment, reference should be made to Treasury Department Circular No. 230, as revised, copies of which may be obtained upon application to the Secretary of the Committee on Practice, Treasury Department, Washington, D. C.*

DEFICIENCY TAX

SEC. 870. [Part IV, Subchapter A.] DEFINITION OF DEFICIENCY.

As used in this subchapter in respect of the tax imposed by this subchapter the term "deficiency" means—

(1) The amount by which the tax imposed by this subchapter exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or credited without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

SEC. 871. [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

(a) (1) *Petition to Board of Tax Appeals.* If the Commissioner determines that there is a deficiency in respect of the tax imposed by this subchapter, the Commissioner is authorized to send notice of such deficiency to the executor by registered mail. Within 90 days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day), the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this subchapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the executor, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3653 (a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

* * * * *

(e) *Increase of deficiency after notice mailed.* The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) *Further deficiency letters restricted.* If the Commissioner has mailed to the executor notice of a deficiency as provided in subsection (a), and the executor files a petition with the Board within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subsection (e) or section 872 (c). If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subsection or of subsection (a), or of section 911, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a).

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SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935 (c).

SEC. 3760. [Chapter 36.] CLOSING AGREEMENTS.

(a) *Authorization.* The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

(b) *Finality.* If such agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

§ 81.73 *Deficiency, petitions, and closing agreements.* Section 870 by its definition of the word "deficiency" provides a term which will apply to any amount of tax determined to be due in excess of the amount of tax reported by the executor, or in excess of the amount reported by the executor as adjusted by way of prior assessments, abatements, refunds, or collections without assessment. In defining the term "deficiency" section 870 recognizes two classes of cases—one, in which the executor makes a return showing some tax liability; the other, in which the executor makes a return showing no tax liability, or in which the executor fails to make a return. Additional tax, resulting from supplemental information filed after the return has been filed, is a deficiency within the meaning of the Internal Revenue Code.

When a case is considered for the first time, the deficiency is the excess of the amount determined to be the correct amount of the tax over the amount shown as the tax by the executor on his return, or, if it is a case in which no tax was reported by the executor, the deficiency is the amount determined to be the correct amount of the tax. Subsequent information sometimes discloses that the amount previously determined to be the correct amount of the tax is less than the correct amount, and that a redetermination of the tax is necessary. In such a case the deficiency on redetermination is the excess of the amount determined to be the correct amount of the tax over the sum of the amount of tax reported by the executor and the deficiency assessed in connection with the previous determination. If it is a case in which no tax was reported by the executor, the deficiency is the excess of the amount determined to be the correct amount of the tax over the amount of the deficiency disclosed by the previous determination. If the previous determination resulted in a refund to the executor, the deficiency upon the second determination is the excess of the amount determined to be the correct amount of the tax over the amount of tax reported by the executor decreased by the amount of the tax refunded.

In all cases in which a deficiency in respect of a tax (including penalties or other additions to the tax provided by law) is determined by the Commissioner, a notice thereof will be sent to the executor by registered mail in accordance with the provisions of section 871 (a) of the Internal Revenue Code even though a jeopardy assessment (see § 81.74) is made. If, subsequent to the mailing of such notice, a jeopardy assessment is made in respect of the deficiency to which such notice relates no subsequent notice will be sent to the executor by the Commissioner, but if such jeopardy assessment is made, and the amount thereof is in excess of the deficiency to which the notice relates, the Commissioner will mail a notice to the executor as required by section 871 (a) of the determination of such additional deficiency provided no petition has theretofore been filed with the Board of Tax Appeals. If a deficiency is determined in respect of the basic tax imposed by subchapter A, the additional tax imposed by subchapter B, and the defense tax imposed by subchapter C (effective between June

25, 1940, and September 21, 1941), notice of all such deficiencies may be incorporated in the same communication.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after the mailing of the registered letter notifying him of the final determination of a deficiency by the Commissioner, the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency, other than a deficiency resulting from the correction of a mathematical error appearing upon the return.

The executor and the Commissioner (or any officer or employee authorized by the Commissioner), subject to approval by the Secretary, the Under Secretary, or an Assistant Secretary of the Treasury, may, under the provisions of section 3760, enter into a closing agreement in writing relating to the tax liability of the estate which will be final and conclusive except upon a showing of fraud or malfeasance, or misrepresentation of a material fact.*

ASSESSMENT OF TAX

SEC. 3640. [Chapter 35.] ASSESSMENT AUTHORITY.

The Commissioner is authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this title, or accruing under any former internal revenue law, where such taxes have not been duly paid by stamp at the time and in the manner provided by law.

SEC. 822. [Part II, Subchapter A.] PAYMENT OF TAX.

(a) *Time of payment.*

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(2) *Extension of time.* Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed ten years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may, if he deems it necessary, require the executor to furnish security for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension.

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SEC. 871 [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

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(b) *Collection of deficiency found by Board.* If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) *Failure to file petition.* If the executor does not file a petition with the Board within the time prescribed in subsection (a) the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) *Waiver of restrictions.* The executor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) *Increase of deficiency after notice mailed.* The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) *Further deficiency letters restricted.* If the Commissioner has mailed to the executor notice of a deficiency as provided in subsection (a), and the executor files a petition with the Board within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subsection (e) or section 872 (c). If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subsection or of subsection (a), or of section 911, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a).

(g) *Final decisions of board.* For the purposes of this subchapter the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1140.

(h) *Extension of time for payment of deficiency.* Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension.

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SEC. 872. [Part IV, Subchapter A.] JEOPARDY ASSESSMENTS.

(a) *Authority for making.* If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) *Deficiency letters.* If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 871 (a), then the Commissioner shall mail a notice under such subsection within 60 days after the making of the assessment.

(c) *Amount assessable before decision of board.* The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the executor, despite the provisions of section 871 (f) and whether or not the executor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner may, at any time before the decision of the board is rendered abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Commissioner shall notify the board of the amount of such assessment, or abatement, if the petition is filed with the board before the making of the assessment or is subsequently filed, and the board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) *Amount assessable after decision of board.* If the jeopardy assessment is made after the decision of the board is rendered such assessment may be made only in respect of the deficiency determined by the board in its decision.

(e) *Expiration of right to assess.* A jeopardy assessment may not be made after the decision of the board has become final or after the executor has filed a petition for review of the decision of the board.

(f) *Bond to stay collection.* When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 892 or 893 (b) (4). If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

(g) *Same—Further conditions.* If the bond is given before the executor has filed his petition with the Board under subsection (a) of section 871, the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

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(i) *Collection of unpaid amounts.* When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been

assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

SEC. 874. [Part IV, Subchapter A.] PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

(a) *General rule.* Except as provided in subsection (b) the amount of estate taxes imposed by this subchapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) *Exceptions*—(1) *False return or no return.* In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(2) *Collection after assessment.* Where the assessment of any tax imposed by this subchapter has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

SEC. 875. [Part IV, Subchapter A.] SUSPENSION OF RUNNING OF STATUTE.

The running of the statute of limitations provided in section 874 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under section 871 (a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935 (c).

§ 81.74 *Assessments.* In any case in which the Commissioner believes that the assessment or collection of a deficiency tax will be jeopardized by delay, he will make an immediate assessment thereof. In such case the assessment may be made before the mailing of the notice provided by section 871 (a), or at any time thereafter prior to the filing of a petition for a review by the court of a decision rendered by the Board. If the jeopardy assessment is made subsequent to a decision of the Board, then the assessment is limited to the amount of the deficiency determined by the Board. If the jeopardy assessment is made before any notice in respect of the deficiency to which the jeopardy assessment relates has been mailed under subsection (a) of section 871, the Commissioner will mail a notice as provided by such subsection within 60 days after the making of such jeopardy assessment. The Commissioner may, at any time before the decision of the Board is rendered, abate such an assessment or any portion thereof, to the extent that he believes it to be excessive in amount.

If an amount of tax in excess of that shown upon the return is determined to be due as a result of the correction of a mathematical error appearing upon the face of the return, the executor will be duly notified and an assessment made of the tax which would have been the correct tax but for the mathematical error. The notice that the correct amount of the tax has been assessed will not be a notice within the meaning of subsection (a) of section 871 or section 911 and the executor has no right to file a petition with the Board of Tax Appeals based upon such notice.

If a petition is filed with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final will be assessed, except such portion as may have been assessed as a jeopardy assessment and not abated. If no petition is filed with the Board within the time prescribed in section 871 (a), the deficiency, notice of which has been mailed to the executor, will be assessed. If the executor by a signed notice in writing filed with the Commissioner waives the restrictions on the assessment and collection of the whole or any part of the deficiency, assessment of such whole or part will be made immediately. (As to payment, see §§ 81.75 to 81.82, inclusive.)

All assessments against executors (as to assessments against transferees and fiduciaries, see § 81.102), except in the case of a false or fraudulent return, or of a failure to file a return within the time required by law, must be made within three years after the return was filed. If notice of a deficiency is mailed in accordance with the provisions of subsection (a) of section 871, then the running of the statute of limitations on assessment of any deficiency shall be suspended for the period during which the Commissioner is prohibited from making the assessment (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter. If an extension of time for payment of tax is granted in accordance with section 822 (a) (2) or section 871 (h), then the running of the statute of limitations on assessment shall be suspended for the time covered by such extension.

In case of a false or fraudulent return with intent to evade the tax, or of a failure to file a required return, the tax may be assessed, or proceedings in court for collection may be begun without assessment, at any time.*

PAYMENT OF AND RECEIPTS FOR TAXES

SEC. 822. [Part II, Subchapter A.] PAYMENT OF TAX.

(a) *Time of payment*—(1) *General rule.* The tax imposed by this subchapter shall be due and payable fifteen months after the decedent's death.

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(b) *Liability for payment.* The tax imposed by this subchapter shall be paid by the executor to the collector.

SEC. 871. [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

* * * * *

(b) *Collection of deficiency found by board.* If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. * * *

(c) *Failure to file petition.* If the executor does not file a petition with the Board within the time prescribed in subsection (a) the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

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SEC. 823. [Part II, Subchapter A.] DUPLICATE RECEIPTS.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

SEC. 3656. [Chapter 36.] PAYMENT BY CHECK.

(a) *Certified checks*—

(1) *Authority to receive.* It shall be lawful for collectors to receive for internal revenue taxes certified checks drawn on national and state banks and trust companies during such time and under such regulations as the Secretary may prescribe.

(2) *Discharge of liability*—(A) *Check duly paid.* No person who may be indebted to the United States on account of internal revenue taxes who shall have tendered a certified check or checks as provisional payment for such taxes, in accordance with the terms of this subsection, shall be released from the obligation to make ultimate payment thereof until such certified check so received has been duly paid.

(B) *Check unpaid.* If any such check so received is not duly paid by the bank on which it is drawn, and so certifying, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of such bank; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

(b) *Uncertified checks*—(1) *Authority to receive.* Collectors may receive uncertified checks in payment of income, war profits, and excess profits taxes, and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

(2) *Ultimate liability.* If a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the

gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935 (c).

§ 81.75 *Payment of tax; general.* The tax is due and must be paid within 15 months from the date of death unless an extension of time for payment thereof has been granted by the Commissioner. (See also § 81.79.) If the tax is due 15 months after the decedent's death, the due date is the day of the fifteenth calendar month after his death numerically coresponding to the day of the calendar month on which death occurred, except that, if there is no numerically corresponding day in such fifteenth month, the last day of such fifteenth month is the due date. For example, if the decedent died on August 31, 1939, the due date is November 30, 1940. No discount will be allowed for payment in advance of the due date. The collector will grant to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts.

Following an investigation of the return, the tax liability will be determined by the Commissioner. If the amount of tax shown on the return has been paid and exceeds the amount of tax as determined, a certificate of overassessment will be prepared and issued, regardless of whether or not a claim for refund of such excess payment is filed unless refundment of such excess is barred by the statute of limitations, or such excess is otherwise not refundable, as in the case of a compromise (see § 81.98), a closing agreement (see § 81.73) conclusively fixing the amount of tax liability, or an estoppel. If the amount of tax as determined exceeds the amount of tax already paid but is less than the amount shown on the return, the executor will be notified of the amount of the unpaid tax and payment thereof should be made to the collector. If the audit of the return does not disclose a deficiency tax or overpayment the executor will be notified to that effect. If, as a result of the audit of the return, a deficiency in respect of the tax is finally determined and such deficiency is in whole or in part assessed (see § 81.74), the executor should pay the amount of the deficiency assessed upon notice and demand from the collector, except in the case a stay of the collection of a jeopardy assessment is obtained by the filing of a bond (see § 81.93), or an extension of time for payment is granted (see § 81.80). Until the tax, including any deficiency, is finally determined, the executor should reserve a sufficient portion of the estate to satisfy the liability.*

§ 81.76 *The executor shall pay the tax.* The Internal Revenue Code provides that the executor shall pay the tax. This duty applies to the entire tax, regardless of the fact that the gross estate consists in part of property which will not come into his possession. If there is no duly qualified executor or administrator, all persons in actual or constructive possession of any property of the decedent are liable for and required to pay the tax to the extent of the value of such property. (See section 930 (a).) As to the personal liability of the executor, see § 81.99.*

§ 81.77 *Payment by check.* Collectors may accept uncertified checks in payment of the tax, provided such checks are collectible at par, that is, for the full amount, without any deduction for exchange or other charges. The collector will stamp upon the face of each check before deposit thereof the words "This check is in payment of an obligation to the United States and must be paid at par. No protest." This should be followed by his name and title. The day on which the check is received will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If the bank on which a check is drawn should refuse to pay it at par, the check should be returned through the depositary bank.

All expenses incident to the attempt to collect such a check and the return of it through the depositary bank must be paid by the drawer of the check to the bank on which it is drawn. (See section 3971 of the Internal Revenue Code.) In case a check has been returned uncollected by the depositary bank, the collector should proceed to collect the tax as though no check had been given, and the taxpayer will remain liable for payment of the tax and for all interest, legal penalties, and additions, if any attach, to the same extent as though such check had not been tendered. A taxpayer who tenders a certified check in payment of the tax is not released from his obligation until the check has been paid.

Treasury Department Circular No. 176, as amended, prescribes detailed regulations governing the deposit and collection of checks. Collectors are referred to paragraphs 13–16 and paragraph 26 thereof as to the deposit of taxpayers' checks and the handling of uncollected or lost items.*

§ 81.78 *Payment with bonds or notes of the United States.* Payment of the tax may be made with certain bonds of the United States in accordance with section 14 of the Second Liberty Bond Act, as amended (U.S.C., 1940 edition, Title 31, section 765), and Department Circular 225, as amended and supplemented, issued pursuant thereto. Such bonds must bear interest at a higher rate than 4 per cent per annum, and are receivable at par value, together with interest accrued at the time of payment, provided they were owned by the decedent continuously for at least six months prior to the date of his death, and upon such date constituted a part of his gross estate.

With respect to payment of tax with United States Treasury notes, the latest Treasury decision pertaining thereto should be consulted. (See Appendix.)*

EXTENSION OF TIME FOR PAYMENT OF TAX

SEC. 822. [Part II, Subchapter A.] PAYMENT OF TAX.

(a) *Time of payment.*

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(2) *Extension of time.* Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed ten years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may, if he deems it necessary, require the executor to furnish security for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension.

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SEC. 925. [Part IV, Subchapter A.] PERIOD OF EXTENSION.

Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this subchapter attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then be payable, together with interest thereon at the rate of 4 per centum per annum from eighteen months after the date of the decedent's death until such amount is paid.

SEC. 926. [Part IV, Subchapter A.] REQUIREMENTS FOR EXTENSION.

The postponement of payment of such amount shall be under such regulations as the Commissioner with the approval of the Secretary may prescribe, and shall be upon condition that the executor, or any other person liable for the tax, shall furnish a bond in such an amount, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment within six months after the termination of such precedent interest or interests of the amount the payment of which is so postponed, together with interest thereon, as provided in section 925.

SEC. 927. [Part IV, Subchapter A.] CREDIT FOR STATE DEATH TAXES.

Such part of any estate, inheritance, legacy, or succession taxes allowable as a credit against the tax imposed by this subchapter as is attributable to such reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the percentage limitation contained in section 813 (b), if such part is paid, and credit therefor claimed, at any time prior to the expiration of 60 days after the termination of the precedent interest or interests in the property.

SEC. 871. [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

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(h) *Extension of time for payment of deficiency.* Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of four years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case the running of the statute of limitations for assessment and

collection, as provided in section 874, shall be suspended for the period of any such extension.

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SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935 (c).

§ 81.79 *Extension of time*—(a) *For payment of tax shown on return.* In any case in which the Commissioner finds that payment, on the due date, of any part of the tax shown on the return would impose undue hardship upon the estate, he may extend the time for payment thereof for a period or periods not to exceed in all 10 years from the due date.

The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax at the due date. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

An application for such an extension must be in writing and must contain, or be supported by, information under oath showing the undue hardship that would result to the estate if the requested extension were refused. The application, with the supporting information, must be filed with the collector, who will transmit it to the Commissioner with his recommendations as to the extension. When it is received by the Commissioner, it will be examined, and, if possible, within 30 days will be denied, granted, or tentatively granted subject to certain conditions of which the executor will be notified. The Commissioner will not consider an application for such an extension unless request therefor is made to the collector on or before the due date. If the executor desires to obtain an additional extension, the request therefor must be made to the collector on or before the date of the expiration of the previous extension. No single extension for more than one year will be granted. The granting of an extension of time for paying the tax is discretionary with the Commissioner, and such authority will be exercised under such conditions as he may deem advisable.

If an extension is granted, the Commissioner may, if he deems it necessary, require the executor to furnish security for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension.

The amount of the tax for which an extension is granted, with the additions thereto, shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand from the collector. Payment of the amount for which the extension was granted and the additions thereto before the expiration of the extension will not relieve the executor from paying the entire amount of interest provided for in the extension.

The granting of such an extension will not relieve the executor from the duty of filing the return on or before the date fixed by the regulations, nor will it operate to prevent the running of interest. (See § 81.81.) An extension of time to pay the tax may extend the period within which taxes allowed as a credit by section 813 (b) are required to be paid and the credit therefor claimed. (See § 81.9.) The running of the statute of limitations for assessment and collection, as provided in section 874, is suspended for the period of the extension. (See §§ 81.74 and 81.102.)

(b) *For payment of tax attributable to a reversionary or remainder interest.* In case there is included in the gross estate a reversionary or remainder interest in property, the payment of the part of the tax attributable to such interest may at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property. This provision is limited to cases in which the reversionary or remainder interest is included in the decedent's gross estate as such and does not extend to cases in which the decedent creates future estates by his own testamentary act.

Notice of the exercise of the election to postpone the payment of the tax attributable to a reversionary or remainder interest should be filed with the Commissioner before the date prescribed for payment of the tax. There should be filed with the notice of election a certified copy of the will or other instrument under which the reversionary or remainder interest was created. The Commissioner may require the submission of such additional proof as is deemed necessary to disclose the complete facts. If the duration of the precedent interest is dependent upon the life of any person, the application must show the date of birth of such person.

As a prerequisite to the postponement of the payment of the tax attributable to a reversionary or remainder interest, a bond must be furnished in such an amount (at least double the amount of the tax and interest for the estimated duration of the precedent interest), and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the tax and interest accrued thereon within six months after the termination of the precedent interest. In case the duration of the precedent interest is dependent upon the life or lives of any person or persons, or is otherwise indefinite, the bond must be further conditioned upon the principal or surety promptly notifying the Commissioner when such precedent interest terminates and upon the principal or surety notifying the Commissioner during the month of September of each year as to the continuance of the precedent interest. If after the acceptance of a bond it is determined that the amount of the tax attributable to the reversionary or remainder interest was understated in the bond, a new bond or a supplemental bond may be required, or such tax to the extent of the understatement may be collected.

If the decedent's gross estate consists of both a reversionary or remainder interest in property and other property, the tax attributable to the reversionary or remainder interest, within the meaning of section 925 and this section, is an amount which bears the same ratio to the total tax which the value of the reversionary or remainder interests bears to the entire gross estate, subject to the following qualification: In determining the ratio, the value of the reversionary or remainder interest should be reduced by (1) the amount of claims, mortgages, and indebtedness which is a lien upon such interest; (2) losses in respect of such interest during the settlement of the estate which are deductible under the provisions of sections 812 (b) (5) and 861 (a) (1); (3) any amount in respect of such interest identified as previously taxed property under the provisions of sections 812 (c) and 861 (a) (2); (4) any amount deductible on account of devises or bequests of such interests to charitable, etc., uses as described in sections 812 (d) and 861 (a) (3). In determining the ratio, the gross estate should likewise be reduced by such deductions having similar relationship to items in the gross estate other than the remainder or reversionary interest.

If the time for payment of the Federal estate tax attributable to a reversionary or remainder interest in property is postponed, all estate, inheritance, legacy, or succession taxes allowable as a credit under the provisions of section 813 (b), as amended, which are paid and for which credit is claimed within the period provided in such section, will be allowed not to exceed 80 percent respectively, of that portion of the Federal basic tax attributable to such interest and to that portion attributable to the other property, and will be applied first to the respective portion of the Federal basic tax which is attributable to the same interests in property to which the estate, inheritance, legacy, or succession taxes are attributable. Estate, inheritance, legacy, or succession taxes, as described in section 813 (b), as amended, which are attributable to the reversionary or remainder interest and which are paid and for which credit is claimed after the expiration of the period provided in that section will also be allowed as a credit against the Federal basic tax attributable to such interest (limited by the requirement that the total credit may not exceed 80 percent of the total Federal basic tax) if such taxes are paid and credit therefor is claimed prior to the expiration of 60 days after the termination of the preceding interest or interests in the property.

*Example.* The Federal basic tax attributable to the reversionary or remainder interest is $5,000, and that attributa-

ble to all other property is $10,000. The estate, inheritance, legacy, or succession taxes paid to the State within the 4-year period are $9,000, all attributable to property other than the reversionary or remainder interest. Of this $9,000, the maximum of $8,000 is credited against the Federal basic tax of $10,000 attributable to property other than the reversionary or remainder interest, and the balance of $1,000 is credited to the Federal basic tax attributable to the reversionary interest. Accordingly, the estate will be required to pay $2,000 (Federal basic tax of $10,000 attributable to property other than the reversionary or remainder interest, minus the credit of $8,000) at once, and an extension will be allowed for payment of $4,000 (Federal basic tax of $5,000 attributable to the reversionary interest, minus credit of $1,000). After expiration of the 4-year period, but before expiration of 60 days after termination of the life estate or precedent interest, the estate pays additional State estate, inheritance, legacy, or succession taxes of $5,000 attributable to the reversionary or remainder interest. As the maximum credit is $12,000 (80 percent of $15,000, the total Federal basic tax) and $9,000 has already been allowed, there will be an additional allowance of $3,000, and the estate will be required to pay $1,000 at the end of the extension period.

If any estate, inheritance, legacy, or succession taxes are imposed by any of the several States, Territories, or possessions of the United States, or the District of Columbia upon a reversionary or a remainder interest in property and other property, without definitely apportioning the tax between such classes of property, for the purposes of this section the amount of such estate, inheritance, legacy, or succession taxes which will be deemed to be attributable to the reversionary or remainder interest will be an amount which bears the same ratio to the total of such taxes as the value of such property bears to the value of the decedent's entire estate upon which the estate, inheritance, legacy, or succession tax was imposed. In determining the ratio, reduction will be made in the value of the reversionary or remainder interest and the value of the gross estate as previously provided in this section for determining the Federal estate tax attributable to the reversionary or remainder interest.

The amount of tax the payment of which is postponed under the provisions of section 925 bears interest at the rate of 4 per cent per annum from the expiration of 18 months after the date of the decedent's death until such amount is paid. (See § 81.81 (b).) *

§ 81.80 *Extension of time for payment of deficiency tax.* If it is shown to the satisfaction of the Commissioner that the payment of the deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner may grant an extension of time for the payment of the deficiency or any part thereof for a period not to exceed in all four years from the date prescribed for the payment of the deficiency.

The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the deficiency at the due date. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted where the deficiency is due to negligence or intentional disregard of the rules and regulations, or to fraud with intent to evade the tax.

An application for such an extension must be in writing and must contain, or be supported by, information under oath showing the undue hardship that would result to the estate were the requested extension refused. The application, with the supporting information, must be filed with the collector, who will transmit it to the Commissioner with his recommendations as to the extension. When it is received by the Commissioner, it will be examined, and, if possible, within 30 days will be denied, granted, or tentatively granted subject to certain conditions of which the executor will be notified. The Commissioner will not consider an application for an extension of time for the payment of a deficiency unless request therefor is made to the collector on or before the date prescribed for payment thereof, as shown by the notice and demand from the collector. If the executor desires to obtain an additional extension, the request therefor must be made to the collector on or before the date of the expiration of the previous extension. No single extension for more than one year will be granted. The granting of an extension of time for paying the deficiency is discretionary, and such authority will be exercised under such conditions as may be deemed advisable.

As a condition to the granting of such an extension, the Commissioner will usually require the executor to furnish a bond in an amount not exceeding double the amount of the deficiency, or to furnish other security satisfactory to the Commissioner for the payment of the liability on or before the date prescribed for payment in the extension, so that the risk of loss to the Government will not be more at the end of the extension period than it was at the beginning of the period. If a bond is required it shall be conditioned upon the payment of the deficiency, interest, and any additional amounts assessed in connection therewith in accordance with the terms of the extension granted, and shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds, and shall be subject to the approval of the Commissioner. In lieu of such a bond, the executor may file a bond secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, 49 Stat. 22, U.S.C., 1940 edition, Title 6, section 15.)

The amount of the deficiency for which an extension is granted, with any additions thereto, shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand from the collector. Payment of the amount for which the extension was granted and any additions thereto before the expiration of the extension will not relieve the executor from paying the entire amount of interest provided for in the extension.

The granting of such an extension will not operate to prevent the running of interest. (See § 81.82.) An extension of time to pay the deficiency may extend the period within which taxes allowed as a credit by section 813 (b) are required to be paid and the credit therefor claimed. (See § 81.9.) The running of the statute of limitations for assessment and collection, as provided in section 874, is suspended for the period of the extension. (See §§ 81.74 and 81.102.) *

INTEREST ON TAX

SEC. 890. [Part IV, Subchapter A.] INTEREST ON EXTENDED PAYMENTS.

(a) *Tax shown on return.* If the time for the payment is extended as provided in section 822 (a) (2) there shall be collected, as a part of such amount, interest thereon from the expiration of three months after the due date of the tax to the expiration of the period of the extension. In the case of any such extension, the rate of interest shall be 4 per centum per annum.

(b) *Deficiency.* In case an extension for the payment of a deficiency is granted, as provided in section 871 (h), there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period.

SEC. 925. [Part IV, Subchapter A.] PERIOD OF EXTENSION.

Where there is included in the value of the gross estate the value of a reversionary or remainder interest in property, the payment of the part of the tax imposed by this subchapter attributable to such interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property, and the amount the payment of which is so postponed shall then be payable, together with interest thereon at the rate of 4 per centum per annum from eighteen months after the date of the decedent's death until such amount is paid.

SEC. 891. [Part IV, Subchapter A.] INTEREST ON DEFICIENCIES.

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under section 871 (d), to the thirtieth

day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

SEC. 871. [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

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(i) *50 per cent addition treated as deficiency.* The 50 per centum addition to the tax provided by section 3612 (d) (2) shall, when assessed in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of section 891 shall not be applicable.

SEC. 892. [Part IV, Subchapter A.] INTEREST ON JEOPARDY ASSESSMENTS.

In the case of the amount collected under section 872 (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 872 (i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 891.

SEC. 893. [Part IV, Subchapter A.] ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.

(a) *Tax shown on return*—(1) *Payment not extended.* Where the amount determined by the executor as the tax imposed by this subchapter, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the due date until it is paid.

(2) *Payment extended.* Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 890 (a), is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) *Deficiency*—(1) *Payment not extended.* Where a deficiency, or any interest assessed in connection therewith under section 891, or any addition to the tax provided for in section 3612 (d), is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

(2) *Filing of jeopardy bond.* If a bond is filed, as provided in section 872, the provisions of paragraph (1) of this subsection shall not apply to the amount covered by the bond.

(3) *Payment extended.* If the part of the deficiency the time for payment of which is extended as provided in section 871 (h) is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per centum per annum for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(4) *Jeopardy assessment—Payment stayed by bond.* If the amount included in the notice and demand from the collector under section 872 (i) is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid.

SEC. 872. [Part IV, Subchapter A.] JEOPARDY ASSESSMENTS.

* * * * *

(f) *Bond to stay collection.* When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 892 or 893 (b) (4). If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall at the request of the taxpayer, be proportionately reduced.

(g) *Same—Further conditions.* If the bond is given before the executor has filed his petition with the Board under subsection (a) of section 871, the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

* * * * *

(i) *Collection of unpaid amounts.* When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935 (c).

§ 81.81 *Interest on tax*—(a) *Shown on return.* If any portion of the tax shown on the executor's return is not paid on or before the due date, and no extension of time for payment thereof has been granted, such unpaid portion bears interest from the due date until payment is received by the collector at the rate of 6 per cent per annum.

If an extension of time has been granted for paying any portion of the tax shown on the executor's return, in accordance with § 81.79 (a), interest accrues thereon at the rate of 4 per cent per annum from the expiration of 18 months after the decedent's death to the expiration of the period of the extension. If the amount of the tax, the time for payment of which has been extended, together with any interest accrued thereon, is not paid in full on or before the date of the expiration of the extension, the total unpaid amount (tax and any accrued interest) bears interest from the expiration of the extension until payment is received by the collector at the rate of 6 per cent per annum.

Interest at 4 or 6 per cent per annum is computed on the basis of 365 days to the year, or 366 days in a leap year.

(b) *Attributable to a reversionary or remainder interest.* If the time for the payment of the tax attributable to a reversionary or remainder interest is postponed in accordance with the provisions of section 925, the amount the payment of which is so postponed will bear interest at the rate of 4 per cent per annum from the expiration of 18 months after the date of the decedent's death until such amount is paid. However, if the amount of the tax, the time for payment of which is so postponed, together with interest accrued thereon, is not paid in full on or before the date of the expiration of the period of the postponement (six months after the termination of the precedent interest or interests in the property), the unpaid amount bears interest at the rate of 6 per cent per annum from the date of the expiration of the period of the postponement until payment is received by the collector.*

§ 81.82 *Interest on deficiency tax.* The Internal Revenue Code provides that any deficiency shall bear interest at the rate of 6 per cent per annum from the due date for payment of the tax (15 months after the date of death) to the date the deficiency is assessed, except in the case of a waiver of the restrictions against the assessment and collection of the deficiency, and that such interest shall be assessed at the same time as the deficiency of which it becomes an integral part. The deficiency in respect of which the restrictions against the assessment and collection are waived under section 871 (d) bears interest at the rate of 6 per cent per annum from the due date of the tax to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed, whichever is the earlier. The term "deficiency" includes any tax resulting from the correction of a mathematical error appearing upon the face of a return. (See second paragraph of § 81.74.)

If any portion of the deficiency assessed is not paid within 30 days from the date of the notice and demand issued by the collector (except a deficiency or any part thereof with respect to which a jeopardy assessment is made and collection is stayed by the filing of a bond), and no extension of time for payment thereof has been granted, such unpaid portion bears interest from the date of the notice and demand until payment is

received by the collector at the rate of 6 per cent per annum.

If an extension of time is granted for paying any portion of the deficiency assessed, in accordance with section 81.80, interest accrues thereon at the rate of 6 per cent per annum for the period of the extension, i. e., from the date prescribed for the payment (30 days after the date of the notice and demand) to the expiration of the period of the extension. If the amount of the deficiency, the time for payment of which has been extended, together with interest accrued thereon, is not paid in full on or before the date of the expiration of the extension, the total unpaid amount) tax, interest and any addition thereto) bears interest from the expiration of the extension until payment is received by the collector at the rate of 6 per cent per annum.

Any addition to the tax resulting from the imposition of an ad valorem penalty under the provisions of section 3612 (d) is not subject to any interest between the due date for payment of the tax (15 months after the date of death) and the date of the assessment of the penalty.

If a stay of the collection of a jeopardy assessment of a deficiency tax, or any addition to the tax resulting from the imposition of an ad valorem penalty, is obtained and a petition for a redetermination of the deficiency is filed with the Board of Tax Appeals, interest accrues on such unpaid portion of the deficiency or penalty, if any, determined by a decision of the Board which is made final, at the rate of 6 per cent per annum from the date of the notice and demand from the collector following the jeopardy assessment to the date of the notice and demand by the collector subsequent to the final action taken on the petition filed with the Board. If the amount which the Board determines should have been assessed is not paid in full within 30 days from the date of such notice and demand issued subsequent to the decision of the Board which has become final, interest accrues upon the unpaid amount from the date of such notice and demand until it is paid at the rate of 6 per cent per annum. If the amount (exclusive of any ad valorem penalty) determined by the Board as the amount which should be assessed is greater than the amount actually assessed the difference bears interest at the rate of 6 per cent per annum from the due date of the tax until assessment of such difference. If the collection of the jeopardy assessment is stayed, and no petition is filed with the Board for a redetermination of the deficiency, interest accrues upon the deficiency so assessed at the rate of 6 per cent per annum from the date of the jeopardy notice and demand to the date of the notice and demand made by the collector after the expiration of the 90 days from the mailing by the Commissioner of the notice of the deficiency. If such amount is not paid within 30 days from the date of such further notice and demand, interest accrues upon the unpaid amount from the date of such further notice and demand until it is paid at the rate of 6 per cent per annum.

Interest at 6 per cent per annum is computed on the basis of 365 days to the year, or 366 days in a leap year.*

COLLECTION OF TAX

SEC. 826. [Part II, Subchapter A.] COLLECTION OF UNPAID TAX.

(a) *Sale of property.* If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law; or appropriate proceedings may be commenced in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This subsection in so far as it applies to the collection of a deficiency shall be subject to the provisions of sections 871 and 891.

(b) *Reimbursement out of estate.* If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this subchapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

(c) *Liability of life insurance beneficiaries.* If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of $40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

§ 81.83 *Sale of property.* The remedy by action provided in section 826 (a) is not exclusive. For other available remedies for the collection of the tax, see § 81.102.*

§ 81.84 *Right to reimbursement.* If any portion of the tax is paid by or collected out of that part of the estate passing to, or in the possession of, any person other than the duly qualified executor or administrator, such person may be entitled to reimbursement, either out of the undistributed estate or by contribution from other beneficiaries whose shares or interests in the estate would have been reduced had the tax been paid before distribution of the estate, or whose shares or interests are subject either to an equal or prior liability for the payment of taxes, debts, or other charges against the estate. The executor is entitled to require beneficiaries under insurance policies to bear their proportion of the tax. These provisions, however, are not designed to curtail the right of the Commissioner to collect the tax from any person, or out of any property, liable therefor. The Commissioner cannot be required to apportion the tax among the persons liable, nor to enforce any right to reimbursement or contribution.*

LIEN FOR TAX

SEC. 827. [Part II, Subchapter A.] LIEN FOR TAX.

(a) *Upon gross estate.* Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) *Upon property of transferee.* If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

(c) *Continuance after discharge of executor.* The provisions of section 825 shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

* * * * *

SEC. 825. [Part II, Subchapter A.] DISCHARGE OF EXECUTOR FROM PERSONAL LIABILITY.

(a) *Application for discharge.* If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is

filed, but not after the expiration of the period prescribed for the assessment of the tax in sections 874 and 875) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

§ 81.85 *Property subject to lien.* The lien imposed by section 827 attaches at the date of the decedent's death to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency tax found to be due upon review and audit.

The lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except—

(a) If the tax is paid in full before the expiration of such period.

(b) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof.

(c) Such portion of the gross estate as has passed to a bona fide purchaser for value if payment is made of the full amount of tax determined by the Commissioner pursuant to a request of the executor for discharge from personal liability, as authorized by sections 825 (a) and 827 (c) (see § 81.71), but there is substituted a like lien upon the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

(d) Such property as was received from the decedent as a transfer by trust or otherwise in contemplation of or intended to take effect in possession or enjoyment at or after his death, or under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom (except in case the transfer was a bona fide sale for an adequate and full consideration in money or money's worth), and was sold by the transferee or trustee to a bona fide purchaser for such a consideration. In such case the lien attaches to all the property of the transferee or trustee except such thereof as may be sold to a bona fide purchaser for such a consideration.

(e) If a certificate releasing such lien is issued. (See § 81.86.)*

§ 81.86 *Release of lien.* The statute provides that if the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may issue his certificate releasing any or all property of the estate from the lien. The issuance of certificates releasing such lien is a matter resting within the discretion of the Commissioner, and certificates will be issued only in case there is actual need therefor. The primary purpose of such release is not to evidence payment or satisfaction of the tax, but to permit the transfer of property free from the lien in case it is necessary to clear title. Receipts for payment of the tax are issued by the collector.

If the tax liability has been fully discharged a certificate may be issued releasing the lien as to any or all property of the estate. If the tax liability has not been fully discharged, no general release of all property of the estate will be granted but certificates releasing the lien upon particular items of property may be issued by the Commissioner, who may require as a prerequisite, in such an amount as he may designate, a partial payment of tax or the furnishing of an indemnity bond with such surety or sureties as he deems necessary. In lieu of such surety or sureties, the bond may be secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, 49 Stat. 22, U.S.C., 1940 edition, Title 6, section 15.) The tax will be considered fully discharged only when investigation has been completed and payment of the tax, including any deficiency finally determined, has been made.

The application for a release should be filed with the Commissioner and should explain the circumstances that require the release, fully describe the particular items for which the release is desired, and show the applicant's relationship to the estate, such as executor, heir, devisee, legatee, beneficiary, transferee, or purchaser. If the return, Form 706, has not been filed, an affidavit may be required showing the value of the property to be released, the basis for such valuation, the approximate value of the gross estate, the approximate value of the total real property included in the gross estate, and in case the property is to be sold or transferred, the name and address of the purchaser or transferee and the consideration to be received.*

PENALTIES

SEC. 894. [Part IV, Subchapter A.] PENALTIES.

* * * * *

(b) *Specific*—(1) *Civil.* Whoever fails to comply with any duty imposed upon him by section 820, 821, or 864, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this subchapter, shall be liable to a penalty of not exceeding $500, to be recovered, with costs of suit, in a civil action in the name of the United States.

(2) *Criminal.* (A) Whoever knowingly makes any false statement in any notice or return required to be filed under this subchapter shall be liable to a penalty of not exceeding $5,000, or imprisonment not exceeding one year, or both.

(B) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(C) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(D) The term "person" as used in paragraphs (B) and (C) includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

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SEC. 3793. [Chapter 38.] PENALTIES AND FORFEITURES.

* * * * *

(b) *Fraudulent returns, affidavits, and claims*—(1) *Assistance in preparation or presentation.* Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(2) *Person defined.* The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 3710. [Chapter 36.] SURRENDER OF PROPERTY SUBJECT TO DISTRAINT.

(a) *Requirement.* Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) *Penalty for violation.* Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties

and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(c) *Person defined.* The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 3612. [Chapter 34.] RETURNS EXECUTED BY COMMISSIONER OR COLLECTOR.

* * * * *

(d) *Additions to tax.*

(1) *Failure to file return.* In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax: *Provided,* That in the case of a failure to make and file a return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after August 30, 1935, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

(2) *Fraud.* In a case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

* * * * *

(e) *Collection of additions to tax.* The amount added to any tax under paragraphs (1) and (2) of subsection (d) shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

(f) *Determination and assessment.* The Commissioner shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section.

SEC. 3762. [Chapter 36.] PENALTIES.

Any person who, in connection with any compromise under section 3761, or offer of such compromise, or in connection with any closing agreement under section 3760, or offer to enter into any such agreement, willfully—

(a) *Concealment of property.* Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(b) *Withholding, falsifying, and destroying records.* Receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax—

Shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935 (c).

§ 81.87 *Nature of penalties.* Two kinds of penalties are provided for delinquency with respect to the duties imposed by the statute:

(1) A specific penalty, to be recovered by suit, unless previously paid or adjusted by the acceptance of an offer in compromise; and

(2) A penalty of a certain percentage of the tax, to be added to and collected in the same manner as the tax.

In any case in which more than one penalty is provided the Government may assert any one or more thereof.*

§ 81.88 *Penalties for false or fraudulent notice or return.* In case any statement in the notice or return is knowingly false, the person making it is subject to a penalty not exceeding $5,000, or imprisonment for a period not exceeding one year, or both, and for a false or fraudulent return, 50 per cent will be added to the amount of the tax. Any person required to file any notice or make a return who willfully fails to do so at the time required shall be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully aids or assists in the preparation or presentation of a false or fraudulent notice or return, or procures, counsels, or advises the preparation or presentation of such a notice or return, whether such falsity or fraud is with or without the knowledge or consent of the person required to make the notice or return, will be guilty of a felony and, upon conviction thereof, fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.*

§ 81.89 *Penalty for failure to give notice or make and file return.* For failure to give the notice required by section 820 or make and file the return required by section 821, 864, or 937 within the time prescribed in § 81.63 or 81.67, the person in default is subject to a penalty not exceeding $500.

For failure to make and file such return within the time prescribed, or within an extension of time granted by the Commissioner or the collector, 5 per cent will be added to the tax if the failure is for not more than 30 days, with an additional 5 per cent for each 30 days or fraction thereof during which failure continues, not to exceed 25 per cent in the aggregate, except that if the return is filed after the time allowed and it is shown that the failure to file within the time so allowed was due to a reasonable cause and not to willful neglect, no such addition will be made to the tax.*

§ 81.90 *Penalty for failure to pay tax, exhibit property, keep or exhibit records, etc., and for concealment of assets.* Any person in possession or control of any record, file, or paper, containing or supposed to contain information relating to the estate, or having in his possession or control property comprised in the gross estate of the decedent, who fails to exhibit the same upon the request of the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, in the performance of his duties, or having knowledge or information of any fact or facts of a material bearing upon the liability, or the extent of liability, of the estate to the tax, who fails to make disclosure thereof upon request of the Commissioner or any revenue agent or inspector designated by him for that purpose, is liable to a penalty not to exceed $500, to be recovered by civil action. Such a request must be granted whether or not he believes that a compliance therewith is material.

Any person required to pay the tax, keep any records, or supply any information, for the purpose of the computation, assessment, or collection of the tax, who willfully fails to pay such tax, keep such records, or supply such information, as required by the law or regulations, shall, in addition to other penalties, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Any person who willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Any person who in connection with any compromise entered into or offer made under the provisions of section 3761, or, who in connection with any closing agreement under section 3760, or the offer to enter into any such agreement, willfully conceals from any officer or employee of the United States any property belonging to the estate or any person liable in respect of the tax, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or its value or the financial condition of any person liable in respect of the tax, shall, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both.*

§ 81.91 *Penalty for assisting, procuring, or advising the preparation or presentation of false or fraudulent documents.* Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent affidavit, claim, or document, shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such affidavit, claim, or document, be guilty of a felony, and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.*

ABATEMENT AND STAY OF COLLECTION OF JEOPARDY ASSESSMENT

SEC. 872. [Part IV, Subchapter A.] JEOPARDY ASSESSMENTS.

* * * * *

(f) *Bond to stay collection.* When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of col-

lection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in section 892 or 893 (b) (4). If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond shall, at the request of the taxpayer, be proportionately reduced.

(g) *Same—Further conditions.* If the bond is given before the executor has filed his petition with the Board under subsection (a) of section 871, the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

(h) *Waiver of stay.* Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The executor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the executor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the executor, be proportionately reduced.

(i) *Collection of unpaid amounts.* When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

SEC. 873. [Part IV, Subchapter A.] CLAIMS IN ABATEMENT.

No claim in abatement shall be filed in respect of the assessment of any estate tax imposed by this subchapter.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, except that in the case of a citizen or resident of the United States a return shall be required if the value of the gross estate at the time of decedent's death exceeds the amount of the specific exemption provided in section 935 (c).

§ 81.92 *Claim for abatement.* No claim for abatement may be filed in respect of any assessment of estate tax imposed by the Internal Revenue Code. The amount of any assessment directed to be abated by the statute as the result of a decision of the Board of Tax Appeals which has become final and all overassessments determined as a result of audit or examination of returns will be abated by the Commissioner without action on the part of the executor.*

§ 81.93 *Collection of jeopardy assessment stayed by filing bond.* If a jeopardy assessment has been made, the executor, within 30 days after notice and demand from the collector for payment of the amount of the jeopardy assessment may obtain a stay of collection of the whole, or any part, of the amount of such assessment by filing with the collector a bond in such amount not exceeding double the amount as to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated as a result of a decision of the Board which has become final, together with the interest thereon, as provided in the statute. (See § 81.82.) In lieu of such sureties, the bond may be secured by the deposit of bonds or notes of the United States, any public debt obligations of the United States, or any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, equal in their total par value to the amount of such bond. (See section 1126 of the Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935, 49 Stat. 22, U.S.C., 1940 edition, Title 6, section 15.) The petition with the Board of Tax Appeals for redetermination of the deficiency in respect of which the jeopardy assessment was made must be filed within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) after the mailing by the Commissioner of the notice of deficiency. (See § 81.73.) If any portion of the jeopardy assessment is abated by the Commissioner before the decision of the Board is rendered, the bond will, upon request of the executor, be proportionately reduced. If the bond is given before the petition is filed with the Board, the bond shall contain a further condition that if a petition is not filed within the 90 days, then the amount, the collection of which is stayed by the bond, shall be paid on notice and demand at any time after the expiration of such 90-day period, together with interest thereon at the rate of 6 per cent per annum from the date of the jeopardy notice and demand made by the collector to the date of notice and demand made after the expiration of the 90-day period.*

§ 81.94 *Accrual of interest as affected by the stay of the collection of a jeopardy assessment.* For rules relating to the accrual of interest where the collection of a jeopardy assessment is stayed by the filing of a bond, see § 81.82.*

§ 81.95 *Limitation of time to file bond to stay collection of jeopardy assessment.* If it is desired to stay the collection of the whole, or any part, of the amount in respect of which a jeopardy assessment has been made, the bond referred to in § 81.93 must be filed with the collector within 30 days after notice and demand by the collector for the payment of the amount of the jeopardy assessment.*

REFUNDS

SEC. 910. [Part IV, Subchapter A.] PERIOD OF LIMITATION FOR FILING CLAIMS.

All claims for the refunding of the tax imposed by this subchapter alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax. The amount of the refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the refund.

SEC. 911. [Part IV, Subchapter A.] EFFECT OF PETITION TO BOARD.

If the Commissioner has mailed to the executor a notice of deficiency under section 871 (a) and if the executor files a petition with the Board of Tax Appeals within the time prescribed in such subsection, no refund in respect of the tax shall be allowed or made and no suit for the recovery of any part of such tax shall be instituted in any court, except—

(a) As to overpayments determined by a decision of the Board which has become final; and

(b) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(c) As to any amount collected after the statutory period of limitations upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for refund or in any such suit for refund the decision of the Board which has become final, as to whether such period had expired before the notice of deficiency was mailed, shall be conclusive.

SEC. 912. [Part IV, Subchapter A.] OVERPAYMENT FOUND BY BOARD.

If the Board finds that there is no deficiency and further finds that the executor has made an overpayment of tax, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the executor as provided in section 3770 (a). No such refund shall be made of any portion of the tax unless the Board determines as part of its decision that such portion was paid within three years before the filing of the claim or the filing of the petition, whichever is earlier, or that such portion was paid after the mailing of the notice of deficiency.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, * * *.

SEC. 3746. [Chapter 36.] SUITS FOR RECOVERY OF ERRONEOUS REFUNDS.

(a) *Refunds after limitation period.* Any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 3774, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

(b) *Refunds otherwise erroneous.* Any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) which has been erroneously refunded (if such refund would not be considered as erroneous under section 3774) may

be recovered by suit brought in the name of the United States, but only if such suit is begun before the expiration of two years after the making of such refund.

(c) *Refunds based on fraud or misrepresentation.* Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

(d) *Interest.* Erroneous refunds recoverable by suit under this section shall bear interest at the rate of 6 per centum per annum from the date of the payment of the refund.

SEC. 3760. [Chapter 36.] CLOSING AGREEMENTS.

(a) *Authorization.* The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

(b) *Finality.* If such agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

SEC. 3770. [Chapter 37.] AUTHORITY TO MAKE ABATEMENTS, CREDITS, AND REFUNDS.

(a) *To taxpayers*—(1) *Assessments and collections generally* (as amended by section 508 (b) of the Second Revenue Act of 1940).—Except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, the Commissioner, subject to regulations prescribed by the Secretary, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected.

(2) *Assessments and collections after limitation period.* Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

(3) *Date of allowance.* Where the Commissioner has signed a schedule of overassessments in respect of any internal revenue tax imposed by this title, the Revenue Act of 1932, or any prior revenue Act, the date on which he first signed such schedule (if after May 28, 1928) shall be considered as the date of allowance of refund or credit in respect of such tax.

* * * * *

(b) *To collectors and officers.* The Commissioner, subject to regulations prescribed by the Secretary, is authorized to repay—

(1) *Collections recovered.* To any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit; also

(2) *Damages and costs.* All damages and costs recovered against any collecter, deputy collector, agent or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty.

SEC. 3772. [Chapter 37.] SUITS FOR REFUND.

(a) *Limitations*—(1) *Claim.* No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

(2) *Time.* No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates.

(3) *Reconsideration after mailing of notice.* Any consideration, reconsideration, or action by the Commissioner with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which suit may be begun. This paragraph shall not operated (A) to bar a suit or proceeding in respect of a claim reopened prior to June 22, 1936, if such suit or proceeding was not barred under the law in effect prior to that date, or (B) to prevent the suspension of the statute of limitations for filing suit under section 3774 (b) (2).

(b) *Protest or duress.* Such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

* * * * *

SEC. 177. Judicial Code (as amended by section 808 of the Revenue Act of 1936, 49 Stat. 1746 [U.S.C., 1940 edition, Title 28, section 284 (b)]).

* * * * *

(a) In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the rate of 6 per centum per annum upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is hereby authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor.

SEC. 3774. [Chapter 37.] REFUNDS AFTER PERIODS OF LIMITATION. A refund of any portion of an internal revenue tax (or any interest, penalty, additional amount, or addition to such tax) shall be considered erroneous—

(a) *Expiration of period for filing claim.* If made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) *Disallowance of claim and expiration of period for filing suit.* In the case of a claim filed within the proper time and disallowed by the Commissioner if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the Board of Tax Appeals or the courts. If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement.

* * * * *

§ 81.96 *Claim for refund.* A claim for refund of estate tax, or for refund of interest or penalties, erroneously or illegally collected, should be made on the form prescibed by the Treasury Department (Form 843), and should be filed with the collector of internal revenue, although a claim will not be considered defective solely by reason of the fact that it is not made on the form or that it is filed with the Commissioner of Internal Revenue. The claim must set forth in detail and under oath each ground upon which a refund is claimed, and facts sufficient to apprise the Commissioner of the exact basis thereof. Any claim which does not comply with the requirements of the preceding sentence will not be considered for any purpose as a claim for refund.

Claims for the refund of estate tax imposed by the Internal Revenue Code must be filed within three years next after the payment of the amount sought to be refunded.

The amount of the refund shall not exceed the portion of the tax paid during the three year period immediately preceding the filing of the claim, or the filing of the petition with the Board of Tax Appeals. Upon receipt of any claim for refund, other than a claim for refund of an overpayment determined in accordance with a decision of the Board of Tax Appeals which has become final, the return of the estate will be reaudited and only the excess payment determined by the Commissioner as a result of consideration of the claim and reaudit will be refunded. If the reaudit reveals that the tax has been underpaid, the amount of such underpayment will be collected unless the collection thereof is barred.

If a petition was filed with the Board of Tax Appeals for the redetermination of a deficiency, as provided by section 871 (a), and the Board finds that the executor has made an overpayment of the tax, and further determines as part of its decision that any portion of the overpayment was made within three years before the filing of the claim or the filing of the petition, whichever is earlier, or that such portion was paid after the mailing of the notice of deficiency, the amount of such portion of the overpayment will be refunded.

Save in the case of a claim for refund of an overpayment computed in accordance with a decision of the Board of Tax Appeals which has become final, the burden of proof rests upon the claimant and

all facts relied upon in support of the claim must be clearly set forth under oath. Every affidavit, argument, brief, or statement of facts, prepared or filed by an attorney or agent as argument or evidence in the matter of a protest, must have therein a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that the facts contained therein are true. In case there is a hearing, should the executor not appear in person, his representative who appears must present a properly executed power of attorney and be enrolled to practice before the Treasury Department. (See § 81.72.)

(a) If the claim is made by an executor or administrator, a certificate of the court must be furnished showing that the appointment remains in full force and effect.

(b) If the executor or administrator has been discharged and no administrator de bonis non has been appointed and qualified, there should be submitted, in lieu of the certificate above mentioned, (1) a certified copy of the court order granting the discharge, and (2) a certified copy of the order of distribution, or, if such order does not fully disclose the identity of the person or persons entitled to receive any amount that may be refunded and the percentage or proportion thereof to which each, if more than one, is entitled, there should be submitted a certified copy of the decedent's will, if any, and such further proof as may be requisite to establish both the identity of such person or persons and the percentage or proportion of the amount sought to be refunded to which each, in case there are more than one, is entitled.

If upon audit of the return filed by the executor the Commissioner determines that an overassessment has been made on account of the tax, a certificate of overassessment will be prepared and issued, even though claim for refund of such excess payment has not been filed. However, in such case the documentary evidence, as set out above, identifying the person or persons entitled to receive the refund will be required.

A refund is erroneous if made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed. In case a claim was filed for the refund of the tax within the proper time and was disallowed by the Commissioner, and the period of limitation for filing suit by the executor had expired prior to the making of the refund, a refund based upon such claim is erroneous unless suit was begun by the executor within the period of limitation for filing suit, or unless within such period the executor and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision of one or more named cases then pending before the Board of Tax Appeals or the courts. Erroneous refunds, as above described, may be recovered by suit brought in the name of the United States within two years after the making of such refunds. An erroneous refund, though not considered as erroneous under section 3774, may be recovered in the same manner if the suit is begun within two years after the making of such refund. Erroneous refunds, whether erroneous under the provisions of section 3774 or otherwise, may be recovered by suit brought within five years of the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

A claim for the payment of a judgment rendered against a collector of internal revenue representing Federal estate tax, penalties, or other sums collected in connection therewith should be made on Form 843 and filed with the Commissioner of Internal Revenue, Washington, D. C. The claimant should state the names of all parties to the action, the date of its commencement, the date of the judgment, the court in which it was recovered, its amount, and the fact that the action related to Federal estate tax or interest or penalties in connection therewith. To the claim there should be annexed two certified copies of the final judgment, a certificate of probable cause (see section 989 of the Revised Statutes [U.S.C., 1940 edition, Title 28, section 842]) and, if refund is claimed, an itemized bill of the costs paid, receipted by the clerk or other proper officer of the court.

A claim for the payment of a judgment rendered against the United States representing Federal estate tax, penalties, or other sums collected in connection therewith should be made on Form 843 in the manner prescribed in the preceding paragraph, except that—

(a) a certificate of probable cause is not required,

(b) the claims shall be executed in duplicate, and

(c) in the case of a judgment rendered by the Court of Claims there may be submitted, in place of a certified copy of the final judgment, a certificate of the judgment issued by the clerk of the court and two copies of the court's opinion, if any was rendered.*

INTEREST ON REFUNDS

SEC. 813. [Part II, Subchapter A.] CREDITS AGAINST TAX.

* * * * *

(b) *Estate, succession, legacy, and inheritance taxes.* * * * Refund based on the credit may (despite the provisions of sections 910 to 912, inclusive), be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

SEC. 3771. [Chapter 37.] INTEREST ON OVERPAYMENTS.

(a) *Rate.* Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 per centum per annum.

(b) *Period.* Such interest shall be allowed and paid as follows:

* * * * *

(2) *Refunds.* In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

* * * * *

§ 81.97 *Payment of claims and interest.* Under the law, warrants in payment of claims allowed can only be drawn payable to the person or persons entitled to the proceeds, and consequently cannot be drawn payable to attorneys or agents. If the claimants are indebted to the United States for taxes, such taxes must be paid before the warrants are delivered. (U.S.C., 1940 edition, Title 31, section 227.)

Upon the allowance of the claim for refund of any tax or penalty paid, unless the refund results from the allowance of a credit for payment of estate, inheritance, legacy, or succession taxes, the statute provides for the payment of interest upon the total amount of such refund at the rate of 6 per cent per annum from the date such tax or penalty was paid to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner, whether or not such check is accepted by the taxpayer. Acceptance of a refund warrant or check will not prejudice the right of the claimant to have refunded to him any additional overpayment and interest thereon. If a refund is based upon the credit for payment of estate, inheritance, legacy, or succession taxes allowed by subsection (b) of section 813 (see § 81.9), the refund will be made without interest.*

POWER TO COMPROMISE OR REMIT PENALTIES

SEC. 3761. [Chapter 36.] COMPROMISES.

(a) *Authorization.* The Commissioner, with the approval of the Secretary, or of the Under Secretary of the Treasury, or of an Assistant Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General may compromise any such case after reference to the Department of Justice for prosecution or defense.

(b) *Record.* Whenever a compromise is made by the Commissioner in any case there shall be placed on file in the office of the Commissioner the opinion of the General Counsel for the Department of the Treasury, or of the officer acting as such, with his reasons therefor, with a statement of—

(1) The amount of tax assessed,

(2) The amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

* * * * *

§ 81.98 *Compromise of taxes and penalties.* Offers in compromise should be filed with the appropriate collector of internal revenue. No offer in compromise of tax, interest, and ad valorem penalty collectible as part of the tax will be accepted unless there is a substantial doubt as to either liability or collectibility.*

PERSONAL LIABILITY OF EXECUTOR, TRANSFEREE, TRUSTEE, AND BENEFICIARY

SEC. 3467. Revised Statutes (as amended by section 518 (a) of the Revenue Act of 1934 [U.S.C., 1940 edition, Title 31, section

192]). Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

SEC. 827. [Part II, Subchapter A.] LIEN FOR TAX.

* * * * *

(b) *Upon property of transferee.* If (1) except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death, or makes a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (A) the possession or enjoyment of, or the right to the income from, the property, or (B) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom, or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

* * * * *

§ 81.99 *Personal liability.* If the executor, before paying all the estate tax, pays, in whole or in part, any debt due by the decedent or the decedent's estate, or distributes any portion of the estate, he is personally liable, to the extent of such payment or distribution, for so much of the estate tax as remains due and unpaid.

The term "executor" includes every person in actual or constructive possession of any property of the decedent if there is no appointed, qualified, and acting personal representative within the United States. For provisions of the statute and regulations prescribing conditions authorizing release of the executor from his personal liability for payment of the tax, see section 825 and § 81.71.

If the tax in respect of a transfer of property includible in the gross estate under the provisions of section 811 (c), or in respect of insurance receivable by a beneficiary other than the estate and includible in the gross estate under the provisions of section 811 (g), is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax.*



EXAMINATION OF RECORDS AND TAKING OF TESTIMONY

SEC. 3614. [Chapter 34.] EXAMINATION OF BOOKS AND WITNESSES.

(a) *To determine liability of the taxpayer.* The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

(b) *To determine liability of a transferee.* The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons.

SEC. 3633. [Chapter 34.] JURISDICTION OF DISTRICT COURTS.

(a) *To enforce summons.* If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides shall have jurisdicion by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

* * * * *

SEC. 3800. [Chapter 38.] JURISDICTION OF DISTRICT COURTS TO ISSUE ORDERS, PROCESSES, AND JUDGMENTS.

The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

§ 81.100 *Securing evidence; taking testimony.* In order to ascertain the correctness of a return, or to make a return if none has been made, the Commissioner has power to require the attendance, and to take the testimony, of the person rendering the return, or any officer or employee of such person, or any other person having knowledge in the premises. Such persons may be required to produce any relevant book, paper, or other record. The Commissioner also is authorized, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, to examine any books, papers, records, or memoranda bearing upon such liability and may require the attendance of the transferor or transferee, or any officer or employee of such person and take his testimony with reference to the matter. The Commissioner has the authority to administer oaths to the persons required to testify. The power and authority herein described may be exercised by any officer or employee of the Bureau of Internal Revenue, including the field force, designated by the Commissioner for that purpose. (For penalties, see § 81.90.)*

§ 81.101 *Power to compel compliance.* If any person is summoned to appear and testify, or to produce books, papers, or other data, the District Court of the United States for the district in which such person resides has power to compel the giving of the testimony, the production of the books, papers, or data, and to issue any appropriate process, writ, or order.*

REMEDIES FOR COLLECTION AND PROCEEDINGS FOR ENFORCING LIABILITY OF A TRANSFEREE OR FIDUCIARY

SEC. 822. [Part II, Subchapter A.] PAYMENT OF TAX.

(a) TIME OF PAYMENT.

* * * * *

(2) *Extension of time.* Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part * * *. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of extension, and the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension.

* * * * *

SEC. 871. [Part IV, Subchapter A.] PROCEDURE IN GENERAL.

* * * * *

(b) *Extension of time for payment of deficiency.* Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner, under regulations prescribed by the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency * * *. In such case the running of the statute of limitations for assessment and collection, as provided in section 874, shall be suspended for the period of any such extension.

* * * * *

SEC. 874. [Part IV, Subchapter A.] PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

(a) *General rule.* Except as provided in subsection (b) the amount of estate taxes imposed by this subchapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall

be begun after the expiration of three years after the return was filed.

(b) EXCEPTIONS—(1) *False return or no return.* In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(2) *Collection after assessment.* Where the assessment of any tax imposed by this subchapter has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

SEC. 900. [Part IV, Subchapter A.] TRANSFERRED ASSETS.

(a) *Method of collection.* The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this subchapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) *Transferees.* The liability, at law or in equity, of a transferee of property of a decedent, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this subchapter.

(2) *Fiduciaries.* The liability of a fiduciary under section 3467 of the Revised Statutes (U.S.C., Title 31, § 192) in respect of the payment of any such tax from the estate of the decedent.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) *Period of limitation.* The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor.

(2) If a court proceeding against the executor for the collection of the tax has been begun within the period provided in paragraph (1)—then within one year after return of execution in such proceeding.

(c) *Suspension of running of statute of limitations.* The running of the statute of limitations, upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under section 871 (a) to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

(d) *Prohibition of suits to restrain enforcement of liability of transferee or fiduciary.* No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any estate tax, or (2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (U.S.C., Title 31, § 192) in respect of any such tax.

(e) *Definition of "transferee".* As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

SEC. 3653. [Chapter 36.] PROHIBITION OF SUITS TO RESTRAIN ASSESSMENT OR COLLECTION.

(a) *Tax.* Except as provided in sections 272 (a), 871 (a) and 1012 (a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

(b) *Liability of transferee or fiduciary.* No suit shall be maintained in any court for the purpose of restraining the assessment or collection of (1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any income, war-profits, excess-profits, or estate tax, (2) the amount of the liability, at law or in equity, of a transferee of property of a donor in respect of any gift tax, or (3) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (U. S. C., Title 31, § 192) in respect of any such tax.

SEC. 937. [Subchapter B.] ASSESSMENT, COLLECTION, AND PAYMENT OF TAX.

Except as provided in section 936, the tax imposed by section 935 shall be assessed, collected, and paid, in the same manner, and shall be subject to the same provisions of law (including penalties), as the tax imposed by subchapter A, * * *.

§ 81.102. *Remedies for collection and administrative proceedings for enforcing liability of a transferee or fiduciary*—(a) *Remedies for collection.* Three remedies are provided for the collection of the estate tax imposed by the Internal Revenue Code: (1) The collector may issue warrant of distraint authorizing the seizure and sale of any or all of the assets of the estate. (See section 3690 of the Internal Revenue Code.) (2) The collector may commence in any court of the United States appropriate proceedings, in the name of the United States, to subject the property of the decedent to sale under the judgment or decree of the court. (3) The personal liability of the executor and of certain transferees, trustees, and beneficiaries, set forth in § 81.99, may be enforced by any appropriate action.

The period of limitation, except in case of fraud or in case no return was filed, for collection of the tax by distraint or suit is six years after assessment if assessment of the tax was made within the statutory period of limitation or prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor. If an extension of time for payment of tax is granted under the provisions of section 822 (a) (2) or section 871 (h), the running of the statute of limitations on collection by distraint or suit is suspended for the period of such extension.

(b) *Administrative proceedings for enforcing liability of a transferee or fiduciary.* The amount for which a transferee of the property of a decedent is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, as amended, in respect of any estate tax imposed by the Internal Revenue Code, whether shown on the return of the executor or determined as a deficiency in the tax, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid, in the same manner and subject to the same provisions and limitations as in the case of a deficiency, except as hereinafter provided.

The term "transferee" as used in section 900 includes an heir, legatee, devisee, and distributee of an estate of a deceased person.

The period of limitation for assessment of the liability of a transferee or of a fiduciary is as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor. (See sections 871, 872, 874, and 875, and § 81.74.)

(2) If a court proceeding against the executor for the collection of the tax has been begun within the period of limitation for the bringing of such proceeding, then within one year after the return of execution in such proceeding.

If a notice of the liability of a transferee, or the liability of a fiduciary, has been mailed to such transferee or to such fiduciary under the provisions of section 871 (a) (see § 81.73), then the running of the statute of limitations shall be suspended for the period in which the Commissioner is prohibited from making the assessment (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

If assessments have been made against several persons covering the same tax liability, and payment of such liability by one or more such persons has been duly certified to the Commissioner, the Commissioner, for the purpose of temporarily relieving the collector from liability under section 3950 of the Internal Revenue Code, may authorize him to take credit temporarily with respect to the assessments not specifically paid. Such action, however, shall not constitute an abatement and shall not discharge the liability of the persons concerned.*

RECORDS, STATEMENTS, AND SPECIAL RETURNS

SEC. 821. [Part II, Subchapter A.] RETURNS.

* * * * *

(d) *Records, statements, and returns.* Every person liable to any tax imposed by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

* * * * *

SEC. 3603. [Chapter 34.] NOTICE REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

SEC. 3632. [Chapter 34.] AUTHORITY TO ADMINISTER OATHS, TAKE TESTIMONY, AND CERTIFY.

(a) *Internal revenue personnel*—(1) *Persons in charge of administration of internal revenue laws generally.* Every collector, deputy collector, internal revenue agent, and internal revenue officer assigned to duty under an internal revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are

authorized by law or regulation authorized by law to be taken.

* * * * *

(b) *Others.* Any oath or affirmation required or authorized by any internal revenue law or by any regulations made under authority thereof may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

§ 81.103 *Executor's duty to keep records.* It is the duty of the executor to keep such records as the Commissioner may require. Executors are required to keep such complete and detailed records of the affairs of the estate as will enable the Commissioner to determine accurately the amount of the tax liability.*

§ 81.104 *Executor's duty to render statements.* It is the duty of the executor not only to make the formal return, but also to render any other sworn statement which the Commissioner may require for the purpose of determining whether a tax liability exists and, if so, the extent thereof.*

ESTATES ADMINISTERED IN THE UNITED STATES COURT FOR CHINA

SEC. 851. [Part II, Subchapter A.] CITIZENS WITH ESTATES IN CHINA.

The term "resident" as used in this subchapter includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China.

SEC. 920 [Part IV, Subchapter A.] PAYMENT OF TAX.

In the case of a resident within the meaning of section 851—

(a) *To Clerk of United States Court for China.* Where no part of the gross estate of the decedent is situated in the United States at the time of his death, the total amount of tax due under this subchapter shall be paid to or collected by the clerk of the United States Court for China;

(b) *To Collector.* Where any part of the gross estate of the decedent is situated in the United States at the time of his death, the tax due under this subchapter shall be paid to or collected by the collector of the district in which is situated the part of the gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

SEC. 921. [Part IV, Subchapter A.] AUTHORITY OF CLERK OF UNITED STATES COURT FOR CHINA TO ACT AS COLLECTOR.

For the purpose of section 920 the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States.

NOTICE OF PERSONS ACTING AS FIDUCIARY

SEC. 901. [Part IV, Subchapter A.] NOTICE OF FIDUCIARY RELATIONSHIP.

(a) *Fiduciary of decedent.* Upon notice to the Commissioner that any person is acting as executor, such person shall assume the powers, rights, duties, and privileges of an executor in respect of the tax imposed by this subchapter until notice is given that such person is no longer acting as executor.

(b) *Fiduciary of transferee.* Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 900, the fiduciary shall assume on behalf of such person the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) *Manner of notice.* Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) *Address for notice of liability.* In the absence of any notice to the Commissioner under subsection (a) or (b), notice under this subchapter of a deficiency or other liability, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for the purposes of this subchapter.

§ 81.105 *Notice of persons acting as fiduciary.* The "notice to the Commissioner" provided for in section 901 shall be in writing signed by the fiduciary and filed with the Commissioner, setting forth the name and address of the person for whom he is acting in a fiduciary capacity and also the nature of the liability of such person, accompanied by satisfactory evidence of his authority to act for such person in the fiduciary capacity. If the fiduciary capacity exists by order of court, a certified copy of the order of the court may be regarded as such satisfactory evidence. The written notice to the Commissioner need not be accompanied by evidence of the authority of the fiduciary to act if there is already on file with the Commissioner satisfactory evidence of the authority to act. Any such written notice which has been filed with the Commissioner since the enactment of the Internal Revenue Code shall be considered as sufficient notice to the Commissioner within the meaning of section 901 if and when there is or has been filed with the Commissioner the satisfactory evidence herein provided for. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the Commissioner written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. Such written notice should state the name and address of the person, if any, who has been substituted as fiduciary.

This section, made under the provisions of section 901, shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of the Internal Revenue Code.*

MISCELLANEOUS PROVISIONS

SEC. 840. [Part II, Subchapter A.] OTHER LAWS APPLICABLE.

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, shall be extended to and made a part of this subchapter.

SEC. 3791. [Chapter 38.] RULES AND REGULATIONS.

(a) *Authorization*—(1) *In general.* * * * the Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

(2) *In case of change in law.* The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

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

SEC. 3302. [Chapter 38.] SEPARABILITY CLAUSE.

If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

In pursuance of the Internal Revenue Code, approved February 10, 1939, and applicable only to estate taxes on estates of decedents dying after that date, the foregoing regulations are hereby prescribed and Regulations 80 (1937 Edition), as amended by Treasury decisions relating thereto, insofar as they relate or have been made applicable to the estate taxes imposed by the Internal Revenue Code, are hereby superseded.

[SEAL] NORMAN D. CANN,
*Acting Commissioner of Internal Revenue.*

Approved: February 18, 1942.

JOHN L. SULLIVAN,
*Acting Secretary of the Treasury.*

[F. R. Doc. 42-1581; Filed, February 23, 1942; 11:54 a. m.]

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[T.D. 5119]

PART 19—INCOME TAX UNDER THE INTERNAL REVENUE CODE

REGULATIONS 103 AMENDED TO CONFORM TO PUBLIC LAW 436 (77TH CONGRESS), SIMPLIFYING THE PROCEDURE IN CONNECTION WITH THE AMORTIZATION OF CERTAIN FACILITIES

In order to conform Regulations 103 [Part 19, Code of Federal Regulations, 1940 Sup.] to the provisions of Public Law 436 (77th Congress), approved February 6, 1942, such regulations are amended as follows:

PARAGRAPH 1. By inserting immediately preceding § 19.124-1, as added by Treasury Decision 5016,[1] approved October 23, 1940, and as amended by Treasury Decision 5049,[2] approved May 29, 1941, and Treasury Decision 5104,[3] approved December 23, 1941, the following:

PUBLIC LAW 436, APPROVED FEBRUARY 6, 1942

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That, effective as of October 8, 1940, section 124 (i), as amended, of the Internal Revenue Code, is hereby repealed.

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[1] 5 F.R. 4217.
[2] 6 F.R. 2711.
[3] 6 F.R. 6731.

PAR. 2. By amending the first sentence of § 19.124-2, as added by Treasury Decision 5016 and amended by Treasury Decision 5104, to read as follows:

If the Secretary of the Department concerned makes the required certification of necessity, a corporation is entitled, at its election, to a deduction with respect to the amortization of the adjusted basis of an emergency facility, such amortization to be based generally on a period of 60 months.

PAR. 3. By striking out § 19.124-9, as added by Treasury Decision 5016 and amended by Treasury Decisions 5049 and 5104.

(This Treasury decision is issued under the authority contained in Public Law 436 (77th Congress), approved February 6, 1942, and section 62 of the Internal Revenue Code, 53 Stat. 32 (26 U.S.C. 62))

[SEAL] NORMAN D. CANN,
*Acting Commissioner of Internal Revenue.*

Approved: February 23, 1942.

JOHN L. SULLIVAN,
*Acting Secretary of the Treasury.*

[F. R. Doc. 42-1631; Filed, February 24, 1942; 11:35 a. m.]

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[T. D. 5118]

PART 182—INDUSTRIAL ALCOHOL

AMENDMENT OF APPENDIX TO REGULATIONS NO. 3, REVISED 1938

Pursuant to authority in sections 3070 (a), 3105 (a), 3124 (a) (6), and 3176 (a), Internal Revenue Code, the Appendix to Regulations No. 3, approved December 29, 1938 (Appendix to Part 182, Code of Federal Regulations) is hereby amended by modifying Specially Denatured Alcohol Formula No. 27-B and by authorizing a new Specially Denatured Alcohol Formula No. 40-A, as follows:

*Formula No. 27-B*

To every 100 gallons of ethyl alcohol of not less than 190° proof add:
1 gallon Oil of Lavender Flowers U. S. P. or
1 gallon Oil of Cedar Leaf U. S. P. and 100 pounds Soft Soap U. S. P.

*Formula No. 40-A*

To every 100 gallons of ethyl alcohol of not less than 190° proof add:
5 pounds of Sucrose Octa Acetate, and
⅛ gallon Denaturing Grade Tertiary Butyl Alcohol.

[SEAL] NORMAN D. CANN,
*Acting Commissioner of Internal Revenue.*

Approved: February 23, 1942.

JOHN L. SULLIVAN,
*Acting Secretary of the Treasury.*

[F. R. Doc. 42-1630; Filed, February 24, 1942; 11:35 a. m.]

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART 30[1]—TRAVEL AND OTHER CONDUCT OF ALIENS OF ENEMY NATIONALITIES

Section 30.2 is amended by adding thereto paragraphs (c), (d) and (e).

§ 30.2 *Classes of persons not required to comply with these regulations.* * * *

* * * * *

(c) Subjects or citizens of Italy who were, prior to August 6, 1924 (1) Turkish subjects or persons of Greek extraction and (2) habitual residents of the Aegean, or Dodecanese Islands, or Islets dependent thereon, provided that said aliens have not at any time voluntarily become German, Italian or Japanese citizens or subjects.

(d) Aliens who became subjects or citizens of Italy by virtue of marriage or relationship to the persons described in paragraph (c) of this section, provided that said aliens have not at any time voluntarily become German, Italian or Japanese citizens or subjects.

(e) Aliens of enemy nationalities during their term of military service in the armed forces of the United States.

Dated: February 19, 1942.

FRANCIS BIDDLE,
*Attorney General.*

[F. R. Doc. 42-1623; Filed, February 24, 1942; 10:48 a. m.]

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PART 30[1]—TRAVEL AND OTHER CONDUCT OF ALIENS OF ENEMY NATIONALITIES

Section 30.7 is amended by changing the title thereof and adding thereto paragraph (c).

§ 30.7 *Change of place of abode, employment, or name and use of assumed name.*

* * * * *

(c) The several United States Attorneys are hereby authorized to grant permission in writing to an alien of enemy nationality to assume or use a name for business or professional purposes, other than that given as the alien's legal name in the Certificate of Identification, where it appears to the satisfaction of the United States Attorney that the granting of the permission is needful or useful to the applicant's regular and customary mode of earning a livelihood and it appears that the granting of permission will not in any manner be detrimental to the national security. The alien shall make written application to the United States Attorney for the District of his residence stating his name, Certificate of Identification number after it is obtained, residence, business address, the name which he desires to assume, the reasons therefor and any prior use by him of the assumed name for which he desires permission or any other assumed name. Where granted, such permission shall be in writing and shall be expressly limited to the needs of the particular case and may, in the discretion of the United States Attorney, be further limited and restricted in any manner and respect which he shall deem to be in the interest of national security.

Dated: February 21, 1942.

FRANCIS BIDDLE,
*Attorney General.*

[F. R. Doc. 42-1619; Filed, February 24, 1942; 10:43 a. m.]

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PART 30[1]—TRAVEL AND OTHER CONDUCT OF ALIENS OF ENEMY NATIONALITIES

Upon the recommendations of the Secretary of War, § 30.15 (a) is amended by adding thereto as subparagraph (4), the following areas which are designated as prohibited areas in which no alien of enemy nationality (German, Italian or Japanese) shall reside, enter upon, remain or be found after February 15, 1942 with such exceptions as hereafter may be provided by the Attorney General:

§ 30.15 *Prohibited and restricted areas.* * * *

(a) * * *

(4) Prohibited Areas in State of California:

*Prohibiting Area No. 3.* Commencing at the mouth of the Mad River and following up Mad River to U. S. Highway No. 101; then southward on U. S. Highway No. 101 to the Eel River to the Pacific Ocean and up along the coast to the point of beginning.

*Prohibited Area No. 6.* Commencing at the mouth of South Fork Ten Mile River, thence up the South Fork Ten Mile River to State Highway No. 1, turning south along State Highway No. 1 to the Navarro River, then down the Navarro River to the Pacific Ocean, thence north along the coast to the point of beginning.

*Prohibited Area No. 8.* Commencing at the mouth of Salmon Creek going up Almon Creek to State Highway No. 1, turning south on State Highway No. 1 to U. S. Highway No. 101, following south along U. S. Highway No. 101 to the northern boundary line of the military reservations of Forts Baker and Barry, then along the northern boundary line of Forts Baker, Barry, and Cronkhite to the Pacific Ocean, then up the coast to the point of beginning.

*Prohibited Area No. 10.* Commencing at the north end of the Carquinez Toll Bridge, then north along United States Highway No. 40 to the intersection of Highway No. 40 and an unnamed highway which extends between Sulphur Springs and Flosden just north of Lake

[1] 7 F.R. 844, 1084.

Chabot, following the said unnamed highway westward to Flosden, then southwest along State Highway No. 48 to the westerly boundary of the Mare Island, U. S. Navy Yard; continuing south along that western boundary of the Mare Island, U. S. Navy Yard to San Pablo Bay, and following in a southeasterly direction the shore line of Mare Island and across Mare Island Strait to the point of beginning.

*Prohibited Area No. 12.* Commencing on the bank of the Sacramento River just west of Middle Point. The boundary line of this area then runs south along an unnamed road to the Contra Costa Canal, then easterly along the Contra Costa Canal to the road which is immediately east of the Black Diamond Railroad, then south along the road through Nortonville and Summerville; then east along said road, to a certain road running north to Antioch, continuing north along the latter road through Antioch to the bank of the San Joaquin River opposite Kimball Island.

*Prohibited Area No. 13.* Commencing at the west end of Berkeley Municipal Fishing Pier. The line runs then east along said pier to University Avenue, then east along University Avenue to Grove Street, then north along Grove Street to Arlington Avenue, then continues north along Arlington Avenue to Barret Avenue to United States Highway No. 40, follows United States Highway No. 40 north to San Pablo Creek Road, then along San Pablo Creek Road easterly to the road across Sobrante Ridge which connects the San Pablo Creek Road and the Pinole Valley Road to the Alhambra Valley Road and easterly along the Alhambra Valley Road to a road running north to Muir, continues along said road to Muir then east along California State Highway No. 4 to the Sacramento Northern Ry., and continues north along the Sacramento Northern Ry. to Suisun Bay.

*Prohibited Area No. 16.* Alameda County. The area in Oakland bounded on the east by the Southern Pacific Railroad tracks, on the north by the Bay Bridge Approach, on the south by 7th Street and on the west by the Outer Harbor from the intersection of Terminal and 7th Street Northeast to the Key System ferry slips.

*Prohibited Area No. 18.* Commencing at the north end of the San Leandro Bay Bridge. The line runs northeast from that point along High Street to East 12th Street, then northwest along East 12th Street and 8th Street to Harrison Street, then south along Harrison Street through Posey Tube and along Webster Street to San Francisco Bay at Neptune Beach, then along the shore to the point of beginning.

*Prohibited Area No. 19.* Covers the Embarcadero from Pier #46 to Pier #14, and the entire waterfront from China Basin to the Presidio Reservation boundary line.

*Prohibited Area No. 26.* Commencing at the mouth of Purisima Creek, then up the creek to State Highway No. 1 continuing north on State Highway No. 1 to Princeton, then due west from Princeton to the Pacific Ocean and following south along the shore line to the point of beginning.

*Prohibited Area No. 28.* Commencing at the mouth of Laguna Creek running up the Creek to State Highway No. 1, then south on State Highway No. 1 to the Carmel River and along the Carmel River to the Pacific Ocean, then up the shore line to the point of beginning.

*Prohibited Area No. 31.* Commencing at Cambria on the Pacific Ocean and running south along State Highway No. 1 to the Santa Maria River, then following the Santa Maria River west to the Pacific Ocean and along the shore line up to the point of beginning.

*Prohibited Area No. 32.* The area bounded on the north by Stockton Channel, on the east by Lincoln Street (from 100 block to 1300 block), on the south by Charter Way Road to Santa Fe Railroad, on the west by the San Joaquin River.

*Prohibited Area No. 33.* It is a rectangle which includes the Municipal Airport and is bounded by the shore line on the west, Rosecrans Avenue on the south, Western Avenue on the east and Manchester Avenue on the north.

*Prohibited Area No. 34.* The area in Santa Monica bounded by Centinella Street, Pico Street, Lincoln Blvd. and Venice Blvd.

*Prohibited Area No. 36.* The area in Inglewood bounded by Industrial Street, Centinella Blvd., Exton Street and Hazel Street.

*Prohibited Area No. 48.* Beginning at the water front along Beach Street east to Kettner Blvd., then north and northwest to Vine Street, then northwest on Hancock Street to Winder Street, then northwest on La Jolla Avenue to San Diego Avenue, then northwest on San Diego Avenue to Taylor Street turning west on Taylor Street to Rosecrans Street then southwest on Rosecrans Street to Mission Bay Causeway (Midway Road), then southeast to U. S. Marine Corps Base.

(5) Prohibited Areas in State of Arizona:

*Prohibited Area No. 1.* Cochise Radio Beam Tower. From the intersection of Highway 81 and a paved road to Manzoro, four miles south of Cochise, south 225 yards along Highway 81, thence 225 yards west along fence, thence north 255 yards along fence to paved road, thence 225 yards east along paved road to intersection with Highway 81. All roads exclusive.

*Prohibited Area No. 2.* KSUN Broadcasting Station, Bisbee, Arizona. From the intersection on the Southern Pacific Railroad and an oiled road at the Lowell Station, north along the Southern Pacific Railroad 150 yards, thence east to an unimproved road, thence south along the unimproved road to the intersection with an oiled road, thence west along the oiled road to the intersection with the Southern Pacific Railroad. All roads exclusive.

*Prohibited Area No. 3.* Central Arizona Light and Power Company Plant, Phoenix, Arizona. From the intersection of Lateral 16 and the Southern Pacific Railroad, south along Lateral 16 880 yards, thence west along Highway 80 880 yards thence north 880 yards to Southern Pacific Railroad thence east along Southern Pacific Railroad 880 yards to the intersection with Lateral 16. All roads exclusive.

*Prohibited Area No. 4.* KOY Broadcasting Station, Phoenix, Arizona. From the intersection of Camel Back Road and 11th Street, west along Camel Back Road 500 feet, thence north 500 feet, thence east 500 feet to 12th Street, thence south along 12th Street to the intersection with Camel Back Road. All roads exclusive.

*Prohibited Area No. 5.* KPHO Broadcasting Station, Phoenix, Arizona. From the intersection of Buckeye Road and 24th Avenue, east along Buckeye Road 465 feet, thence south 465 feet, thence west 465 feet to 24th Avenue, thence along 24th Avenue 465 feet to the intersection with Buckeye Road. All roads exclusive.

*Prohibited Area No. 6.* Water Users' Sub-station (Switching Point). From a point on the south side of Buckeye Road, 300 feet east of 17th Avenue, east 165 feet along Buckeye Road, thence south 600 feet, thence west 165 feet, thence north 600 feet to the intersection with Buckeye Road. All roads exclusive.

*Prohibited Area No. 7.* Phoenix Sub-Station (Switching Point). From a point at the intersection of 1st Avenue and the Southern Pacific Railroad, south along 1st Avenue to the intersection with West Lincoln Street, thence west along West Lincoln Street to the intersection with 3rd Avenue, thence north along 3rd Avenue to the intersection with West Buchanan Street, thence east along West Buchanan Street to the intersection with 2nd Avenue, thence north along 2nd Avenue to the intersection with the Southern Pacific Railroad, thence east along the Southern Pacific Railroad to the intersection with 1st Avenue. All roads exclusive.

*Prohibited Area No. 8.* KTAR Broadcasting Station, Phoenix, Arizona. From the intersection of East Thomas Road and 36th Street, east on East Thomas Road, 440 yards, thence south 440 yards, thence west 440 yards to 36th Street, thence north along 36th Street 440 yards to the intersection with East Thomas Road. All roads exclusive.

*Prohibited Area No. 9.* Water Supply Reservoir, Phoenix, Arizona. A rectangular space 200 yards by 250 yards located on the north side of East Thomas Road 600 yards west of intersection of East Thomas Road with Ingleside Avenue.

*Prohibited Area No. 10.* Phoenix Radio Beam Tower. From a point on Hunter Drive, 1⅛ miles north of 8th Street, Tempe, 225 yards, north along fence, thence 225 yards east along fence, thence 225 yards south along fence, thence 225 yards west along fence to Hunter Drive. All roads exclusive.

*Prohibited Area No. 11.* Cross-Cut Power Plant, Tempe, Arizona. From the intersection of the Overflow Canal and Highway 80, north 165 yards along Highway 80, thence west 165 yards to South-

ern Pacific Railroad, thence south along Southern Pacific Railroad 165 yards to Overflow Canal, thence east 165 yards along Overflow Canal to the intersection with Highway 80.

*Prohibited Area No. 12.* Mesa Sub-Station (Switching Point). From a point on the north side of 4th Street, 1 mile east of Mesa Drive at the intersection of 4th Street and a paved road, east along 4th Street 400 feet, thence north 400 feet, thence west 400 feet to a paved road, thence south 400 feet along the paved road to the intersection with 4th Street. All roads exclusive.

*Prohibited Area No. 13.* KVOA, Broadcasting Station, Tucson, Arizona. From the intersection of 12th Avenue and Lee Street, west along Lee Street 600 feet, thence north 600 feet, thence east 600 feet to 12th Avenue, thence south along 12th Avenue to the intersection with Lee Street. All roads exclusive.

*Prohibited Area No. 14.* Tucson Gas, Electric Light and Power Co., Tucson, Arizona. From the intersection of 5th and Court Streets, south along Court Street to the intersection with 6th Street, thence west along 6th Street to the intersection with Main Street, thence north along Main Street to the intersection with 5th Street, thence along 5th Street to the intersection with Court Street. All roads exclusive.

*Prohibited Area No. 15.* KTUC, Broadcasting Station, Tucson, Arizona. From the intersection of 6th Avenue and 12th Street, west along 12th Street to intersection with Scott Street, thence north along Scott Street to the intersection with Broadway, thence east along Broadway to the intersection with 6th Avenue, thence along 6th Ave. to the intersection with 12th St. All roads exclusive.

*Prohibited Area No. 16.* Imperial Dam, located at the southern end of Imperial Reservoir, on the Colorado River, 20 miles north of Yuma, Arizona.

*Prohibited Area No. 17.* Laguna Dam, located at the southern end of Laguna Reservoir, on the Colorado River, 15 miles north of Yuma, Arizona.

*Prohibited Area No. 18.* KYUM, Broadcasting Station, Yuma, Arizona. From the intersection of 1st Street and 19th Avenue, south along 19th Avenue to the intersection with the West Main Canal, thence west along the West Main Canal to the intersection with 20th Avenue, thence north along 20th Avenue to the intersection with 1st Street, thence east along 1st Street to the intersection with 19th Avenue. All roads exclusive.

Dated: February 21, 1942.

FRANCIS BIDDLE,
*Attorney General.*

[F. R. Doc. 42-1621; Filed, February 24, 1942; 10:47 a. m.]

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PART 30 [1]—TRAVEL AND OTHER CONDUCT OF ALIENS OF ENEMY NATIONALITIES

Section 30.15 is amended by adding to paragraph (b) thereof subparagraph (1).

[1] 7 F.R. 844, 1084.

§ 30.15 *Prohibited and restricted areas.* Notwithstanding the provisions of § 30.3, the presence and conduct of an alien of enemy nationality are controlled in certain areas as follows:

* * * * *

(b) * * *

(1) The following conditions are prescribed:

(i) No alien of enemy nationality shall between the hours of 9 P. M. and 6 A. M. be absent from the place of residence indicated on his Certificate of Identification.

(ii) At all other times an alien of enemy nationality shall be found only (*a*) at said place of residence or within a distance of five miles therefrom; (*b*) at the place of employment indicated on his Certificate of Identification; or (*c*) travelling between the said place of residence and the said place of employment.

(iii) The several United States Attorneys are hereby authorized to grant exceptions to the above prescribed conditions where, after sufficient investigation, a compelling reason for such an exception is found to exist. The alien shall make written application to the United States Attorney for the District of his residence for such an exception stating his name, Certificate of Identification number after it is obtained, residence, business address, the specific exception which he desires and the reasons therefor. During the pendency of his application the applicant must comply with the above conditions. Where granted, such exception shall be expressly limited to the needs of the particular case and may, in the discretion of the United States Attorney, be further limited and restricted in any manner and respect which he shall deem to be in the interest of national security. When granted, the exception shall be endorsed in full by the United States Attorney on the applicant's Certificate of Identification.

Dated: February 21, 1942.

FRANCIS BIDDLE,
*Attorney General.*

[F. R. Doc. 42-1618; Filed, February 24, 1942; 10:43 a. m.]

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PART 30 [1]—TRAVEL AND OTHER CONDUCT OF ALIENS OF ENEMY NATIONALITIES

Upon the recommendation of the Secretary of War, § 30.15 (b) is amended by adding thereto as subparagraph (2) the following areas which are designated as restricted areas in which no aliens of enemy nationality (German, Italian or Japanese) shall reside in, enter upon, remain in, or be found within after February 24, 1942 except that permits may be issued to such aliens to be in such restricted areas under prescribed conditions:

§ 30.15 *Prohibited and restricted areas.* * * *

* * * * *

(b) * * *

* * * * *

(2) Restricted areas of California:

*Restricted Area No. 1.* The area comprised within the boundaries of the Oregon-California State Line on the north, the Pacific Ocean on the west, the boundary between the Northern California Sector and the Southern California Sector on the south and on the east by a line running north and south beginning at the point where the easterly boundary line of the right-of-way of U. S. Highway No. 99 crosses the Oregon-California State Line in Siskiyou County northeast of Hilt and ending at a point on Route No. 99 above Wheeler Ridge, Kern County. There is excluded from this area, Prohibited Areas Nos. 1 to 32, inclusive, which have been designated as Prohibited Areas. The north and south line representing the eastern boundary follows an irregular course and is described as follows: Commencing at the Oregon-California State Line and following the easterly boundary line of the right-of-way of U. S. Highway No. 99 in a southerly direction to the point where the said easterly boundary line intersects the southerly boundary line of the right-of-way of the California State Highway No. 96, projected. The line then runs in a westerly and southerly direction along the easterly boundary line of California State Highway No. 96 to the point where that Highway intersects the northerly boundary of the right-of-way of U. S. Highway No. 299; it then follows in a southeasterly direction along U. S. Highway No. 299 to the point where the northerly boundary line of the right-of-way of U. S. Highway No. 299 intersects the eastern boundary line of Humboldt County to the north boundary line of Mendocino County, California, then west along the north boundary of Mendocino County to the easterly boundary line of the right-of-way of U. S. Highway No. 101. The line follows then in a southerly direction along the easterly boundary of U. S. Highway No. 101 to the point where it intersects the northerly boundary line of California State Highway No. 20 and then in an easterly direction along the California State Highway No. 20 northerly boundary line to the point where it intersects the easterly boundary line of the right-of-way of U. S. Highway No. 99 East at or near Marysville, California. The line then follows in a southerly direction along the easterly boundary line of the right-of-way of U. S. Highway No. 99 East to the point where it intersects the easterly boundary line of the right-of-way of U. S. Highway No. 99 in or near the city of Sacramento, California, and then in a southerly direction along the easterly boundary line of the right-of-way of U. S. Highway No. 99 to the point where it intersects the southerly boundary line of California State Highway No. 120 in or near the town of Mantega, California. It follows then in a westerly direction along the southerly boundary line of the right-of-way of California State Highway No. 120 to the point where the same intersects the southerly boundary line of the right-of-way of U. S. Highway No. 50. It follows then in a westerly direction along the southerly boundary line of the right-of-

way of U. S. Highway No. 50 to the point where the same intersects the easterly boundary line of the right-of-way of California State Highway No. 33, near Tracy, California. It follows then in a southerly direction along the easterly boundary line of the right-of-way of California State Highway No. 33, near Tracy, California. It follows then in a southerly direction along the easterly boundary line of the right-of-way of California State Highway No. 33 to the point where it, if projected, intersects the southerly boundary line of the right-of-way of California State Highway No. 152, in or near the town of Los Banos, California. It follows then in a westerly direction along the southerly boundary line of the right-of-way of California State Highway No. 152 to the point where the same intersects the easterly boundary line of the right-of-way of California State Highway No. 156. It follows then in a southerly direction along the easterly boundary line of the right-of-way of California State Highway No. 156 to the point where the same intersects the easterly boundary line of the right-of-way of California State Highway No. 25 in or near the town of Hollister, California. It follows then in a southerly direction along the easterly boundary line of the right-of-way of California State Highway No. 25 to the point where it intersects the northerly boundary line of the right-of-way of California State Highway No. 198 at or near the town of Priest Valley, California. It follows then in an easterly direction along the northerly boundary line of the right-of-way of California State Highway No. 198 to the point where it intersects the easterly boundary line of the right-of-way of California State Highway No. 33, projected in or near the town of Coalinga, California. It follows then in a southerly direction along the easterly boundary line of the right-of-way of California State Highway No. 33 to the point where it intersects the northerly boundary line of the right-of-way of California State Highway No. 166 in or near the town of Maricopa, California. It follows then in an easterly direction along the northerly boundary line of the right-of-way of California State Highway No. 166 to the point where it, projected, intersects the easterly boundary line of the right-of-way of U. S. Highway No. 99. It follows then in a southerly direction along the easterly boundary line of the right-of-way of U. S. Highway No. 99 to the point where the same intersects the boundary between the Northern California Sector and the Southern California Sector of the Western Defense Command. The boundary between the Northern California Sector and the Southern California Sector of the Western Defense Command commences at a point on the coast line slightly below Point Sal and follows in an east, northeast direction through Schuman, just below Lake View, just above Gates, just below Pattiway and ends at a point on U. S. Highway No. 99 slightly below California State Highway 166. The southern boundary of Restricted Area No. 1 commences at a point below 35 degrees latitude and extends west, northwest so as to cross the line of 35 degrees latitude and ends at a point above 35 degrees latitude.

*Restricted Area No. 2.* Shasta County. The area within a distance of 500 ft. in any direction from the Hat Creek No. 1 Hydro Electric Generating Plant of the Pacific Gas and Electric Company. Postoffice address, Cassel, California.

*Restricted Area No. 3.* Shasta County. The area within a distance of 500 ft. in any direction from the Hat Creek No. 2 Hydro Electric Generating Plant of the Pacific Gas and Electric Company. P. O. address, Cassel, California.

*Restricted Area No. 4.* Shasta County. The area within a distance of 500 ft. in any direction from the Coleman Hydro Electric Generating Plant of the Pacific Gas and Electric Company. P. O. Address, Cottonwood, California.

*Restricted Area No. 5.* Butte County. The area within a distance of 500 ft. in any direction from the De Salba Hydro Electric Generating Plant of the Pacific Gas and Electric Company. P. O. Address, De Salba, California.

*Restricted Area No. 6.* Yuba County. The area within a distance of 500 ft. in any direction from the Colgate Hydro Electric Generating Plant of the Pacific Gas and Electric Company. P. O. Address, Dobbins, California.

*Restricted Area No. 7.* Nevada and Placer Counties. The area within a distance of 300 ft. in any direction from the Spaulding No. 1 Hydro Electric Generating Plant of the Pacific Gas and Electric Company. P. O. Address, Emigrant Gap, California.

*Restricted Area No. 8.* Nevada and Placer Counties. The area within a distance of 300 ft. in any direction from the Spaulding No. 2 Hydro Electric Generating Plant of the Pacific Gas and Electric Company. P. O. Address, Emigrant Gap, California.

*Restricted Area No. 9.* Nevada and Placer Counties. The area within a distance of 300 ft. in any direction from the Spaulding No. 3 Hydro Electric Generating Plant of the Pacific Gas and Electric Company. P. O. Address, Emigrant Gap, California.

*Restricted Area No. 10.* Placer County. The area within a distance of 500 ft. in any direction from the Halsey Hydro Electric Generating Plant of the Pacific Gas and Electric Company, P. O. Address, Auburn, California.

*Restricted Area No. 11.* Placer County. The area within a distance of 500 ft. in any direction from the Wise Hydro Electric Generating Plant of the Pacific Gas and Electric Company. P. O. Address, Auburn, California.

*Restricted Area No. 12.* Mono County. The area within a distance of 500 ft. in any direction from the Big Creek Hydro Electric Generating Plant of the California Electric Pacific Company located 7 miles north of Bishop, California.

Effective date of these designations is February 24, 1942.

FRANCIS BIDDLE,
*Attorney General.*

[F. R. Doc. 42-1620; Filed, February 24, 1942; 10:43 a. m.]

PART 30—TRAVEL AND OTHER CONDUCT OF ALIENS OF ENEMY NATIONALITIES

Part 30[1] is amended by adding the following new sections:

Sec.
30.51 Persons required to apply.
30.52 Persons not required to apply.
30.53 Places to apply.
30.54 Time to apply.
30.55 Modifications of time to apply.
30.56 Method of making application for Certificate of Identification.
30.57 Certificates of Identification.
30.58 Disposition of application forms.
30.59 Nature of information.
30.60 Changes of name, residence, or employment.
30.61 Use of assumed name.
30.62 Compliance with all regulations of conduct of applicants.
30.63 Violation of regulations.

§ 30.51 *Persons required to apply.* Except as hereinafter expressly excluded by § 30.52, persons in the United States (including Puerto Rico and the Virgin Islands) required to apply for Certificates of Identification, and otherwise to comply with these regulations, are as follows:

(a) All aliens who are of the age of 14 years or upward and who are German, Italian, or Japanese citizens or subjects.

(b) All aliens of the age of 14 years or upward who at present are stateless but who, at the time at which they became stateless, were German, Italian, or Japanese citizens or subjects.

(c) All aliens, of the classes described in paragraphs (a) and (b) of this section, who have not reached the age of 14 years at the time that applications for Certificates of Identification are required, shall from that time forward and so long as the said Presidential Proclamation dated January 14, 1942, shall remain in effect, immediately upon reaching the age of 14 years, present themselves at the nearest appropriate post office or such other place as may be hereafter designated, and make application for such Certificate of Identification.*

*§§ 30.51 to 30.63 inclusive issued under the authority contained in Proclamation 2525, December 7, 1941, Proclamations 2526 and 2527, December 6, 1941, and 6 F.R. 6321, 6323 and 6324, December 10, 1941 and Proc. 2537, January 14, 1942, 7 F.R. 329, January 17, 1942; Rev. Stat. sec. 4067, 50 U.S.C. sec. 21.

§ 30.52 *Persons not required to apply.* Classes of aliens not required to apply for Certificates of Identification, or otherwise to comply with these regulations, include the following:

(a) German, Italian, or Japanese citizens or subjects who, before December 7, 1941, in the case of former Japanese subjects and before December 8, 1941, in the case of former German or Italian citizens, became citizens of any nation other than Germany, Italy, or Japan: *Provided,* That such persons have not, by special license or otherwise, retained their status as German, Italian, or Japanese citizens or subjects.

(b) Austrians or Austrian-Hungarians (Austro-Hungarians), who registered as such under the Alien Registration Act of

[1] 7 F.R. 844, 1084.

1940: *Provided,* That such persons have not at any time voluntarily become German, Italian, or Japanese citizens or subjects.

(c) Koreans who, under the Alien Registration Act of 1940, registered as Koreans, provided that such persons have not at any time voluntarily become German, Italian, or Japanese citizens or subjects.

(d) These regulations shall not be construed as defining or limiting the classes of "alien enemies" who are subject to apprehension, detention or internment, or to any of the other provisions of the Presidential Proclamations of December 7 and 8, 1941, and regulations heretofore or hereafter issued pursuant thereto.*

§ 30.53 *Places to apply.* (a) Persons required to apply for Certificates of Identification shall present themselves at the first-class, second class, or county-seat post office nearest to their places of residence, or at any other post office or other place which may hereafter be designated in accordance with instructions issued by the Post Office Department or otherwise.

(b) Persons required to apply for Certificates of Identification who are unavoidably absent from their places of residence during the dates hereinafter designated for such places may, in order to relieve themselves from the penalties prescribed for failure to make such applications, present themselves at the place and time prescribed for applications in the district in which they temporarily are, and shall then and there file applications in the regular way, which applications, duly executed in duplicate, shall be immediately forwarded to the first-class, second-class, or county-seat post office nearest the habitual places of residence of such applicants and such post office shall deliver the Certificate of Identification to applicant as hereinafter provided.*

§ 30.54 *Time to apply.* Persons required to apply for Certificates of Identification shall apply at the time hereinafter set forth, as follows:

(a) Persons present within the States of Arizona, California, Idaho, Montana, Nevada, Oregon, Utah and Washington are required to apply between the dates of February 2 and February 9, 1942, both inclusive.

(b) Persons present within the continental United States elsewhere than in the above-enumerated States are required to apply between the dates of February 9, and February 28, 1942, both inclusive.

(c) Special provisions will be made as to the times and places to apply for Certificates of Identification in Puerto Rico and the Virgin Islands.*

§ 30.55 *Modifications of time to apply.* Provided that a person, who is subject to the regulations in this part and who falls into one of the following-described categories, has registered in compliance with the provisions of the Alien Registration Act of 1940, as evidenced by his possession of an Alien Registration Receipt Card, he shall be entitled to the following modification of the requirements of the regulations in this part:

(a) Persons who are inmates of asylums, jails, prisons, or penitentiaries, Federal or State, shall not be obliged to make application for a Certificate of Identification so long as they remain inmates of such institutions. Immediately upon their discharge from such institutions, however, such persons shall be under obligation to apply for such Certificates. Their applications shall be made either at (1) such institutions, if facilities therefor exist, or at (2) the first-class, second-class, or county-seat post office, or (3) such other place, nearest their residence, as may then be designated for the receiving of such applications.

(b) Persons who are so aged or infirm as to be confined permanently to their places of residence or to institutions shall not be obliged to make application for a Certificate of Identification so long as they shall be physically incapable of making such application at a post office.

(c) Persons who, during the period fixed for the filing of applications for Certificates of Identification, are temporarily bedridden, in hospitals or at their residences, must within 5 days of their recovery, make application for a Certificate of Identification at the place, nearest their place of residence, at which such applications are then being received. In order, however, to qualify for such temporary modification of the time requirements for making application, such persons must give, or must cause to be given in their behalf, a written notice setting forth their name, address, Alien Registration Receipt Card Number, age, nationality, the nature of their physical incapacity and its probable duration. Such notice must be accompanied by a Doctor's certificate and must be mailed or delivered, within the period fixed for the filing of applications for Certificates of Identification to the postmaster of the nearest first- or second-class or county-seat post office.

In the event that any person, subject to these regulations and falling within one of the above-enumerated categories, has not registered in compliance with the requirements of the Alien Registration Act of 1940, he shall give notice, or shall cause notice to be given in his behalf, to the postmaster of the nearest first-class, second-class, or county-seat post office; such notice shall contain his name, address, the fact of nonregistration, and shall be given during the period fixed for the filing of applications for Certificates of Identification.*

§ 30.56 *Method of making application for certificate of identification.* (a) Any postmaster in a first- or second-class post office in the United States, or in the post office at the seat of government of any county, parish, or equivalent subdivision in the United States, or in any other post office or other place which may hereafter be designated, or any postal employee designated by such postmaster, shall be an identification official, authorized to receive applications for Certificates of Identification in accordance with these regulations.

(b) Any postmaster who shall designate any person as an identification official shall certify that fact to the Department of Justice.

(c) Application shall be made by each person required to apply hereunder upon Form AR-AE-22, and the application shall in all respects conform to said form.

(d) A notice to all persons subject to these regulations, including abbreviated instructions and suggestions (Form AR-AE-21) shall be printed and placed in post offices and in such other places as may be deemed appropriate for general distribution; and, together with copies of these regulations, shall be posted at prominent places in post offices at which applications for Certificates of Identification will be filed.

(e) The identification official shall deliver to the applicant two copies of the form of application for Certificate of Identification (AR-AE-22).

(f) The applicant shall fill in the application forms (AR-AE-22) in duplicate, either personally or through a representative. If the applicant is unable to write or is unable to write clearly and legibly, the identification official shall, upon request of such applicant, fill in the application forms, in duplicate, with information furnished him by the applicant.

(g) The identification official shall request the applicant to produce his alien registration receipt card, and, upon its production, shall verify the number appearing thereon with the registration number inserted on the application for Certificate of Identification (Form AR-AE-22).

(h) After the application for Certificate of Identification (Form AR-AE-22) has been completed in duplicate, the identification official shall fill in the description of the applicant as the information is called for at the bottom of the Form AR-AE-22.

(i) The applicant shall furnish to the identification official three unmounted photographs of the applicant, with light background, 2 by 2 inches in size, on thin paper. Such photographs, in order to be acceptable, must clearly show a front view of the face of the applicant without hat, and applicant must state, and such must appear to be the fact, that such photographs were taken not more than 30 days prior to the date on which the application is presented.

(j) The application forms (AR-AE-22) must be personally signed in duplicate

and sworn to (or affirmed) by the applicant before an identification official.

(k) If the applicant is unable to write, he must make his mark in the signature space in the application forms, and his mark shall be witnessed by a witness other than the identification official. The witness shall sign his name and address on the application forms near the mark, and the words "witnessed by" shall precede the signature of the witness.

(l) If the applicant has conscientious scruples against taking an oath, he may make affirmation to the truth and completeness of his statements and answers in the application.

(m) All identification officials are hereby authorized to administer to applicants the oath or affirmation required herein. The oath is to be taken by the applicant's raising his right hand and swearing to the truth and completeness of the statements and answers made by him in the application. Affirmation may be made by applicant's raising his right hand and declaring that he solemnly affirms the truth and completeness of the statements and answers made by him in the application.

(n) The following information shall be furnished by each applicant:

(1) The applicant shall give in full his present legal name in the English alphabet.

(2) The applicant shall give the name (not including aliases) under which he registered in accordance with the provisions of the Alien Registration Act of 1940, providing that such name is different from the present legal name of applicant. If the name under which applicant registered in accordance with the provisions of the Alien Registration Act of 1940 is different from applicant's present legal name, applicant shall explain briefly the reason for the difference.

(3) The applicant shall give the location of his residence; that is, the place where the applicant habitually sleeps. If he has no such place, he shall so state. He shall give the address where his mail is regularly received or delivered. He shall also state the location of other residences since January 1, 1941, in each case stating the approximate period spent at each such residence.

(4) The applicant shall state the names and addresses of all persons, firms, or corporations by which he has been employed since January 1, 1941, together with a statement of the capacity in which he was so employed and the approximate dates covered by each such employment. If the applicant, during said period, was himself engaged in some trade, business, or profession, he shall so indicate, stating his business address and the period covered.

(5) The applicant shall state the month, day, and year of his birth according to the American (that is, Gregorian) calendar. The applicant shall also name the country, if any, of which he is a citizen or subject, or to which he owes allegiance. If the applicant is not a citizen of any country he shall so state; he shall, in such case, state the country of which he was last a citizen or subject, or to which he last owed allegiance.

(6) The applicant shall give the names, state the relationships, and give the addresses of parents, brothers or sisters, husband or wife, or children of the applicant living in the United States on the date of making the application.

(7) The applicant shall state whether or not he has any children serving, at the time of the application, in the armed forces of the United States, including the auxiliary arms of service. If the applicant has such children he shall state their names and indicate in each case the branch of service in which such child is serving.

(8) The applicant shall give the names, state the relationship and give the last known address or country of residence of parents, brothers or sisters, husband or wife, or children of the applicant living outside the United States. If any of said relatives are, or when last known to applicant were, serving in the armed forces of a foreign nation, the applicant shall state this fact.

(9) The applicant shall state whether or not, he has, since August 27, 1940, either applied for or received first citizenship papers in the United States or petitioned for naturalization in the United States. In the event that the applicant has so applied, received, or petitioned, he shall state which and give the place and date. The applicant shall state also whether or not he has ever been refused or denied naturalization in the United States. If he has been refused or denied naturalization he shall state the court, place, and reasons or causes given, and whether said reasons or causes have since been removed.

(10) If the applicant has at any time taken any steps toward naturalization in a country other than the United States, he shall so indicate and shall state when and where and in what country.

(11) If the applicant has at any time taken an oath of allegiance to any country, state, or nation other than the United States he shall so indicate and shall state the time, place, and country.

(12) The applicant shall state whether he has read or had read to him a summary of the provisions of Presidential proclamations and regulations concerning the conduct of persons of enemy nationalities, and he shall further state whether or not he has complied with such proclamations and regulations, and further whether any exemption of any kind has been granted to him.

(13) The applicant shall indicate whether he was registered for Selective Service, and if he was, the applicant shall state the place and his local draft board order number.

(14) The applicant shall list the clubs, organizations, or societies of which he has been a member or officer, or with which he has been affiliated, at any time during the period of 5 years preceding the date of such application either in the United States or abroad. In the event that any such listed membership or affiliation has ceased prior to the date of the application, the applicant shall give the approximate date thereof. If the applicant spent any part of said 5-year period outside the United States, he shall include a statement of his foreign political party or national organization affiliation during such portion of said 5-year period as he spent outside the United States.

(15) The applicant shall be given the opportunity, and space shall be provided on the form (AR-AE-22) for the purpose, to make any additional statement concerning himself, or his status, he may wish to make. But there shall be no obligation upon the applicant to insert any additional information in such space. In the event that the applicant uses such space to give the names and addresses of persons who might vouch for the applicant's loyalty to the United States, the applicant shall write either personally or through his representative, or the identification official shall write for him, a statement substantially as follows:

I have neither given anything of value nor obligated myself in any manner whatsoever for permission to use the above names,

and applicant shall be obliged to swear to or affirm the truth of such statement.

(o) Whenever an applicant states that he is unable to supply any of the information required by Form AR-AE-22, the identification official shall ask the applicant if he has exhausted all possible sources of information. If the applicant answers that he has done so, the applicant or the identification official shall write "Don't know" in the space reserved for such information in said form.

(p) After the applicant shall have duly executed and sworn to (or affirmed) his application in duplicate, the identification official shall transfer from such form to the Certificate of Identification (Form AR-AE-23) such information as is called for in said Form AR-AE-23. The identification official shall then affix one of said photographs to each of the executed applications (AR-AE-22) and one of such photographs to the Certificate of Identification (Form AR-AE-23). The applicant, if able to write, shall sign each of said three photographs of himself in such directed manner as not to obscure the features and applicant shall affix his signature also at the place indicated in the Certificate of Identification (Form AR-AE-23).

The applicant shall place a single specified fingerprint on each of the forms of application for a Certificate of Identification (AR–AE–22) and in the Certificate of Identification (AR–AE–23). The identification official in each case shall take the applicant's fingerprint or cause the same to be taken under his supervision.*

§ 30.57 *Certificates of identification.* (a) At the earliest practicable date after the filing of the application there shall be delivered to the applicant, in accordance with instructions issued by the Post Office Department, a Certificate of Identification (Form AR–AE–23). The issuance of such certificate shall not relieve the applicant or holder from full compliance with any and all laws and regulations of the United States now existing or which hereafter may exist, concerning aliens of enemy nationalities; nor shall it be construed to confer on the holder immunity from any liability, pain, penalty or punishment incurred by the holder for violation of any law of the United States either before or after its issuance.

(b) All persons, required to apply for and obtain Certificates of Identification, shall carry such certificates with them at all times and present them if required to do so by any police officer or other government officer. Any such person shall promptly report his loss of Certificate of Identification to the nearest United States attorney.

(c) A Certificate of Identification shall not be issued to any person who has already received one unless he surrenders his former certificate, except in case of loss as provided below. No person shall use a Certificate of Identification relating to any other person. If any person loses his Certificate of Identification he may make affidavit under oath (or affirmation) to that effect, and, upon proof thereof, there may be issued to him a copy, which shall be plainly marked as such. If the holder dies or permanently departs from the United States, his Certificate of Identification shall be returned to the Department of Justice. If any person finds a lost Certificate of Identification he shall forward it to the United States Department of Justice.*

§ 30.58 *Disposition of application forms.* (a) One copy of the completely executed application for Certificate of Identification (AR–AH–22) shall be sent promptly to the Alien Registration Division of the Department of Justice in accordance with the instructions of the Post Office Department.

(b) The second copy of the completely executed application for Certificate of Identification shall be sent to the nearest field office of the Federal Bureau of Investigation in accordance with the instructions of the Post Office Department.*

§ 30.59 *Nature of information.* All information furnished by the applicant in connection with his application shall be secret and confidential and shall be available only to such persons or agencies as may be designated by the Attorney General. It shall be unlawful for any identification official to divulge any such information to any person or agency not so designated.*

§ 30.60 *Changes of name, residence, or employment.* (a) Whenever the holder of a Certificate of Identification changes his (1) name, under legal authority, (2) residence address, or (3) place of employment, written notices thereof shall immediately be given to (i) the Alien Registration Division of the Immigration and Naturalization Service, and (ii) the Federal Bureau of Investigation at the office shown in the holder's Certificate of Identification.

(b) Nothing herein contained shall relieve any alien or parent or guardian of any alien less than 14 years of age who is not a permanent resident of the United States, and who was or is required to register under the Alien Registration Act of 1940 from reporting to the Commissioner of Immigration and Naturalization the alien's residence at the end of each 3 months' residence in the United States, regardless of whether or not the alien has changed his residence.*

§ 30.61 *Use of assumed name.* No person to whom a Certificate of Identification has been issued shall for any purpose assume or use, or purport to assume or use, or continue the assumption or use, of any name other than that given as his legal name in his application for a Certificate of Identification, except such changes as may be duly authorized by or under the law.*

§ 30.62 *Compliance with all regulations of conduct of applicants.* No alien of enemy nationality as hereinbefore defined shall enter or be found at any time in any area hereafter designated by the Attorney General as an area in which an alien of enemy nationality shall not be found except in accordance with such regulations and permission as may be prescribed by the Attorney General. All such aliens of enemy nationalities shall obey all regulations heretofore and hereafter issued governing travel, change of residence, occupation or employment, and possession of various articles such as cameras, radios, firearms, ammunition, explosives, signal devices, and similar articles.*

§ 30.63 *Violation of regulations.* (a) Any alien of enemy nationality herein defined who fails to comply with the regulations in this part or any other regulations governing the conduct of aliens of enemy nationalities, is subject to apprehenson, detention, and interment for the duration of the war.

(b) Any alien of enemy nationality herein defined who shall aid, abet, counsel, command, induce, or procure any other alien of enemy nationality to fail to comply with any of the regulations in this part or any other regulations governing the conduct of aliens of enemy nationalities, is subject to apprehension, detention, and internment for the duration of the war.*

Dated: January 22, 1942.

FRANCIS BIDDLE,
*Attorney General.*

[F. R. Doc. 42–1624; Filed, February 24, 1942; 10:48 a. m.]

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PART 30 [1]—TRAVEL AND OTHER CONDUCT OF ALIENS OF ENEMY NATIONALITIES

Section 30.61 is amended to read as follows:

§ 30.61 *Use of assumed name.* No person to whom a Certificate of Identification has been issued shall, for any purpose, assume or use, or purport to assume or use, or continue the assumption or use, of any name other than that given as his legal name in his application for a Certificate of Identification, except such changes as may be duly authorized in § 30.7 (c).

Dated: February 21, 1942.

FRANCIS BIDDLE,
*Attorney General.*

[F. R. Doc. 42–1622; Filed, February 24, 1942; 10:47 a. m.]

[1] 7 F.R. 844, 1084.

## TITLE 30—MINERAL RESOURCES

## CHAPTER III—BITUMINOUS COAL DIVISION

[Docket No. A-1155]

### PART 321—MINIMUM PRICE SCHEDULE, DISTRICT NO. 1

ORDER AMENDING ORDER GRANTING TEMPORARY RELIEF AND CONDITIONALLY PROVIDING FOR FINAL RELIEF IN THE MATTER OF THE PETITION OF DISTRICT BOARD NO. 1 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF CERTAIN MINES IN DISTRICT NO. 1

An order granting temporary relief and conditionally providing for final relief was issued in the above-entitled matter on December 13, 1941, 6 F. R. 6754, establishing price classifications and minimum prices for the coals of certain mines in District No. 1, including the establishment of price classifications and minimum prices for the coals of Bald Eagle #1 Mine, Mine Index No. 3206, and Bald Eagle #2 Mine, Mine Index No. 3207, of John D. Walker, code member, for all shipments except truck and for truck shipments.

The original petitioner in the above-entitled matter subsequently filed an amendment to its petition alleging that the price classifications and minimum prices established for the coals of the Bald Eagle #1 Mine, Mine Index No. 3206, and the Bald Eagle #2 Mine, Mine Index No. 3207, of John D. Walker, in Size Groups 4 and 5, for truck shipments are five cents higher than the prices for comparable and analogous coals for such shipments, and requesting a five-cent reduction in the minimum prices established for the coals of the said mine index numbers in Size Groups 4 and 5 for truck shipments.

It appears that a reasonable showing of necessity has been made for the granting of temporary relief in the manner hereinafter set forth, that no pleadings in opposition to the said amendment to the original petition have been filed with the Division in the above-entitled matter, and that the following action is necessary in order to effectuate the purposes of the Act.

*Now, therefore, it is ordered,* That the said order granting temporary relief and conditionally providing for final relief dated December 13, 1941, in the above-entitled matter be, and it is hereby amended, by revoking the minimum prices established therein for the coals of Bald Eagle #1 Mine, Mine Index No. 3206 and Bald Eagle #2 Mine, Mine Index No. 3207, in Size Groups 4 and 5 for truck shipments;

*It is furthered ordered,* That, pending final disposition of the above-entitled matter, temporary relief is granted as follows: Commencing forthwith, § 321.24 (*General prices*) is amended by adding thereto Supplement T, which supplement is hereinafter set forth and hereby made a part hereof.

*It is further ordered,* That pleadings in opposition to the said amendment to the original petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division with forty-five (45) days from the date of this Order, pursuant to the Rules and Regulations Governing Practice and Procedure Before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

*It is further ordered,* That the relief herein granted shall become final sixty (60) days from the date of this Order, unless it shall otherwise be ordered.

*It is further ordered,* That in all other respects the said Order of December 13, 1941, be, and it hereby is, continued in full force and effect until otherwise ordered.

Dated: February 9, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

TEMPORARY AND CONDITIONALLY FINAL EFFECTIVE MINIMUM PRICES FOR DISTRICT NO. 1

NOTE: The material contained in this supplement is to be read in the light of the classifications, prices, instructions, exceptions and other provisions contained in Part 321, Minimum Price Schedule for District No. 1 and supplements thereto.

FOR TRUCK SHIPMENTS

§ 321.24 *General prices*—Supplement T

[Prices in cents per net ton for shipment into all market areas]

| Code member index | Mine index No. | Mine | Subdistrict No. | County | Seam | All lump coal double screened top Size 2" and over | Double screened top size 2" and under | Run of mine modified R/M | 2" and under slack | ¾" and under slack |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | 1 | 2 | 3 | 4 | 5 |
| Walker, John D. | 3206 | Bald Eagle #1 | 12 | Clearfield | D | (*) | ---- | (*) | 205 | 195 |
| Walker, John D. | 3207 | Bald Eagle #2 | 12 | Clearfield | E | (*) | ---- | (*) | 205 | 195 |

*Indicates coal in this size group previously classified and priced.

[F. R. Doc. 42-1519; Filed, February 20, 1942; 10:56 a. m.]

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### PART 321—MINIMUM PRICE SCHEDULE, DISTRICT NO. 1

[Docket No. A-1274]

ORDER GRANTING TEMPORARY RELIEF AND CONDITIONALLY PROVIDING FOR FINAL RELIEF IN THE MATTER OF THE PETITION OF DISTRICT BOARD NO. 1 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF CERTAIN MINES IN DISTRICT NO. 1

An original petition, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937 having been duly filed with this Division by the above-named party, requesting the establishment, both temporary and permanent, of price classifications and minimum prices for the coals of certain mines in District No. 1; and

It appearing that a reasonable showing of necessity has been made for the granting of temporary relief in the manner hereinafter set forth; and

No petitions of intervention having been filed with the Division in the above-entitled matter; and

The following action being deemed necessary in order to effectuate the purposes of the Act;

*It is ordered,* That pending final disposition of the above-entitled matter, temporary relief is granted as follows: Commencing forthwith § 321.7 (*Alphabetical list of code members*) is amended by adding thereto Supplement R, and § 321.24 (*General prices*) is amended by adding thereto Supplement T, which supplements are hereinafter set forth and hereby made a part hereof.

*It is further ordered,* That pleadings in opposition to the original petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division within forty-five (45) days from the date of this Order, pursuant to the Rules and Regulations Governing Practice and Procedure before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

*It is further ordered,* That the relief herein granted shall become final sixty (60) days from the date of this Order, unless it shall otherwise be ordered.

Dated: February 10, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

TEMPORARY AND CONDITIONALLY FINAL EFFECTIVE MINIMUM PRICES FOR DISTRICT NO. 1

NOTE: The material contained in these supplements is to be read in the light of the classifications, prices, instructions, exceptions and other provisions contained in Part 321, Minimum Price Schedule for District No. 1 and supplements thereto.

FOR ALL SHIPMENTS EXCEPT TRUCK

§ 321.7 *Alphabetical list of code members*—Supplement R

[Alphabetical listing of code members having railway loading facilities, showing price classifications by size group numbers]

| Mine index number | Code member | Mine name | Subdistrict No. | Seam | Shipping point | Railroad | Freight origin group number | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2646 | Bish, Guy | Bish | 6 | D | Punxsutawney, Pa | B&O-PRR | 63 | E | (†) | (*) | E | (†) |
| 3333 | Commercial Truck Mine (L. H. Lambing) | Commercial | 26 | B | Twin Rocks, Pa | PRR | 53 | (†) | (†) | C | (†) | (†) |
| 389 | Enterprise Coal Mining Company | Ponfeigh #7 | 41 | Pittsburgh | Garrett, Pa | W. Md | 102 | G | G | (*) | G | G |
| 390 | Enterprise Coal Mining Company | Ponfeigh #7-A | 41 | Sewickley | Garrett, Pa | W. Md | 102 | E | E | (*) | E | E |
| 3344 | Flick, John (Flick Coal Co.) | Barnhart | 37 | C′ | Stoyestown, Pa | B&O | 100 | (†) | (†) | E | (†) | (†) |
| 3356 | Flick, John (Flick Coal Co.) | Flick | 37 | D | Stoyestown, Pa | B&O | 100 | (†) | (†) | B | (†) | (†) |
| 3343 | Garfield Fuel Company c/o F. B. McFeely | Garfield #3 | 28 | B | Bolivar, Pa | PRR | 82 | (†) | (†) | G | (†) | (†) |
| 3368 | Shaw, Kenneth | Shaw #1 | 33 | D | Windber, Pa | PRR | 49 | (†) | (†) | E | (†) | (†) |

† Indicates no classifications effective for these size groups.
* Indicates coal in this size group previously classified and priced.
NOTE: If coals within either of the following groups are loaded into the same car the price that shall apply to such mixture shall be the price which is listed for the coal in the mixture which has the higher price classification: Mine Index Nos. 389 and 390 of Enterprise Coal Mining Company; Mine Index Nos. 326 and 769 of Mohawk Mining Company.

FOR TRUCK SHIPMENTS

§ 321.24 *General prices*—Supplement T

[Prices in cents per net ton for shipment into all market areas]

| Code member index | Mine index No. | Mine | Subdistrict No. | County | Seam | All lump coal double screened top size 2" and over (1) | Double screened top size 2" and under (2) | Run of mine modified R/M (3) | 2" and under slack (4) | ¾" and under slack (5) |
|---|---|---|---|---|---|---|---|---|---|---|
| Bish, Guy | 2646 | Bish | 6 | Jefferson | D | 250 | ---- | (*) | 215 | ---- |
| Commercial Truck Mine (L. H. Lambing). | 3333 | Commercial | 26 | Cambria | B | ---- | ---- | 235 | ---- | ---- |
| Enterprise Coal Mining Company | 389 | Ponfeigh #7 | 41 | Somerset | Pittsburgh | 240 | 215 | (*) | 205 | 195 |
| Enterprise Coal Mining Company | 390 | Ponfeigh #7-A | 41 | Somerset | Sewickley | 250 | 225 | (*) | 215 | 205 |
| Flick, John (Flick Coal Co.) | 3344 | Barnhart | 37 | Somerset | C′ | ---- | ---- | 225 | ---- | ---- |
| Flick, John (Flick Coal Co.) | 3356 | Flick | 37 | Somerset | D | ---- | ---- | 240 | ---- | ---- |
| Garfield Fuel Company c/o F. B. McFeely. | 3343 | Garfield #3 | 28 | Indiana | B | ---- | ---- | 215 | ---- | ---- |
| Shaw, Kenneth | 3368 | Shaw #1 | 33 | Somerset | D | ---- | ---- | 225 | ---- | ---- |
| Sturtz, George & Walter (George Sturtz). | 3357 | Kennell #4 | 41 | Somerset | Pittsburgh | ---- | ---- | 220 | ---- | ---- |
| Treese, Blaine E. | 3331 | Treese | 12 | Indiana | E | ---- | ---- | 215 | ---- | ---- |
| Vollmer, Laurence B. | 3370 | Vollmer | 2 | Elk | B | ---- | ---- | 210 | ---- | ---- |

*Indicates coal in this size group previously classified and priced.

[F. R. Doc. 42-1521; Filed, February 20, 1942; 10:57 a. m.]

[Docket No. A-1000, Part II]

PART 323—MINIMUM PRICE SCHEDULE, DITRICT NO. 3

ORDER GRANTING RELIEF IN THE MATTER OF THE PETITION OF DISTRICT BOARD NO. 3 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF THE SCOTCH HILL MINES NOS. 1 TO 35, INCLUSIVE (MINE INDEX NOS. 240, 241 AND 252 TO 284, INCLUSIVE), IN DISTRICT NO. 3

This proceeding having been instituted upon a petition filed with the Bituminous Coal Division by District Board 3 on August 6, 1941, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, praying for, *inter alia*, price classifications and minimum prices for the coals of the Scotch Hill Mines Nos. 1 to 35 (Mine Index Nos. 240, 241, and 252 to 284, inclusive) of The Henry Clay Coal Mining Company;

Temporary relief having been granted by an Order of the Director dated September 19, 1941, 6 F.R. 4849;

A petition of intervention having been filed by The Henry Clay Coal Mining Company on October 8, 1941, requesting that the Scotch Hill Mines Nos. 1 to 35 be designated as the Scotch Hill Mine No. 1 and that the same classifications and minimum prices established by the Order of September 19, 1941, for the coals of the Scotch Hill Mines Nos. 1 to 35 be established for the coals of Scotch Hill Mine No. 1;

A petition of intervention having also been filed by District Board 2;

Pursuant to appropriate orders and after due notice to all interested persons, a hearing in this matter having been held on October 27, November 25 and 28, and December 1, 1941, before Floyd McGown, a duly designated Examiner of the Division, at a hearing room thereof in Washington, D. C., at which all interested persons were afforded an opportunity to be present, adduce evidence, cross-examine witnesses, and otherwise be heard and at which District Boards 2 and 3 and The Henry Clay Coal Mining Company appeared;

The parties having waived the preparation and submission of a report by the Examiner, and the record in the proceeding having therefore been submitted to the undersigned;

The undersigned having made Findings of Fact and Conclusions of Law and

having rendered an Opinion in this matter, which are filed herewith;

*Now, therefore, it is ordered,* That § 323.6 (*Alphabetical list of code members*), § 323.8 (*Special prices*—(b) *Railroad fuel prices for all movements except via lakes*) and § 323.8 (*Special prices*—(c) *Railroad fuel prices for movement via all lakes—all ports*) in the Schedule of Effective Minimum Prices for District No. 3 for All Shipments Except Truck and § 323.23 (*General prices*) in the Schedule of Effective Minimum Prices for District No. 3 for Truck Shipments be and they hereby are amended to include therein the price classifications and mine, freight origin group, and other designations contained in Supplements R-I, R-II, R-III, and T attached hereto and made a part hereof, as the price classifications and designations of Scotch Hill Mines Nos. 1-13, 15-19, 21, 23-26, 28-30, and 32-35 of The Henry Clay Coal Mining Company.

*It is further ordered,* That the prayers for relief contained in the several petitions filed herein are granted to the extent set forth above and in all other respects denied.

Dated: February 5, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

FOR ALL SHIPMENTS EXCEPT TRUCK

NOTE: The material contained in these supplements is to be read in the light of the classifications, prices, instructions, exceptions and other provisions contained in Part 323, Minimum Price Schedule for District No. 3 and supplements thereto.

## § 323.6 *Alphabetical list of code members*—Supplement R-I

[Alphabetical listing of code members having railway loading facilities, showing price classification by size group numbers]

| Mine index No. | Code member | Mine name | Seam | Shipping point | Railroad | Freight origin group No. | Size group Nos. 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 265 | Henry Clay Coal Mining Co., The | Scotch Hill #10 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 240 | Henry Clay Coal Mining Co., The | Scotch Hill #1 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 260 | Henry Clay Coal Mining Co., The | Scotch Hill #11 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 270 | Henry Clay Coal Mining Co., The | Scotch Hill #21 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 273 | Henry Clay Coal Mining Co., The | Scotch Hill #24 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 268 | Henry Clay Coal Mining Co., The | Scotch Hill #10 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 241 | Henry Clay Coal Mining Co., The | Scotch Hill #2 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 252 | Henry Clay Coal Mining Co., The | Scotch Hill #3 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 253 | Henry Clay Coal Mining Co., The | Scotch Hill #4 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 254 | Henry Clay Coal Mining Co., The | Scotch Hill #5 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 255 | Henry Clay Coal Mining Co., The | Scotch Hill #6 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 256 | Henry Clay Coal Mining Co., The | Scotch Hill #7 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 257 | Henry Clay Coal Mining Co., The | Scotch Hill #8 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 258 | Henry Clay Coal Mining Co., The | Scotch Hill #9 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 259 | Henry Clay Coal Mining Co., The | Scotch Hill #10 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 261 | Henry Clay Coal Mining Co., The | Scotch Hill #12 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 262 | Henry Clay Coal Mining Co., The | Scotch Hill #13 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 264 | Henry Clay Coal Mining Co., The | Scotch Hill #15 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 266 | Henry Clay Coal Mining Co., The | Scotch Hill #17 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 267 | Henry Clay Coal Mining Co., The | Scotch Hill #18 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 272 | Henry Clay Coal Mining Co., The | Scotch Hill #23 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 274 | Henry Clay Coal Mining Co., The | Scotch Hill #25 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 275 | Henry Clay Coal Mining Co., The | Scotch Hill #26 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 277 | Henry Clay Coal Mining Co., The | Scotch Hill #28 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 278 | Henry Clay Coal Mining Co., The | Scotch Hill #29 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 279 | Henry Clay Coal Mining Co., The | Scotch Hill #30 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 281 | Henry Clay Coal Mining Co., The | Scotch Hill #32 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 282 | Henry Clay Coal Mining Co., The | Scotch Hill #33 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 283 | Henry Clay Coal Mining Co., The | Scotch Hill #34 | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |
| 284 | Henry Clay Coal Mining Co., The | Scotch Hill #35 (Strip) | Pittsburgh | Newburg, W. Va | B&O | 70 | II | II | II | II | II | II | II | II | II | II | | | | | | |

## § 323.8 *Special prices*—(b) *Railroad fuel prices for all movements except via lakes*—Supplement R-II

For railroad fuel prices, add the above mine index numbers to Group No. 1 as set forth in § 323.8 (b) in Minimum Price Schedule.

## § 323.8 *Special prices*—(c) *Railroad fuel prices for movement via all lakes—all ports*—Supplement R-III

For railroad fuel prices, add the above mine index numbers to Group No. 1 as set forth in § 323.8 (c) in Minimum Price Schedule.

FOR TRUCK SHIPMENTS

§ 323.23 *General prices*—Supplement T

[Prices in cents per net ton for shipment into all market areas]

| Code member index | Mine index No. | Mine | Seam | County | Size groups: Lump over 2", egg over 2", bottom size 1 | Lump 2"-egg 2" bottom size but over 1¼" 2 | Lump 1¼" and under, egg 1¼" and under bottom size 3 | All nut and pea 2" and under 4 | Run of mine resultant over 2" 5 | 1¼" and 2" slack 6 | ¾" slack 7 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Henry Clay Coal Mining Co., The. | 265 | Scotch Hill #16 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 240 | Scotch Hill #1 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 260 | Scotch Hill #11 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 270 | Scotch Hill #21 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 273 | Scotch Hill #24 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 268 | Scotch Hill #19 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 241 | Scotch Hill #2 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 252 | Scotch Hill #3 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 253 | Scotch Hill #4 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 254 | Scotch Hill #5 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 255 | Scotch Hill #6 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 256 | Scotch Hill #7 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 257 | Scotch Hill #8 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 258 | Scotch Hill #9 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 259 | Scotch Hill #10 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 261 | Scotch Hill #12 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 262 | Scotch Hill #13 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 264 | Scotch Hill #15 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 266 | Scotch Hill #17 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 267 | Scotch Hill #18 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 272 | Scotch Hill #23 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 274 | Scotch Hill #25 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 275 | Scotch Hill #26 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 277 | Scotch Hill #28 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 278 | Scotch Hill #29 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 279 | Scotch Hill #30 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 281 | Scotch Hill #32 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 282 | Scotch Hill #33 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 283 | Scotch Hill #34 | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |
| Henry Clay Coal Mining Co., The. | 284 | Scotch Hill #35 (Strip). | Pittsburgh | Preston | 230 | 230 | 230 | 205 | 205 | 195 | 185 |

[F. R. Doc. 42-1518; Filed, February 20, 1942; 10:56 a. m.]

[District No. A-1264]

PART 327—MINIMUM PRICE SCHEDULE, DISTRICT NO. 7

ORDER GRANTING TEMPORARY RELIEF AND CONDITIONALLY PROVIDING FOR FINAL RELIEF IN THE MATTER OF THE PETITION OF DISTRICT BOARD NO. 7, FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF CERTAIN MINES IN DISTRICT NO. 7

An original petition, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party, requesting the establishment, both temporary and permanent of price classifications and minimum prices for the coals of certain mines in District No. 7; and

It appearing that a reasonable showing of necessity has been made for the granting of temporary relief in the manner hereinafter set forth; and

No petitions of intervention having been filed with the Division in the above-entitled matter; and

The following action being deemed necessary in order to effectuate the purposes of the Act;

*It is ordered,* That, pending final disposition of the above-entitled matter, temporary relief is granted as follows: Commencing forthwith, § 327.11 (*Low volatile coals: Alphabetical list of code members*) is amended by adding thereto Supplement R, and § 327.34 (*General prices in cents per net ton for shipment into any market area*) is amended by adding thereto Supplement T, which supplements are hereinafter set forth and hereby made a part hereof.

*It is furthered ordered,* That pleadings in opposition to the original petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division within forty-five (45) days from the date of this Order, pursuant to the Rules and Regulations Governing Practice and Procedure before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

*It is furthered ordered,* That the relief herein granted shall become final sixty (60) days from the date of this Order, unless it shall otherwise be ordered.

Dated: February 6, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

TEMPORARY AND CONDITIONALLY FINAL EFFECTIVE MINIMUM PRICES FOR DISTRICT NO. 7

NOTE: The material contained in these supplements is to be read in the light of the classifications, prices, instructions, exceptions and other provisions contained in Part 327, Minimum Price Schedule for District No. 7 and supplements thereto.

FOR ALL SHIPMENTS EXCEPT TRUCK

§ 327.11 *Low volatile coals: Alphabetical list of code members*—Supplement R

[Alphabetical list of code members having railway loading facilities, showing price classifications by size groups for all uses except as separately shown]

| Mine index No. | Code member | Mine name | Subdistrict No. | Low volatile seam | Shipping point | Railroad | Freight origin group No. | Price classification by size group No. | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 291 | England, Oscar | England | 5 | Poca. 6 | Mullens, W. Va. | VGN Ry. | 14 | (†) | (†) | (†) | (†) | (†) | B | B | (†) | (†) | (†) |

†Indicates no classifications effective for these size groups.

FOR TRUCK SHIPMENTS

§ 327.34 *General prices in cents per net ton for shipment into any market area*—Supplement T

| Code member index | Mine index No. | Mine | Subdistrict No. | County | Seam | All lump ¾" or larger, all egg and stove | All nut or pea 1¼" top size or smaller | Screened M/R | Straight mine run | 1¼" screenings | ¾" screenings |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | 1 | 2 | 3 | 4 | 5 | 6 |
| England, Oscar | 291 | England | 5 | Wyoming | Poca. 6 | ---- | ---- | 280 | 215 | --- | --- |
| Lilly, J. C. | 234 | Lilly | 2 | Fayette | Lit. Eagle | ---- | ---- | 280 | 215 | --- | --- |

[F. R. Doc. 42-1523; Filed, February 20, 1942; 10:57 a. m.]

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[Docket No. A-1106]

## PART 328—MINIMUM PRICE SCHEDULE, DISTRICT NO. 8

ORDER GRANTING TEMPORARY RELIEF AND CONDITIONALLY PROVIDING FOR FINAL RELIEF IN THE MATTER OF THE PETITION OF DISTRICT BOARD NO. 8 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF CERTAIN MINES IN DISTRICT NO. 8

An original petition as amended, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party, requesting the establishment, both temporary and permanent, of price classifications and minimum prices for the coals of certain mines in District No. 8,

It appearing that a reasonable showing of necessity has been made for the granting of temporary relief in the manner hereinafter set forth; and

No petitions of intervention having been filed with the Division in the above-entitled matter; and

The following action being deemed necessary in order to effectuate the purposes of the Act;

*It is ordered,* That, pending final disposition of the above-entitled matter, temporary relief is granted as follows: Commencing forthwith, § 328.21 (*Alphabetical list of code members*) is amended by adding thereto Supplement R-I, § 328.11 (*Alphabetical list of code members*) is amended by adding thereto Supplement R-II, § 328.34 (*General prices for high volatile coals in cents per net ton for shipment into all market areas*) is amended by adding thereto Supplement T-I, and § 328.42 (*General prices for low volatile coals*) is amended by adding thereto Supplement T-II, which supplements are hereinafter set forth and hereby made a part hereof.

*It is further ordered,* That pleadings in opposition to the original petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division within forty-five (45) days from the date of this Order, pursuant to the Rules and Regulations Governing Practice and Procedure before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

*It is further ordered,* That the relief herein granted shall become final sixty (60) days from the date of this Order, unless it shall otherwise be ordered.

The original petition lists Mine Index No. 1533 as belonging to T. H. Moyers and prays for the establishment of price classifications and minimum prices for the coals of this mine for all shipments except truck. Prices have been established for Mine Index No. 1533 as belonging to T. H. Mayers, however, for the reason that the name on the code acceptance of this member is spelled "Mayers" and in § 328.34 (*General prices for high volatile coals in cents per net ton for shipment into all market areas*) in the Schedule of Effective Minimum Prices for District No. 8 for Truck Shipments, this code member's name is also spelled "Mayers."

Dated: January 15, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

## TEMPORARY AND CONDITIONALLY FINAL EFFECTIVE MINIMUM PRICES FOR DISTRICT NO. 8

NOTE: The material contained in these supplements is to be read in the light of the classifications, prices, instructions, exceptions and other provisions contained in Part 328, Minimum Price Schedule for District No. 8 and supplements thereto.

FOR ALL SHIPMENTS EXCEPT TRUCK

### § 328.21 *Alphabetical list of code members*—Supplement R–I

[Alphabetical list of code members having railway loading facilities, showing price classifications by size groups for all uses except as separately shown]

| Mine index No. | Code member | Mine name | Subdistrict No. | Low volatile seam | Shipping point | Railroad | Freight origin group No. | Price classifications by size group Nos. 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 3039 | Franks, J. H. | J. H. Franks C. Co. No. 8 | 9 | Cary | Raven, Virginia[1] | N. & W. | 21 | C | C | D | D | D | C | (*) | H | H | H |

[1] Indicates change in shipping point from that shown for predecessor company.

### § 328.11 *Alphabetical list of code members*—Supplement R–II

[Alphabetical list of code members having railway loading facilities, showing price classifications by size groups for all uses except as separately shown]

Price classifications by size group Nos.

| Mine index No. | Code member | Mine name | High volatile seam | Subdistrict | Shipping point | Railroad | Freight origin group No. | For destinations other than Great Lakes: 1, 2 | 3, 4 | 5, 6 | 7 | 8 | 9 | 10 | 11, 12, 13, 14 | 15, 16, 17 | 18, 19, 20, 21 | 22 | 23 | 24 | 25 | 26 | 27 | For Great Lakes cargo only: 1, 2 | 3, 4 | 5, 6 | 7 | 8 | 9 | 10 | 16, 17 | 18, 19, 20, 21 | 22 | 24 | 25 | 26 | 27 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 3286 | Acorn Coal Company | Acorn Coal Co. | No. 3 | 6 | Somerset, Ky. | CNO&TP | 171 | M | M | K | J | G | E | G | E | D | K | (†) | (†) | (†) | (†) | (†) | (†) | M | M | K | G | E | E | G | M | K | (†) | (†) | (†) | (†) | (†) |
| 3561 | Ayers, Herbert & William S. York. | Elmtree | Stray | 6 | Kelos, Ky. | Sou.&I&N | 113 | H | H | F | E | E | C | E | D | D | K | (†) | (†) | (†) | (†) | (†) | (†) | H | H | F | C | B | C | E | M | K | (†) | (†) | (†) | (†) | (†) |
| 870 | Bailey, Dewey | Dewey Bailey | Douglas | 5 | Baileysville, W. Va. | VIR | 230 | H | H | D | C | A | A | A | A | A | F | (†) | (†) | (†) | (†) | (†) | (†) | H | F | E | A | A | A | A | H | F | (†) | (†) | (†) | (†) | (†) |
| 824 | Baker, V. W. (Stanford Coal Co.). | Stanford | Horse Creek | 6 | Livingston, Ky. | L&N | 111 | M | M | K | J | G | E | G | E | D | K | (†) | (†) | (†) | (†) | (†) | (†) | M | M | K | G | E | E | G | M | K | (†) | (†) | (†) | (†) | (†) |
| 3887 | Brafford, J. C. & Earl (J. C. Brafford). | Brafford | Jellico | 6 | Grays, Ky. | L&N | 111 | O | O | J | H | G | E | G | E | F | K | (†) | (†) | (†) | (†) | (†) | (†) | O | M | J | F | D | D | G | M | K | (†) | (†) | (†) | (†) | (†) |
| 5118 | Cawthorne, R. I. | Mayflower | Horse Creek | 6 | Livingston, Ky. | L&N | 111 | M | M | K | J | G | E | G | E | D | K | (†) | (†) | (†) | (†) | (†) | (†) | M | M | K | G | E | E | G | M | K | (†) | (†) | (†) | (†) | (†) |
| 3977 | Childers, Brice | Brice Childers | Upper Elkhorn | 1 | Big Branch, Ky. | O&O | 61 | K | K | H | G | E | C | C | B | D | G | (†) | (†) | (†) | (†) | (†) | C | K | K | H | D | B | B | C | K | G | (†) | (†) | (†) | (†) | C |
| 2554 | Coe, Lillian Lewallen | Pansy | Harlan | 2 | Bardo, Ky. | L&N | 80 | N | N | H | G | F | D | D | B | C | H | (†) | (†) | (†) | (†) | (†) | C | M | L | J | E | C | C | D | M | H | (†) | (†) | (†) | (†) | C |
| 341 | Colcord Coal Company | Montcoal No. 1 | Dorothy | 4 | Montcoal, W. Va. | C&O | 123 | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (†) | (*) | (*) | (*) | C | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (*) | (*) | (†) | (*) | (*) | (*) | C |
| 342 | Colcord Coal Company | Montcoal No. 2 | Dorothy | 4 | Montcoal, W. Va. | C&O | 123 | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (†) | (*) | (*) | (*) | C | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (*) | (*) | (†) | (*) | (*) | (*) | C |
| 1362 | Combs, James M. | James M. Combs | Hazard No. 4 | 3 | Combs, Ky. | L&N | 100 | K | K | J | H | G | E | G | D | D | K | (†) | (†) | (†) | (†) | (†) | (†) | K | K | J | F | D | D | G | L | K | (†) | (†) | (†) | (†) | (†) |
| 643 | Consumers Mining Corporation. | Graceland | Upper Banner | 7 | Red Ash, Va. | N&W | 20 | M | M | K | J | F | C | E | C | (*) | K | (†) | (†) | (†) | (†) | (†) | C | M | M | K | F | D | D | E | (*) | K | (†) | (†) | (†) | (†) | C |
| 3640 | Consumers Mining Corporation. | No. 5 | Upper Banner | 8 | Red Ash, Va. | N&W | 20 | M | M | K | J | F | C | E | C | (*) | K | (†) | (†) | (†) | (†) | (†) | (*) | M | M | K | F | D | D | E | (*) | K | (†) | (†) | (†) | (†) | (*) |
| 3641 | Consumers Mining Corporation. | No. 6 | Upper Banner | 8 | Red Ash, Va. | N&W | 20 | M | M | K | J | F | C | E | C | (*) | K | (†) | (†) | (†) | (†) | (†) | (*) | M | M | K | F | D | D | E | (*) | K | (†) | (†) | (†) | (†) | (*) |
| 1363 | Cornett, Fred | Fred Cornett | Hazard No. 4 | 3 | Combs, Ky. | L&N | 100 | K | K | J | H | G | E | G | D | D | K | (†) | (†) | (†) | (†) | (†) | (†) | K | K | J | F | D | D | G | L | K | (†) | (†) | (†) | (†) | (†) |
| 3378 | Douglas, Roscoe Conklin (Peter Pan Mine). | Peter Pan | Jellico | 6 | Saxton, Ky. | L&N | 111 | H | H | F | E | E | C | E | B | C | G | (†) | (†) | (†) | (†) | (†) | (†) | H | H | F | C | B | C | E | K | G | (†) | (†) | (†) | (†) | (†) |
| 840 | Ewell, Logan | Ewell | Pittsburg | 6 | East Bernstadt, Ky. | L&N | 111 | M | M | K | J | G | E | G | E | D | K | (†) | (†) | (†) | (†) | (†) | (†) | M | M | K | G | E | E | G | M | K | (†) | (†) | (†) | (†) | (†) |
| 3075 | Foote, S. E. (Arrow Hart Coal Company). | Arrow Hart #1 | Coalburg | 4 | Bickmore, W. Va. | Mid. Cr. | 126 | Q | Q | P | O | M | K | M | F | F | M | (†) | (†) | (†) | (†) | (†) | (†) | Q | Q | O | K | H | H | M | Q | M | (†) | (†) | (†) | (†) | (†) |
| 5117 | Hall Coal Co. (H. L. Hall) | Hall | Coal Creek | 6 | Lake City, Tenn. | Sou. | 40 | O | O | H | G | G | E | G | E | C | M | (†) | (†) | (†) | (†) | (†) | (†) | O | M | K | F | D | D | G | L | M | (†) | (†) | (†) | (†) | (†) |
| 5168 | Harris & Harris (Arnold H. Harris). | No. 3 | Widow Kennedy. | 7 | Honaker, Va. | N&W | 20 | K | K | E | E | E | C | E | C | D | K | (†) | (†) | (†) | (†) | (†) | (†) | K | K | E | C | B | B | E | M | K | (†) | (†) | (†) | (†) | (†) |
| 5170 | Imperial Colliery Company | Imperial No. 6 | Dorothy | 4 | Burnwell, W. Va. | C&O | 123 | E | E | E | D | E | C | E | B | B | G | (†) | (†) | A | A | A | (†) | G | G | G | E | C | C | E | H | G | (†) | A | A | A | (†) |
| 607 | Logan County Coal Corp. | McGregor #6 | No. 5 Block | 5 | Slagle, W. Va. | C&O | 150 | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (†) | A | C | C | D | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | A | C | C | D |
| 3917 | Miller, Thomas J. | Miller Coal Co. | Elkhorn No. 3 | 1 | Garrett, Ky. | C&O | 61 | H | H | H | G | E | C | E | B | C | H | (†) | (†) | (†) | (†) | (†) | C | H | H | H | D | B | B | E | K | H | (†) | (†) | (†) | (†) | C |
| 1833 | Moses, Everett N. | Jess Cox | Blue Gem | 6 | Pleasant View, Ky. | L&N | 111 | A | A | A | A | A | A | C | A | A | L | (†) | (†) | (†) | (†) | (†) | (†) | A | A | A | A | A | A | C | D | L | (†) | (†) | (†) | (†) | (†) |
| 1533 | Mayers, T. H. | | Mason | 6 | Kelos, Ky. | Sou. & L&N. | 113 | H | H | F | E | E | C | E | D | D | K | (†) | (†) | (†) | (†) | (†) | (†) | H | H | F | C | B | C | E | M | K | (†) | (†) | (†) | (†) | (†) |
| 3993 | Osburn, Ottis | Laurel Fork Coal Co. | No. 5 Block | 8 | East Lynn, W. Va. | N&W | 130 | Q | Q | O | L | L | J | L | H | G | M | (†) | (†) | (†) | (†) | (†) | (†) | Q | P | N | G | G | G | L | P | M | (†) | (†) | (†) | (†) | (†) |

See notes at end of table.

§ 328.11 *Alphabetical list of code members*—Supplement R-II—Continued

| Mine index No. | Code member | Mine name | High volatile seam | Subdistrict | Shipping point | Railroad | Freight origin group No. | Price classifications by size group Nos. For destinations other than Great Lakes: 1, 2 | 3, 4 | 5, 6 | 7 | 8 | 9 | 10 | 11, 12, 13, 14 | 15, 16, 17 | 18, 19, 20, 21 | 22 | 23 | 24 | 25 | 26 | 27 | For Great Lakes cargo only: 1, 2 | 3, 4 | 5, 6 | 7 | 8 | 9 | 10 | 16, 17 | 18, 19, 20, 21 | 22 | 24 | 25 | 26 | 27 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 266 | Paintsville Coal Co., Inc. c/o O. L. Risner. | Paintsville No. 1 | Millers Creek | 1 | Collista, Ky[1] | C&O | 61 | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (†) | (†) | (†) | (†) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (†) | (†) | (†) |
| 2690 | Patrick, G. K. (Meab Coal Co.). | Graham Bros | Blair | 7 | Norton, Va | L&N and N&W.[3] | 205 | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (†) | (†) | (†) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (†) | (†) | (*) |
| 3083 | Pelfroy, Joe | Pelfroy | Elkhorn | 1 | Pikeville, Ky | C&O | 61 | K | K | H | G | E | C | C | B | D | G | (†) | (†) | (†) | (†) | (†) | C | K | K | H | D | B | B | C | K | G | (†) | (†) | (†) | (†) | C |
| 1755 | Puckett, George | George Puckett | Hazard No. 4 | 6 | Combs, Ky | L&N | 100 | K | K | J | H | G | E | G | D | D | K | (†) | (†) | (†) | (†) | (†) | (†) | K | K | J | F | D | D | G | L | K | (†) | (†) | (†) | (†) | (†) |
| 3094 | Rains, Josh | Josh Rains | Blue Gem | 6 | Yaden, Ky | L&N | 111 | A | A | A | A | A | A | C | A | A | L | (†) | (†) | (†) | (†) | (†) | (†) | A | A | A | A | A | A | C | D | L | (†) | (†) | (†) | (†) | (†) |
| 946 | Rains, R. M | R. M. Rains | Blue Gem | 6 | Yaden, Ky | L&N | 111 | A | A | A | A | A | A | C | A | A | L | (†) | (†) | (†) | (†) | (†) | (†) | A | A | A | A | A | A | C | D | L | (†) | (†) | (†) | (†) | (†) |
| 5174 | Sanders, Darney (Sanders Coal Co.). | Sanders No. 3 | No. 5 Block | 8 | East Lynn, W. Va. | N&W | 130 | Q | Q | O | L | L | J | L | H | G | M | (†) | (†) | (†) | (†) | (†) | (†) | Q | P | N | G | G | G | L | P | M | (†) | (†) | (†) | (†) | (†) |
| [2]2341 | Tate, G. S. (Tacoma Coal Co.). | Tacoma C. Co. #1 | Lower Banner. | 7 | Tacoma, Va | N&W | 30 | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (†) | (†) | (†) | (†) | (†) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (†) | (†) | (†) | (†) |
| [2]820 | Tate, G. S. (Tacoma Coal Co.). | Tacoma C. Co. #2 | Upper Banner. | 7 | Tacoma, Va | N&W | 30 | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (†) | (†) | (†) | (†) | (†) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (†) | (†) | (†) | (†) |
| 3407 | Taylor, Raymond | Raymond Taylor | Elkhorn | 1 | Kona, Ky | L&N | 62 | K | K | K | J | G | E | G | D | D | J | (†) | (†) | (†) | (†) | (†) | (†) | K | K | K | F | D | D | G | L | J | (†) | (†) | (†) | (†) | (†) |
| 6208 | Taylor, Wilse | Taylor | Straight Creek | 6 | Cary, Ky | L&N | 111 | F | F | E | D | C | C | A | B | C | H | (†) | (†) | (†) | (†) | (†) | A | F | F | E | C | B | C | A | J | H | (†) | (†) | (†) | (†) | A |
| 5171 | Thompson, A. A | No. 4 | Widow Kennedy. | 7 | Swords Creek, Va. | N&W | 20 | K | K | E | E | E | C | E | C | D | K | (†) | (†) | (†) | (†) | (†) | (†) | K | K | E | C | B | B | E | M | K | (†) | (†) | (†) | (†) | (†) |
| 3008 | Toney, Bernie | Hunter | Alma | 5 | Big Creek, W. Va. | C&O | 160 | Q | Q | L | K | H | F | H | F | E | K | (†) | (†) | (†) | (†) | (†) | (†) | P | O | M | H | F | F | H | O | K | (†) | (†) | (†) | (†) | (†) |
| 637 | Vanderpool, Ottis | Vanderpool #1 | Elkhorn No. 1 | 1 | McDowell, Ky | C&O | 61 | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (†) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) |
| 3973 | Vanderpool, Ottis | Vanderpool #2 | Elkhorn #1 & 2. | 1 | McDowell, Ky | C&O | 61 | H | H | H | G | E | C | E | B | C | G | L | (†) | A | A | A | A | H | H | H | D | B | B | E | J | G | L | A | A | A | A |
| 3974 | Vanderpool, Ottis | Vanderpool #3 | Elkhorn #1 & 2. | 1 | McDowell, Ky | C&O | 61 | H | H | H | G | E | C | E | B | C | G | L | (†) | A | A | A | A | H | H | H | D | B | B | E | J | G | L | A | A | A | A |
| 3988 | Wilder, R. J | Wilder Blue Gem No. 2. | Blue Gem | 6 | Saxton, Ky | L&N | 111 | A | A | A | A | A | A | C | A | A | L | (†) | (†) | (†) | (†) | (†) | (†) | A | A | A | A | A | A | C | D | L | (†) | (†) | (†) | (†) | (†) |
| 1752 | Woody, William W | Woody | Horse Creek | 6 | London, Ky | L&N | 111 | M | M | K | J | G | E | G | E | D | K | (†) | (†) | (†) | (†) | (†) | (†) | M | M | K | G | E | E | G | M | K | (†) | (†) | (†) | (†) | (†) |

[1] Indicates change in shipping point from that shown for predecessor company.
[2] Indicates change in Railroad which was erroneously shown as the Interstate in Docket A-1091.
[3] Listed to change name of Code Member, shown in error in Docket A-1012 as "Tate, G. S. (Steel Fork Coal Company)."
† Indicates no classification effective for these size groups.
* Indicates previously classified these size groups.

FOR TRUCK SHIPMENTS

§ 328.34 *General prices for high volatile coals in cents per net ton for shipment into all market areas*—Supplement T-I

| Code member index | Mine | Mine index No. | Seam | Base sizes: Lump over 2", egg 4" x 6" (1) | Lump 2" and under, egg 3" x 6" (2) | Lump ¾" and under (3) | Egg 2" x 4", egg 2" x 5" (4) | Stove 3" and under, nut 2" and under (5) | Straight mine run (6) | 2" and under, slack (7) | ¾" and under, slack (8) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| SUB-DISTRICT NO. 1—BIG SANDY-ELKHORN | | | | | | | | | | | |
| BOYD COUNTY, KY. | | | | | | | | | | | |
| Morrison & Morrison (Frank B. Morrison). | Morrison | 5106 | No. 7 | 265 | 245 | 210 | 220 | 205 | 200 | 150 | 145 |
| FLOYD COUNTY, KY. | | | | | | | | | | | |
| Keathley, Everett | Keathley | 3991 | Elkhorn No. 1 | 285 | 265 | 225 | 230 | 215 | 215 | 165 | 160 |
| Miller, Thomas J | Miller Coal Co | 3917 | Elkhorn No. 3 | 285 | 265 | 225 | 230 | 215 | 215 | 165 | 160 |
| Vanderpool, Ottis | Vanderpool #2 | 3973 | Elkhorn #1 & 2 | 285 | 265 | 225 | 230 | 215 | 215 | 170 | 165 |
| Vanderpool, Ottis | Vanderpool #3 | 3974 | Elkhorn #1 & 2 | 285 | 265 | 225 | 230 | 215 | 215 | 170 | 165 |
| GREENUP COUNTY, KY. | | | | | | | | | | | |
| Brown, Matthew | Matthew Brown | 3978 | No. 7 | 265 | 245 | 210 | 220 | 205 | 200 | 150 | 145 |
| Tackett & Hensley (Bruce Tackett). | Tackett | 3936 | Clod | 265 | 245 | 210 | 220 | 205 | 200 | 150 | 145 |
| JOHNSON COUNTY, KY. | | | | | | | | | | | |
| Cole, Lloyd | Preston | 5109 | Millers Creek | 305 | 285 | 235 | 240 | 215 | 225 | 170 | 165 |
| LAWRENCE COUNTY, KY. | | | | | | | | | | | |
| Ables & Hewlett (Wesley Ables) | Ables #3 | 3975 | McHenry | 265 | 245 | 210 | 220 | 205 | 200 | 150 | 145 |
| MAGOFFIN COUNTY, KY. | | | | | | | | | | | |
| Cole, Nute | Nute Coal | 3980 | No. 7 | 265 | 245 | 210 | 220 | 205 | 200 | 150 | 145 |
| MORGAN COUNTY, KY. | | | | | | | | | | | |
| Ball, A. E | Ball | 5110 | Top Vein | 265 | 245 | 210 | 220 | 205 | 200 | 150 | 145 |
| PIKE COUNTY, KY. | | | | | | | | | | | |
| Childers, Brice | Brice Childers | 3977 | Upper Elkhorn | 275 | 255 | 220 | 230 | 215 | 210 | 170 | 165 |
| Pelfrey, Joe | Pelfrey | 3983 | Elkhorn | 275 | 255 | 220 | 230 | 215 | 210 | 170 | 165 |
| SUB-DISTRICT NO. 3—HAZARD | | | | | | | | | | | |
| WOLFE COUNTY, KY. | | | | | | | | | | | |
| Hollon, Wiley | Hollon No. 2 | 3964 | No. 4 | 265 | 245 | 210 | 220 | 205 | 200 | 150 | 145 |
| SUB-DISTRICT NO. 4—KANAWHA | | | | | | | | | | | |
| KANAWHA COUNTY, W. VA. | | | | | | | | | | | |
| Imperial Colliery Company | Imperial #6 | 5170 | Dorothy | 300 | 280 | 230 | 245 | 215 | 220 | 170 | 165 |
| NICHOLAS COUNTY, W. VA. | | | | | | | | | | | |
| Sims, M. H | Sims | 5217 | Big Eagle | 265 | 245 | 230 | 230 | 205 | 220 | 165 | 160 |
| PUTNAM COUNTY, W. VA. | | | | | | | | | | | |
| Landers, James Darold | Newcomer | 5104 | Pittsburgh #3 | 245 | 225 | 205 | 195 | 180 | 195 | 125 | 120 |

§ 328.34 *General prices for high volatile coals in cents per net ton for shipment into all market areas*—Supplement T-I—Continued

| Code member index | Mine | Mine index No. | Seam | Base sizes: Lump over 2", egg 4" x 6" (1) | Lump 2" and under, egg 3" x 6" (2) | Lump ¾" and under (3) | Egg 2" x 4", egg 2" x 5" (4) | Stove 3" and under, nut 2" and under (5) | Straight mine run (6) | 2" and under, slack (7) | ¾" and under, slack (8) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| SUB-DISTRICT NO. 5—LOGAN | | | | | | | | | | | |
| LOGAN COUNTY, W. VA. | | | | | | | | | | | |
| Toney, Bernie | Hunter | 3908 | Alma | 245 | 225 | 220 | 215 | 195 | 210 | 155 | 150 |
| SUB-DISTRICT NO. 6—SOUTHERN APPALACHIAN | | | | | | | | | | | |
| BELL COUNTY, KY. | | | | | | | | | | | |
| Farmer, James R | Farmer | 3853 | Rim | 285 | 265 | 220 | 240 | 215 | 210 | 155 | 150 |
| Marsee, J. F | Marsee Coal Co | 3886 | | 255 | 235 | 215 | 220 | 205 | 205 | 145 | 140 |
| Thompson, E. M | Thompson | 3934 | Dean | 240 | 220 | 205 | 210 | 185 | 195 | 135 | 130 |
| Taylor, Wilso | Taylor | 5208 | Straight Creek | 295 | 275 | 225 | 245 | 215 | 215 | 165 | 160 |
| CLAY COUNTY, KY. | | | | | | | | | | | |
| Ferrell, Roy | Ferrell No. 2 | 3752 | Horse Creek | 265 | 245 | 220 | 220 | 205 | 210 | 155 | 150 |
| KNOX COUNTY, KY. | | | | | | | | | | | |
| Brafford, J. C. & Earl (J. C. Brafford). | Brafford | 3887 | Jellico | 255 | 235 | 235 | 225 | 205 | 215 | 155 | 150 |
| OWSLEY COUNTY, KY. | | | | | | | | | | | |
| Jackson, G. W | | 3930 | | 265 | 245 | 220 | 220 | 205 | 210 | 155 | 150 |
| ROCKCASTLE COUNTY, KY. | | | | | | | | | | | |
| Cawthorne, R. I | Mayflower | 5118 | Horse Creek | 265 | 245 | 220 | 220 | 205 | 210 | 155 | 150 |
| Collins, Morris | Old Hickory | 3979 | Horse Creek | 265 | 245 | 220 | 220 | 205 | 210 | 155 | 150 |
| Crowder, Homer | Roadside | 5107 | Horse Creek | 265 | 245 | 220 | 220 | 205 | 210 | 155 | 150 |
| Mink, Henry | Saw Mill | 5115 | Horse Creek | 265 | 245 | 220 | 220 | 205 | 210 | 155 | 150 |
| Rowe & Doan (Walter Rowe) | Red Maple | 3971 | Horse Creek | 265 | 245 | 220 | 220 | 205 | 210 | 155 | 150 |
| Smith, Fred | Bachelor | 3970 | Horse Creek | 265 | 245 | 220 | 220 | 205 | 210 | 155 | 150 |
| WHITLEY COUNTY, KY. | | | | | | | | | | | |
| Bailey, Lewis | James Roe | 5107 | Jellico | 285 | 265 | 225 | 240 | 215 | 215 | 170 | 165 |
| Baird, L. A | Baird | 3976 | Blue Gem | 335 | 315 | 235 | 260 | 225 | 225 | 145 | 140 |
| Carr, Walter | Owens | 5110 | River Gem | 275 | 255 | 220 | 230 | 215 | 210 | 145 | 140 |
| Douglas, Roscoe Conklin (Peter Pan Mine). | Peter Pan | 3873 | Jellico | 285 | 265 | 225 | 240 | 215 | 215 | 170 | 165 |
| Peace, Dillard | Peace | 3982 | Blue Gem | 335 | 315 | 235 | 260 | 225 | 225 | 145 | 140 |
| Provins, Asberry | Provins | 3934 | Blue Gem | 335 | 315 | 235 | 260 | 225 | 225 | 145 | 140 |
| Rains, Josh | Josh Rains | 3994 | Blue Gem | 335 | 315 | 235 | 260 | 225 | 225 | 145 | 140 |
| Rose, Tom | Tom Rose | 3969 | Jellico | 255 | 235 | 225 | 225 | 205 | 215 | 155 | 150 |
| Wilder, R. J | Wilder Blue Gem No. 2. | 3988 | Blue Gem | 335 | 315 | 235 | 260 | 225 | 225 | 145 | 140 |
| ANDERSON COUNTY, TENN. | | | | | | | | | | | |
| Kiser, Joe | Joe Kiser | 3967 | Coal Creek | 255 | 235 | 225 | 230 | 205 | 215 | 145 | 140 |
| CAMPBELL COUNTY, TENN. | | | | | | | | | | | |
| Hall Coal Co. (H. L. Hall) | Hall | 5117 | Coal Creek | 255 | 235 | 225 | 230 | 205 | 215 | 145 | 140 |
| Moore, William E | Moores | 5209 | Big Split | 295 | 275 | 210 | 245 | 215 | 200 | 145 | 140 |
| Stansberry, H. P. & W. B. (H. P. Stansberry). | Stansberry Coal Co. | 5113 | Rex | 295 | 275 | 210 | 245 | 215 | 200 | 145 | 140 |
| Ward, Lum & Dewey Honeycutt (Lum Ward). | Reynolds' Ridge | 3957 | Rex | 295 | 275 | 210 | 245 | 215 | 200 | 145 | 140 |

*§ 328.34 *General prices for high volatile coals in cents per net ton for shipment into all market areas*—Supplement T-I—Continued

| Code member index | Mine | Mine index No. | Seam | Base sizes | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Lump over 2", exc 4" x 6" | Lump 2" and under, exc 3" x 6" | Lump 3/4" and under | Egg 2" x 4", exc 2" x 6" | Stove 3" and under, nut 2" and under | Straight mine run | 2" and under slack | 3/4" and under slack |
| | | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| SUB-DISTRICT NO. 7—VIRGINIA | | | | | | | | | | | |
| RUSSELL COUNTY, VA. | | | | | | | | | | | |
| Baldwin & Church (W. W. Baldwin). | Baldwin & Church No. 2. | 5169 | Widow Kennedy | 275 | 255 | 220 | 240 | 225 | 210 | 155 | 150 |
| Barnhart Brothers. (R. C. Barnhart). | Barnhart Bros | 5160 | Widow Kennedy. | 275 | 255 | 220 | 240 | 225 | 210 | 155 | 150 |
| Franks & Rector (J. R. Rector) | Franks & Rector | 5161 | Widow Kennedy. | 275 | 255 | 220 | 240 | 225 | 210 | 155 | 150 |
| Harris & Harris (Arnold H. Harris). | Harris & Harris No. 3. | 5168 | Widow Kennedy. | 275 | 255 | 220 | 240 | 225 | 210 | 155 | 150 |
| Keene, Harold C | Keene | 5124 | Widow Kennedy. | 275 | 225 | 220 | 240 | 225 | 210 | 155 | 150 |
| Thompson, A. A | No. 4 | 5171 | Widow Kennedy. | 275 | 255 | 220 | 240 | 225 | 210 | 155 | 150 |
| Whited, C. T | C. T. Whited Coal Co. | 5165 | Widow Kennedy. | 275 | 255 | 220 | 240 | 225 | 210 | 155 | 150 |
| TAZEWELL & RUSSELL COUNTIES, VA. | | | | | | | | | | | |
| Consumers Mining Corporation | Graceland | 643 | Upper Banner | 265 | 245 | 220 | 220 | 215 | (*) | 155 | 150 |
| WISE COUNTY, VA. | | | | | | | | | | | |
| Tate, G. S. (Tacoma Coal Co.) [1] | Tacoma C. Co. #2 | 820 | Upper Banner | (*) | (*) | (*) | (*) | (*) | (*) | (*) | (*) |
| SUB-DISTRICT NO. 8—WILLIAMSON | | | | | | | | | | | |
| PIKE COUNTY, KY. | | | | | | | | | | | |
| Burgett, Julis | Burgett | 3889 | Thacker | 245 | 225 | 210 | 200 | 195 | 200 | 155 | 150 |
| BUCHANAN COUNTY, VA. | | | | | | | | | | | |
| Ashby, John C | Meeting House | 3913 | Lower Banner | 265 | 245 | 220 | 220 | 215 | 210 | 155 | 150 |
| Consumers Mining Corporation | No. 5 | 3640 | Upper Banner | 265 | 245 | 220 | 220 | 215 | (*) | 155 | 150 |
| Consumers Mining Corporation | No. 6 | 3641 | Upper Banner | 265 | 245 | 220 | 220 | 215 | (*) | 155 | 150 |
| WAYNE COUNTY, WEST VA. | | | | | | | | | | | |
| Osburn, Ottis | Laurel Fork Coal Co. | 3893 | No. 5 Block | 245 | 225 | 205 | 210 | 185 | 195 | 145 | 140 |
| Sanders, Barney (Sanders Coal Co.). | Sanders No. 3 | 5174 | No. 5 Block | 245 | 225 | 205 | 210 | 185 | 195 | 145 | 140 |

*Indicates previously classified these size groups.

[1] Relisted to change Name of Code Member, shown in error in Docket A-1012 as "Tate, G. S. (Steel Fork Coal Company.)"

§ 328.42 *General prices for low volatile coals*—Supplement T-II

| Code member index | Mine | Mine index No. | Seam | All lump | Egg, 1 or more than 3" top | Stove, 3" top size | Nut or pea, 1 1/4" top or less | Screened M/R | Straight M/R | 1 1/4" screenings | 3/4" screenings |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| SUB-DISTRICT NO. 9—BUCHANAN COUNTY LOW VOLATILE AND RED ASH MINES IN VIRGINIA AND WILLIAMSON DISTRICTS | | | | | | | | | | | |
| TAZEWELL COUNTY, VA. | | | | | | | | | | | |
| Smith Bros. Coal Co. (Wallace M. Smith). | Smith Bros. C. Co. No. 1. | 5123 | Raven | 305 | 305 | 300 | 230 | 280 | 215 | 155 | 150 |
| Smith Bros. Coal Co. (Wallace M. Smith). | Smith Bros. C. Co. No. 2. | 5122 | Raven | 305 | 305 | 300 | 230 | 280 | 215 | 155 | 150 |
| RUSSELL COUNTY, VA. | | | | | | | | | | | |
| Horton, J. C | Horton | 5125 | Red Ash | 305 | 305 | 300 | 230 | 280 | 215 | 155 | 150 |

[F. R. Doc. 42-1525; Filed, February 20, 1942; 10:58 a. m.]

[Docket No. A-191 and A-195]

PART 331—MINIMUM PRICE SCHEDULE, DISTRICT NO. 11

ORDER AMENDING MEMORANDUM OPINION AND ORDER APPROVING AND ADOPTING, WITH MODIFICATIONS, THE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE EXAMINER AND GRANTING, IN PART, PERMANENT RELIEF IN THE MATTER OF THE PETITION OF MAUMEE COLLIERIES COMPANY FOR REVISION OF THE EFFECTIVE MINIMUM PRICES FOR MINE INDEX 68, DISTRICT 11, BY PROVIDING DEDUCTIONS IN MINE PRICES BASED UPON DIFFERENCES IN FREIGHT RATES AMONG DISTRICT 11 MINES FOR SHIPMENT TO MARKET AREAS 32, 33, AND 35-38, INCLUSIVE, AND IN THE MATTER OF THE PETITION OF BITUMINOUS COAL PRODUCERS BOARD FOR DISTRICT 11 FOR REVISION OF THE EFFECTIVE MINIMUM PRICES FOR DISTRICT 11, BY PROVIDING DEDUCTIONS IN MINE PRICES BASED UPON DIFFERENCES IN FREIGHT RATES AMONG DISTRICT 11 MINES FOR SHIPMENT TO MARKET AREAS 20, 21, AND 30-38, INCLUSIVE

The above-entitled proceedings were instituted by original petitions filed with this Division pursuant to section 4 II (d) of the Bituminous Coal Act of 1937. A final Order granting in part the relief sought was entered in this proceeding on November 15, 1941. On December 7, 1941, District Board No. 11, the original petitioner in Docket No. A-195, filed a petition praying a modification of the relief granted in the Order dated November 15, 1941, 6 F.R. 6500, and as grounds therefor alleged that the adjustments in the effective minimum prices made by that Order for deliveries to Charlestown, Indiana, were predicated upon freight rates effective prior to February 28, 1941, that on February 28, 1941, however, the freight rates for shipments from all subdistricts of District No. 11, except the Evansville Subdistrict, were reduced 22¢ per net ton for delivery to Charlestown, Indiana; and that the adjustments in the effective minimum prices made by the Order of November 15, 1941, for deliveries to Speeds, Indiana, were predicated upon freight rates effective prior to June 23, 1941, that on June 23, 1941, however, the freight rates applicable on shipments from all except the Evansville and Boonville Subdistricts and those mines in the Princeton-Ayrshire Subdistrict located on the AW&W Railroad and the Southern Railway were reduced 22¢ per net ton for delivery to Speeds, Indiana.

It appears, therefore, that in order to effectuate the Order of the Director dated November 15, 1941, in the above-entitled proceedings, that Order should be modified so as to reflect the presently effective freight rates to Charlestown and Speeds, Indiana, from the various producing subdistricts in District No. 11. Moreover, no petitions in opposition to the prayer of District Board No. 11 have been filed and it appears that no parties will be injured by the requested modifications.

*Now, therefore, it is ordered,* That the part of the Order, Supplement R-II, § 331.9 (*Adjustments in f. o. b. mine prices*), herein dated November 15, 1941, relating to permissible freight absorp-

tions to Charlestown and Speeds, Indiana, is deleted, and Supplement R, § 331.9 (*Adjustments in f. o. b. mine prices*), attached hereto and hereby made a part hereof, is effective in its stead.

*It is further ordered,* That pleadings in opposition to, and applications to stay, terminate or modify, the temporary relief herein granted may be filed with the Division within forty-five (45) days from the date of this Order, pursuant to the Rules and Regulations Governing Practice and Procedure before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

*It is further ordered,* That the relief herein granted shall become final sixty (60) days from the date of this Order, unless it shall otherwise be ordered.

Dated: February 10, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

EFFECTIVE MINIMUM PRICES FOR DISTRICT No. 11

NOTE: The material contained in this supplement is to be read in the light of the classifications, prices, instructions, exceptions and other provisions contained in Part 331, Minimum Price Schedule for District No. 11 and supplements thereto.

FOR ALL SHIPMENTS EXCEPT TRUCK

§ 331.9 *Adjustments in f. o. b. mine prices.* Freight Origin Group Numbers and the Amount of Deductions for Freight Rate Differences for coal shipped from Mines Included in each Freight Origin Groups to Destination as Listed Below:

PRODUCING SUBDISTRICTS

| Destination | BC | LS | EV |
|---|---|---|---|
| | 30, 31, 32, 33, 34, 40, 41, 42, 43 | 60, 61, 62, 63, 64, 65, 66, 67, 68, 80, 81 | 51, 52 |
| Charlestown | 17 | 07 | 32 |
| Speeds | 17 | 07 | [1] 32 |

[1] Does not apply from Freight Origin Group No. 51 for the reason that there are no published through rates in effect from mines located on the Evansville and Ohio Valley Railway to Speeds, Indiana.

[F. R. Doc. 42-1520; Filed, February 20, 1942; 10:56 a. m.]

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[Docket No. A-1089 Part II]

PART 333—MINIMUM PRICE SCHEDULE, DISTRICT NO. 13

FINDINGS OF FACT, CONCLUSIONS OF LAW, MEMORANDUM OPINION AND ORDER IN THE MATTER OF THE PETITION OF DISTRICT BOARD 13 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF MINE INDEX NOS. 1261 AND 1293 IN DISTRICT 13, FOR RAIL SHIPMENT

This proceeding was instituted upon a petition filed with the Bituminous Coal Division by District Board 13, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937. The Board, in its petition, proposed price classifications and minimum prices for the coals of certain mines in District 13, including, among others, the coals of the Riverside Mine (Mine Index No. 1261) of the Pratt-American Coal Company and the Winn-Pratt No. 1 Mine (Mine Index No. 1293) of D. F. Winn, both code members in District 13. The petition requested temporary and final relief.

In accordance with this prayer for relief, the Director, in an Order dated November 4, 1941, 6 F. R. 6512, granted temporary relief and conditionally provided for final relief for the coals of the Winn-Pratt No. 1 Mine for rail shipment, for all use except steamship bunker fuel, railroad locomotive fuel and blacksmithing. However, no price classifications and minimum prices were established for the coals of the Riverside Mine for rail shipment and for the coals of the Riverside Mine and the Winn-Pratt No. 1 Mine for steamship vessel use.

Thereafter, by an Order of the Director dated November 4, 1941, the requests for rail prices for the Riverside Mine and prices for the coals of the Riverside and Winn-Pratt No. 1 Mines for steamship vessel use were severed from Docket No. A-1089 and designated as Docket No. A-1089 Part II. At the same time, temporary relief, pending final disposition of these matters, was granted.

Pursuant to Order of the Director and after due notice to all interested persons, a hearing in the matter was held on December 10, 1941, before Joseph A. Huston, a duly designated Examiner of the Division, at a hearing room thereof in Washington, D. C. All interested persons were afforded an opportunity to be present, adduce evidence, cross-examine witnesses and otherwise be heard. Petitioner, District Board 13, appeared. The preparation and filing of a report by the Examiner was waived and the matter was thereupon submitted to the undersigned.

Two matters are up for consideration in this proceeding. The first is the establishment of permanent price classifications and minimum prices for the coals of the Riverside Mine for rail shipment. No objection has been raised against the prices temporarily established in the Order of November 4, 1941, and I find that they are proper and should be made permanent.

Secondly, there is the matter of the establishment of permanent price classifications and minimum prices for the coals of the Riverside Mine and the Winn-Pratt No. 1 Mine for steamship vessel fuel use. District Board 13 in its petition proposed the price of $2.65 per ton for Size Group 13 coals for both of these mines for vessel fuel. The Director, in his Order of November 4, 1941, established a temporary price of $2.70 per ton. At the hearing, witness N. E. Cross, Secretary to District Board 13, contended on behalf of District Board 13 that the proper price should be $2.65 per ton. Witness Cross explained that both of these mines operate in the Pratt Seam in Walker County, Alabama, and were not to be confused with the mines operating in the Pratt Seam in Jefferson County, Alabama, for the reason that the all-rail prices, including vessel fuel, are generally higher for Pratt seam mines operating in Jefferson County than for those operating in the same seam in Walker County. It appears that there is a material difference in the quality of coal mined from this seam in the two counties. Furthermore, the witness stated that a price of $2.65 per ton would relate these mines to other Walker County, Pratt Seam mines, such as Mine Index No. 70, whereas $2.70 per ton would relate these mines to other Pratt Seam mines located in Jefferson County. In view of the nature of the coals produced at the Riverside and the Winn-Pratt No. 1 Mines, it appears that this 5-cent differential is necessary in order to permit the Pratt Seam coals produced by Walker County mines to maintain their existing fair competitive opportunities. Therefore, I find that $2.65 per ton is proper and should be permanently established.

Upon the basis of the uncontroverted testimony in this proceeding, I find and conclude that the establishment of such price classifications and effective minimum prices as set forth in Supplements R-I and R-II, annexed hereto, effectuates the purposes of sections 4 II (a) and 4 II (b) of the Act and complies in all respects with the standards thereof.

*Now, therefore, it is ordered,* That commencing fifteen (15) days from the date hereof, § 333.6 (*General prices*), and § 333.7 (*Special prices—Prices for shipment by railroad, applicable to all coal sold for steamship vessel fuel*) in the Schedule of Effective Minimum Prices for District 13 For All Shipments Except Truck be and it is hereby amended in accordance with the classifications and minimum prices set forth in Supplements R-I and R-II, annexed hereto and made a part hereof.

Dated: January 30, 1942.

[SEAL] DAN H. WHEELER.
*Acting Director.*

NOTE: The material contained in these supplements is to be read in the light of the classifications, prices, instructions, exceptions and other provisions contained in Part 333, Minimum Price Schedule for District No. 13 and supplements thereto.

FOR ALL SHIPMENTS EXCEPT TRUCK

§ 333.6 *General prices*—Supplement R-I

[Prices f. o. b. mines for shipment by railroad, applicable for all uses except railroad locomotive fuel, steamship bunker fuel and blacksmithing]

| Mine Index No. | Code member | Mine | Subdistrict | Seam | Freight origin group |
|---|---|---|---|---|---|
| | WALKER COUNTY, ALA. | | | | |
| 1261 | Pratt-American Coal Co. | Riverside | 1 | Pratt | 31 |

Shipping Point: Colta, Ala. Railroad: L&N.
This mine shall have a price in size groups 13, 19, 22 and 23 on all price tables, 10¢ under the prices listed in size groups 12, 14, 17 and 18, respectively, for mine with Index Number 55.
This mine shall have the same price in size group 24 on all price tables as listed for mine with Index Number 55.

§ 333.7 *Special prices*—(c) *Prices for shipment by railroad, applicable to all coal sold for steamship vessel fuel*—Supplement R–II

[Prices f. o. b. mines for shipment by railroad, applicable to all coal sold for steamship vessel fuel subject to price instructions and exceptions]

| Mine index No. | Code member | Mine | Subdistrict | Seam | Freight origin group |
|---|---|---|---|---|---|
| | WALKER COUNTY, ALA. | | | | |
| 1201 | Pratt-American Coal Co | Riverside | 1 | Pratt | 31 |
| 1293 | Winn, D. F | Winn-Pratt #1 | 1 | Pratt | 120 |

These mines shall have a price of $2.65 for size group 13 for Steamship Vessel Fuel.

[F. R. Doc. 42–1524; Filed, February 20, 1942; 10:58 a. m.]

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[Docket No. A–1281]

## PART 339—MINIMUM PRICE SCHEDULE, DISTRICT NO. 19

ORDER GRANTING TEMPORARY RELIEF AND CONDITIONALLY PROVIDING FOR FINAL RELIEF IN THE MATTER OF THE PETITION OF DISTRICT BOARD NO. 19 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF CERTAIN MINES IN DISTRICT NO. 19 FOR TRUCK SHIPMENT

An original petition, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party, requesting the establishment, both temporary and permanent, of price classifications and minimum prices for the coals of certain mines in District No. 19 for truck shipment; and

It appearing that a reasonable showing of necessity has been made for the granting of temporary relief in the manner hereinafter set forth; and

No petitions of intervention having been filed with the Division in the above-entitled matter; and

The following action being deemed necessary in order to effectuate the purposes of the Act;

*It is ordered*, That pending final disposition of the above-entitled matter, temporary relief is granted as follows: Commencing forthwith, § 339.4 (*Code member price index*) is amended by adding thereto Supplement R, and § 339.21 (*General prices in cents per net ton for shipment into all market areas*) is amended by adding thereto Supplement T, which supplements are hereinafter set forth and hereby made a part hereof.

*It is further ordered*, That pleadings in opposition to the original petition in the above-entitled matter and applications to stay, terminate or modify the temporary relief herein granted may be filed with the Division within forty-five (45) days from the date of this Order, pursuant to the Rules and Regulations Governing Practice and Procedure before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

*It is further ordered*, That the relief herein granted shall become final sixty (60) days from the date of this Order, unless it shall otherwise be ordered.

Dated: February 7, 1942.

[SEAL] DAN H. WHEELER, *Acting Director.*

TEMPORARY AND CONDITIONALLY FINAL EFFECTIVE MINIMUM PRICES FOR DISTRICT NO. 19

NOTE: The material contained in this supplement is to be read in the light of the classifications, prices, instructions, exceptions and other provisions contained in Part 339, Minimum Price Schedule for District No. 19 and supplements thereto.

FOR ALL SHIPMENTS EXCEPT TRUCK

The following price classification and minimum prices shall be inserted in Price Schedule No. 1 for District No. 19:

§ 339.4 *Code member price index*—Supplement R. Insert the following listings in proper alphabetical order:

| Producer | Mine | Mine index No. | County | Subdistrict price group | Prices | |
|---|---|---|---|---|---|---|
| | | | | | Rail | Truck |
| Holmberg, Arthur N | Arts | 230 | Sheridan | 7 | -------- | § 339.21 |
| Shaw, Truman & Lyle (Truman Shaw) | Pugsley | 233 | Johnson | 9 | -------- | § 339.21 |
| Turner, Isaac | Turner | 231 | Sheridan | 7 | -------- | § 339.21 |
| Welton, Herman | Cedar Hills | 232 | Fremont | 6 | -------- | § 339.21 |

FOR TRUCK SHIPMENTS

§ 339.21 *General prices in cents per net ton for shipment into all market areas*—Supplement T. Insert the following code member names, mine names and counties under Subdistricts 6, 7 and 9, and the following prices:

| Code Member Mine Name | County | Size groups | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 12 | 14 | 15 | 16 | 17 |
| SUBDISTRICT NO. 6 | | | | | | | | | | | | | | | | |
| Welton, Herman Cedar Hills | Fremont | 325 | 325 | 325 | 300 | 275 | 275 | 275 | 250 | 150 | 150 | 195 | 125 | 115 | ---- | ---- |
| SUBDISTRICT NO. 7 | | | | | | | | | | | | | | | | |
| Holmberg, Arthur N., Arts Mine | Sheridan | 280 | 280 | 270 | 260 | 260 | 260 | 220 | 220 | 160 | 135 | 170 | 90 | 90 | ---- | ---- |
| Turner, Isaac, Turner Mine | Sheridan | 280 | 280 | 270 | 260 | 260 | 260 | 220 | 220 | 160 | 135 | 170 | 90 | 90 | ---- | ---- |
| SUBDISTRICT NO. 9 | | | | | | | | | | | | | | | | |
| Shaw, Truman & Lyle (Truman Shaw) Pugsley Mine | Johnson | ---- | 240 | 240 | 240 | 240 | 240 | 220 | 200 | 125 | 125 | 150 | 125 | 125 | 100 | 50 |

[F. R. Doc. 42–1522; Filed, February 20, 1942; 10:57 a. m.]

## TITLE 31—MONEY AND FINANCE: TREASURY

### CHAPTER I—MONETARY OFFICES

PART 131—GENERAL LICENSES UNDER EXECUTIVE ORDER NO. 8389, APRIL 10, 1940, AS AMENDED, AND REGULATIONS ISSUED PURSUANT THERETO

AMENDMENT OF GENERAL LICENSE NO. 42 UNDER EXECUTIVE ORDER NO. 8389, APRIL 10, 1940, AS AMENDED, AND REGULATIONS ISSUED PURSUANT THERETO, RELATING TO TRANSACTIONS IN FOREIGN EXCHANGE, ETC.

FEBRUARY 23, 1942.

General License No. 42[1] is amended to read as follows:

§ 131.42 *General License No. 42.* (a) A general license is hereby granted:

(1) Licensing as a generally licensed national any individual residing in the United States on February 23, 1942, and

(2) Licensing as a generally licensed national any partnership, association, corporation or other organization which is a national of a foreign country designated in the Order solely by reason of the interest therein of a person or persons licensed as generally licensed nationals pursuant to this general license.

(b) The following provisions shall govern the filing of reports under this general license:

(1) Before effecting any transaction pursuant to this general license, the following persons licensed herein as generally licensed nationals shall file a report in triplicate on Form TFR-42 with the appropriate Federal Reserve Bank:

(i) Every individual who was not residing in the United States on June 17, 1940; and

(ii) Every partnership, association, corporation or other organization which prior to February 23, 1942, was not a generally licensed national solely by reason of the interest of an individual or individuals referred to in (i) above.

Any person failing to comply with this reporting requirement is not authorized to engage in any transaction pursuant to this general license.

(2) Individuals and other persons licensed herein as generally licensed nationals and not falling within classes referred to in 2 (a) need not file reports on Form TFR-42.

(3) This general license shall not be deemed to suspend, cancel, or otherwise modify in any way the requirements of the Order and regulations relating to reports on Form TFR-300 with respect to the property interests of certain persons licensed herein as generally licensed nationals: *Provided, however,* That if reports on TFR-300 were not, prior to February 23, 1942, required to be filed in any case or class of cases, such reports are not required to be filed pursuant to this general license.

(c) This general license shall not be deemed to license as a generally licensed national:

(1) Any individual who on or since the effective date of the Order has acted or purported to act directly or indirectly for the benefit or on behalf of any blocked country, including the government thereof;

(2) Any individual who is a national of a blocked country by reason of any fact other than that such individual has been domiciled in, or a subject, citizen, or resident of a blocked country at any time on or since the effective date of the Order;

(3) Any individual who enters a blocked country after February 23, 1942; or

(4) Any national of Japan. Nationals of Japan shall continue to be governed by the provisions of General License No. 68A in so far as General License No. 68A may be applicable. (Sec. 5 (b), 40 Stat. 415 and 966; Sec. 2, 48 Stat. 1; 54 Stat. 179; Public No. 354, 77th Congress; E.O. 8389, April 10, 1940, as amended by E.O. 8785, June 14, 1941, E.O. 8832, July 26, 1941, E.O. 8963, December 9, 1941, and E.O. 8998, December 26, 1941; Regulations, April 10, 1940, as amended June 14, 1941, and July 26, 1941)

[SEAL] E. H. FOLEY, Jr.
*Acting Secretary of the Treasury.*

[F. R. Doc. 42-1625; Filed, February 24, 1942; 11:01 a. m.]

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PART 131—GENERAL LICENSES UNDER EXECUTIVE ORDER NO. 8389, APRIL 10, 1940, AS AMENDED, AND REGULATIONS ISSUED PURSUANT THERETO

REVOCATION OF GENERAL LICENSES NOS. 42A[1] AND 68[2] UNDER EXECUTIVE ORDER NO. 8389, APRIL 10, 1940, AS AMENDED, AND REGULATIONS ISSUED PURSUANT THERETO, RELATING TO TRANSACTIONS IN FOREIGN EXCHANGE, ETC.

FEBRUARY 23, 1942.

General Licenses Nos. 42A (§ 131.42a) and 68 (§131.68) are hereby revoked. Sec. 5 (b), 40 Stat. 415 and 966; Sec. 2, 48 Stat. 1; 54 Stat. 179; Public No. 354, 77th Congress; E.O. 8389, April 10, 1940, as amended by E.O. 8785, June 14, 1941, E.O. 8832, July 26, 1941, E.O. 8963, December 9, 1941, and E.O. 8998, December 26, 1941; Regulations, April 10, 1940, as amended June 14, 1941, and July 26, 1941)

[SEAL] E. H. FOLEY, Jr.,
*Acting Secretary of the Treasury.*

[F. R. Doc. 42-1626; Filed, February 24, 1942; 11:01 a. m.]

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## TITLE 32—NATIONAL DEFENSE

### CHAPTER VIII—EXPORT CONTROL

SUBCHAPTER C—BOARD OF ECONOMIC WARFARE

EXPORT CONTROL SCHEDULE C

By virtue of the authority vested in me by Executive Orders No. 8900[3] and 8713,[2] and by Order No. 1[3] of the Board of Economic Warfare of September 15, 1941, and by Proclamation No. 2506[4] of August 27, 1941, it is hereby ordered and determined as follows:

1. Effective March 1, 1942, Export Control Schedule A is revoked.

2. Effective March 1, 1942, the articles and materials designated in Proclamation No. 2465[5] of March 4, 1941, issued pursuant to section 6 of the Act of July 2, 1940 (54 Stat. 714, 50 U.S.C. Sup. sec. 99) shall include any model, design, photograph, photographic negative, document or other article or material, containing a plan, specification, or descriptive or technical information of any kind (other than that appearing generally in a form available to the public) which can be used or adapted for use in connection with any process, synthesis or operation in the production, manufacture, reconstruction, servicing, repair, or use of any of the articles or materials hereinafter listed the exportation of which is prohibited or curtailed in accordance with the provisions of section 6 of the act of Congress approved July 2, 1940, or of any basic or intermediary constituent of any such articles or materials.

3. The articles and materials hereinafter listed include all of the forms, conversions and derivatives of such articles and materials described in Export Control Schedules No. 1 through 27 inclusive and Export Control Schedules Y and Z.

*List*[6]

1. Abrasive Manufactures.
2. Aircraft—Parts, Equipment & Accessories (In addition to those listed in the President's Proclamation of May 1, 1937).
3. Aluminum Alloy Products.
4. Aluminum Ores & Concentrates.
5. Aluminum Products.
6. Antimony.
7. Beryllium.
8. Bismuth.
9. Carbon Electrodes.
10. Chemicals.
11. Chromium.
12. Cobalt.
13. Columbium (Niobium).
14. Copper.
15. Cryolite.
16. Diamonds, Industrial.
17. Drugs, Herbs, Leaves & Roots.
18. Electrical Machinery & Apparatus.

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[1] 6 F.R. 2907.

[1] 6 F.R. 6104; 7 F.R. 468.
[2] 6 F.R. 3726.
[3] 6 F.R. 1501.

[2] 6 F.R. 1502.
[3] 6 F.R. 4828.
[4] 6 F.R. 4469.
[5] 6 F.R. 1300.
[6] As to items No. 1-64, inclusive, exporters will find it convenient to refer to Comprehensive Export Control Schedule No. 6 (March-April, 1942), issued by the Board of Economic Warfare, Office of Export Control, Washington, D. C. Wherever the corresponding entry in the Comprehensive Export Control Schedule appears in bold face type, the entry on the above list is intended to include all the articles and materials indented under such entry in bold face type in the Comprehensive Export Control Schedule. For example, the term "Chemicals" as used in this list includes all the chemicals and chemical compounds listed under the entry "Chemicals" in Comprehensive Export Control Schedule No. 6.

19. Engines—Aircraft, Parts.
20. Engines—Diesel & Semi-Diesel.
21. Ferro-Alloys.
22. Fibers & Manufactures of Nylon and Silk.
23. Firearms, Ammunition & Fireworks.
24. Glass—Bullet-proof laminated glass containing 3 or more sheets.
25. Graphite.
26. Graphite Manufactures.
27. Insecticides, Fungicides & Disinfectants.
28. Instruments, (All types listed).
29. Iridium.
30. Iron-Ferro-Alloys.
31. Iron & Steel Mfrs.—Tools, Tubular Products, Wire.
32. Lead.
33. Locomotives.
34. Machinery—All except Farm Machinery, Printing & Bookbinding, Textile, Sewing & Shoe.
35. Magnesium.
36. Manganese.
37. Mercury.
38. Mica—Built-up & Mica Products, Manufactures, Natural, Raw and Processed.
39. Molybdenum.
40. Naval Stores.
41. Nickel.
42. Oils & Fats—Animal, Fish & Marine Mammal & Vegetable.
43. Optical Elements.
44. Petroleum Products and Tetraethyl Lead.
45. Pigments.
46. Platinum Group Salts & Compounds.
47. Platinum Group Metals.
48. Quartz Crystals.
49. Radium.
50. Rubber (Including all types synthetic rubber).
51. Scientific & Professional Instruments, Apparatus & Supplies.
52. Tantalum.
53. Thorium.
54. Tin.
55. Titanium.
56. Tools—(incorporating) Industrial Diamonds.
57. Tungsten.
58. Uranium.
59. Valves.
60. Vanadium.
61. Vehicles, Motor.
62. Wood Pulp.
63. Zinc.
64. Zirconium.
65. Arms, ammunition and implements of war as defined in the President's Proclamation of May 1, 1937.
66. Clothing (other than dress uniforms) designed for military or naval use.
67. Electronic Apparatus and Systems.
68. Gas masks and components.
69. Kyanite & Sillimanite.
70. Magnesite.
71. Radioactive Materials.
72. Silver Alloys and Plating Processes.
73. Sonic Apparatus and Systems.
74. Synthetic textiles, including: Nylon (including all forms thereof) Rayon (including all forms thereof) Synthetic textiles in all forms thereof other than rayon and nylon.
75. Vessels or boats of all kinds in addition to those specified in the President's Proclamation of May 1, 1937.
76. Vitamins, vitamin preparations and concentrated foods.
77. Any articles or materials, other than those specified above, designed or intended primarily for military or naval use.

By direction of the President.

MILO PERKINS,
*Executive Director.*

WASHINGTON, D. C.
*February 20, 1942.*

[F. R. Doc. 42-1544; Filed, February 20, 1942; 4:52 p. m.]

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## CHAPTER IX—WAR PRODUCTION BOARD

### SUBCHAPTER A—GENERAL PROVISIONS

#### PART 903—DELEGATION OF AUTHORITY

*Amended Definition of "Passenger Automobiles"—Amendment No. 1 to Supplementary Directive No. 1A*

Paragraph (b) of Supplementary Directive No. 1A (§ 903.2),[1] issued February 2, 1942, is hereby amended to read as follows:

§ 903.2 *Further delegation of authority to the Office of Price Administration with reference to rationing of passenger automobiles.*

* * * * *

(b) As used in this Supplementary Directive, the term "new passenger automobiles" means any 1942 model passenger automobile having a seating capacity of not more than 10 persons, irrespective of the number of miles it has been driven, or any other passenger automobile which has been driven less than 1,000 miles, including other body types such as ambulances, hearses, station wagons and taxis, built upon a standard or lengthened passenger car chassis. (E.O. 9024, Jan. 16, 1942, 7 F.R. 329, E.O. 9040, Jan. 24, 1942, 7 F.R. 567; Sec. 2(a), Pub. No. 671, 76th Cong. 3d Sess., as amended by Pub. No. 89, 77th Cong., 1st Sess.; W.P.B. Dir. No. 1, Jan. 24, 1942, 7 F.R. 562)

Issued this 21st day of February 1942.

DONALD M. NELSON,
*Chairman, War Production Board.*

[F. R. Doc. 42-1599; Filed, February 23, 1942; 5:17 p. m.]

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### SUBCHAPTER B—DIVISION OF INDUSTRY OPERATIONS

#### PART 944—REGULATIONS APPLICABLE TO THE OPERATION OF THE PRIORITIES SYSTEM

*Interpretation No. 1 of § 944.14 of Priorities Regulation No. 1[2] as Amended*

The following official interpretation is hereby issued by the Director of Industry Operations with respect to § 944.14 of Priorities Regulation No. 1 as amended December 23, 1941.

Any inventory of any grade of wood pulp in excess of sixty days' supply of that grade, on the basis of current method and rate of operation during any ninety continuous working days of the previous six months, stored either at a plant or in separate warehouses, shall be deemed to be in excess of a "practicable minimum working inventory": *Provided, however,* That this interpretation shall not apply to pulp held for the manufacture of products for Ordnance purposes or to pulp held for delivery under the Lend-Lease Act of March 11, 1941.

Issued this 20th day of February 1942.

J. S. KNOWLSON,
*Director of Industry Operations.*

[F. R. Doc. 42-1543; Filed, February 20, 1942; 5:04 p. m.]

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#### PART 989—DOMESTIC MECHANICAL REFRIGERATORS

*Interpretation No. 2 of Supplementary General Limitation Order L-5-b*

The following interpretation is hereby issued by the Director of Industry Operations with respect to § 989.3, Supplementary General Limitation Order L-5-b,[1] dated February 14, 1942.

New Domestic Mechanical Refrigerators which were sold, leased and traded, but not delivered, shipped or transferred prior to 10:00 A. M., Eastern War Time, February 14, 1942, may not be delivered, shipped or transferred unless such delivery, shipment or transfer is made pursuant to the provisions of subparagraph (a) (1), or unless such refrigerators were actually in transit at 10:00 A. M., Eastern War Time, February 14, 1942.

Issued this 23rd day of February, 1942.

J. S. KNOWLSON,
*Director of Industry Operations.*

[F. R. Doc. 42-1586; Filed, February 23, 1942; 11:57 a. m.]

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#### PART 989—DOMESTIC MECHANICAL REFRIGERATORS

*Supplementary General Limitation Order L-5-c Further Restricting and Finally Prohibiting the Production of Domestic Mechanical Refrigerators*

In accordance with the provisions of §§ 989.1, 989.2, and 989.3 (General Limitation Orders L-5,[2] L-5-a,[3] and L-5-b[4]), which the following order supplements, *It is hereby ordered that:*

§ 989.4 *Supplementary General Limitation Order L-5-c*—(a) *Prohibition of production of domestic mechanical refrigerators after April 30, 1942.* Effective May 1, 1942, no Manufacturer shall produce any Domestic Mechanical Refrigerators.

(b) *Restrictions for the period up to April 30, 1942.* During the period from

[1] 7 F.R. 698.
[2] 6 F.R. 4490, 6682.

[1] 7 F.R. 1063.
[2] 6 F.R. 5008.
[3] 6 F.R. 6256, 7 F.R. 116.
[4] 7 F.R. 1063.

February 14, 1942 to April 30, 1942, inclusive:

(1) No Manufacturer shall produce more Domestic Mechanical Refrigerators than three times the number of such Refrigerators which he could produce under the provisions of paragraph (a) of Supplementary Limitation Order L-5-a during either month of January or February, 1942.

(2) The ratio of Deluxe Models to all other models of Domestic Mechanical Refrigerators produced by any Manufacturer shall not exceed the ratio of Deluxe Models to all other models of Domestic Mechanical Refrigerators produced by him during the period from August 1, 1941 to January 31, 1942, inclusive.

(3) From its effective date the provisions of this Order shall supersede the provisions of Supplementary General Limitation Order L-5-a.

(c) *Governmental orders included in the foregoing restrictions.* The restrictions of paragraphs (a) and (b) above, shall apply to the production of all Domestic Mechanical Refrigerators, including those required to fulfill contracts or orders coming under the provisions of Paragraph (c) of Supplementary General Limitation Order L-5-a, as amended January 6, 1942.

(d) *Replacement parts.* Nothing in this Order shall be construed to prohibit or limit the production of replacement parts for Domestic Mechanical Refrigerators.

(e) *Definition.* For the purposes of this Order:

(1) "Deluxe Model" means any Domestic Mechanical Refrigerator of the type customarily known as a "Deluxe," "Semi-Deluxe," or "High-Humidity" model.

(f) *Effective date.* This Order shall take effect on the date of its issuance and shall continue in effect until revoked.

Issued this 23d day of February 1942.

J. S. KNOWLSON,
*Director of Industry Operations.*

[F. R. Doc. 42-1588; Filed, February 23, 1942; 11:57 a. m.]

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PART 1013—CHLORINATED RUBBER

*Amendment No. 1 to General Preference Order No. M-46 To Conserve the Supply and Direct the Distribution of Chlorinated Rubber*

Section 1013.1 (General Preference Order No. M-46[1]) is hereby amended in the following particulars:

Paragraph (f) is hereby relettered and made paragraph (i).

A new paragraph (f) is hereby added to read as follows:

§ 1013.1 *General Preference Order M-46.*

* * * * *

(f) *Restrictions on use.* Except as may be otherwise directed by the Director of Industry Operations, on and after the effective date hereof,

(1) No person shall use Chlorinated Rubber for a use not specified below:

(i) As a paint, for interior use (not including floor coating) in industrial plants where resistance to chemical corrosion is required. As a paint, for interior use in arsenals. For marine use in ship-bottom and submarine paints.

(ii) For flame-proofing fabric for military tents, tarpaulins and other fabric for military use.

(iii) For tracer bullets.

(iv) For adhering natural and synthetic rubber articles to metal.

(v) For electrical insulation.

(2) No person shall knowingly deliver Chlorinated Rubber for a use not specified in paragraph (f) (1) above.

(3) The provisions of this paragraph (f) shall apply with respect to stocks of Chlorinated Rubber on hand on the effective date of this Order. Persons who have stocks of Chlorinated Rubber on hand on said date, the use of which said stocks is prohibited by provisions of this paragraph (f), shall forthwith report such fact and the details thereof to the Chemicals Branch, War Production Board, and shall hold such Chlorinated Rubber for disposition by the Director of Industry Operations.

A new paragraph (g) is hereby added to read as follows:

(g) *Notification of consumers.* Producers shall, as soon as practicable, notify each of their regular consumers of the requirements and restrictions contained in this Order, but the failure to give such notice shall not excuse any person for the obligation of complying with the terms of this Order.

A new paragraph (h) is hereby added to read as follows:

(h) *Appeals.* Any person affected by this Order who considers that compliance therewith would work an exceptional and unreasonable hardship upon him, or that it would result in a degree of unemployment which would be unreasonably disproportionate compared with the amount of Chlorinated Rubber conserved, or that compliance with this Order would disrupt or impair a program of conversion from nondefense to defense work, may appeal to the War Production Board, Reference: M-46, attention Chemicals Branch, setting forth the pertinent facts and the reason he considers he is entitled to relief. The Director of Industry Operations may thereupon take such action as he deems appropriate. (P.D. Reg. 1, amended December 23, 1941, 6 F.R. 6680; W.P.B. Reg. 1, Jan. 26, 1942; 7 F.R. 561, E.O. 9024, Jan. 16, 1942, 7 F.R. 329; E.O. 9040, Jan. 24, 1942, 7 F.R. 527, sec. 2(a), Pub. No. 671, 76th Cong., 3d Sess., as amended by Pub. No. 89, 77th Cong. 1st Sess.

This Order shall take effect immediately.

Issued this 23d day of February 1942.

J. S. KNOWLSON,
*Director of Industry Operations.*

[F. R. Doc. 42-1587; Filed, February 23, 1942; 11:57 a. m.]

[1] 6 F.R. 5534.

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PART 1116—SHOTGUNS

*Limitation Order No. L-55 to Restrict the Manufacture and Sale of Shotguns*

Whereas national defense requirements have created a shortage of shotguns for plant patrol and other local guard duties, and it is necessary in the public interest and to promote the defense of the United States to conserve the supply and direct the distribution thereof; and

Whereas it is expected that Government orders for large numbers of 12-gauge shotguns will be placed, and it is desired that all manufacturers thereof convert to and utilize for the manufacture of such shotguns all facilities which can be so converted or used;

*Now, therefore, it is hereby ordered,* That:

§ 1116.1 *Limitation Order L-55*—(a) *Definitions.* For the purposes of this Order:

(1) "Shotgun" means single barrel, double barrel, repeating, riot, pump and any other type of Shotgun of any gauge whatsoever.

(2) "Manufacturer" means any person engaged in the manufacture of Shotguns.

(b) *Prohibition of sales.* From and after the effective date of this Order no manufacturer shall sell, deliver, ship, transfer or otherwise dispose of any 12-gauge shotgun (whether produced before or after the effective date of this Order) except:

(i) For Government use only to any Agency, Department, Office, or Officer of the Federal Government or of any state or local government; or pursuant to orders placed by the government of the United Kingdom, Canada, and other Dominions, Crown Colonies and Protectorates of the British Empire, Belgium, China, Greece, the Kingdom of the Netherlands, Norway, Poland, Russia and Yugoslavia; or for the account of any foreign country pursuant to the Act of March 11, 1941, "An Act to Promote the Defense of the United States" (Lend-Lease Act);

(ii) That any such shotguns actually in transit on the effective date of this Order may be delivered to their immediate destination;

(iii) Pursuant to a specific order to the Director of Industry Operations.

(c) *Prohibition of manufacture.* From and after the effective date of this order no person shall, except pursuant to specific order of the Director of Industry Operations:

(1) Use any machinery, machine tools, dies, jigs, fixtures or other equipment which could be used to assemble or manufacture a 12-gauge shotgun or any part thereof, or any part which could be used therein, for the purpose of assembling or manufacturing any shotgun other than a 12-gauge shotgun or any part thereof, or any part to be used therein.

(2) Manufacture during the period February 23 to February 28 inclusive, more shotguns other than 12-gauge shotguns than 50% of 5/365 of the aggregate number of such guns manufactured by such person during the calendar year 1940.

(3) Manufacture during the month of March 1942 or in any calendar month thereafter more shotguns other than 12-gauge shotguns than 50% of one-twelfth of the aggregate number of such guns manufactured by such person during the calendar year 1940.

(d) *Applicability of Priorities Regulation No. 1.* This Order and all transactions affected thereby are subject to the provisions of Priorities Regulation No. 1, as amended from time to time, except to the extent that any provision hereof may be inconsistent therewith, in which case the provisions of this Order shall govern.

(e) *Records.* All persons affected by this Order shall keep and preserve for not less than 2 years accurate and complete records concerning inventories, purchases, production and sales.

(f) *Reports.* All persons affected by this Order shall execute and file with the War Production Board such reports and questionnaires as said Board shall from time to time require.

(g) *Audit and inspection.* All records required to be kept by this Order shall, upon request, be submitted to audit and inspection by duly authorized representative of the War Production Board.

(h) *Violations or false statements.* Any person who violates this Order or who willfully falsifies any records which he is required to keep by the terms of this Order, or otherwise willfully furnishes false information to the War Production Board may be deprived of priorities assistance or may be prohibited by the War Production Board from obtaining any further deliveries of materials subject to allocation. The War Production Board may also take any other action deemed appropriate, including the making of a recommendation for prosecution under section 35 (A) of the Criminal Code (18 U. S. C. 80).

(i) *Appeal.* Any person affected by this Order who considers that compliance therewith would work an exceptional and unreasonable hardship upon him, or that it would result in a serious problem of unemployment in the community, or that compliance with this Order would disrupt or impair a program of conversion from nondefense work, may apply for relief by addressing a letter to the War Production Board setting forth the pertinent facts and the reasons such person considers that he is entitled to relief. The War Production Board may thereupon take such action, if any, as it deems appropriate by the amendment of this Order or otherwise.

(j) *Communications.* All communications concerning this Order shall be addressed to War Production Board, Washington, D. C., Ref.: L-55.

(k) *Effective date.* This Order shall take effect at 9:00 A. M. Eastern War Time of the date of its issuance. (P.D. Reg. 1, amended December 23, 1941, 6 F.R. 6680; W.P.B. Reg. 1, Jan. 26, 1942, 7 F.R. 561; E.O. 9024, Jan. 16, 1942, 7 F.R. 329; E.O. 9040, Jan. 24, 1942, 7 F.R. 527; sec. 2 (a), Pub. Law 671, 76th Cong., 3d Sess., as amended by Pub. Law. 89, 77th Cong. 1st Sess.)

Issued this 23d day of February 1942.

J. S. KNOWLSON,
*Director of Industry Operations.*

[F. R. Doc. 42-1580; Filed, February 23, 1942; 11:57 a. m.]

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PART 1041—PRODUCTION, REFINING, TRANSPORTATION, AND MARKETING OF PETROLEUM

*Amendment No. 1 to Preference Rating Order No. P-98* [1]

1. Section 1041.1 (Preference Rating Order No. P-98, paragraph (e) (2)) is hereby amended to read as follows:

§ 1041.1 *Preference rating order P-98.*

* * * * *

(e) * * *.

(2) In addition to the requirements of paragraph (e) (1), the Operator (but not a Supplier) in order to apply any of the preference ratings of A-2 or higher assigned by paragraph (b) of this Order, other than ratings assigned by paragraphs (b) (1) (ii) and (b) (2) (iv) hereof, must communicate with the Office of Petroleum Coordinator, Washington, D. C., Ref: P-98, supplying in detail the following information:

(i) date of actual breakdown or suspension of operations (if applicable);

(ii) the equipment to be repaired and its operating importance (if applicable);

(iii) the Material and quantity thereof necessary to effectuate the Repair or to initiate or maintain operations;

(iv) the supply of the necessary Material which the Operator has on hand or available; and

(v) the names and addresses of Suppliers from whom the Material is to be obtained and the earliest delivery dates assured by any such Supplier for delivery of the minimum necessary quantity of Material.

The Director of Industry Operations will notify the Operator whether, and to what extent, the application is approved. A copy of such notification shall be furnished by the Operator to any Supplier to evidence the proper rating granted pursuant to the provisions of this Order.

2. Section 1041.1 (Preference Rating Order No. P-98, paragraph (e) (3)) is hereby amended to read as follows:

(3) In addition to the requirements of paragraph (e) (1), the Operator (but not a Supplier) in order to apply any preference ratings, other than those of A-2 or higher assigned by paragraph (b) of this Order, must obtain the countersignature of the Director in Charge of the nearest District Office of the Office of Petroleum Coordinator upon the purchase order which such Supplier has endorsed and signed pursuant to paragraphs (e) (1); unless,

[1] 7 F.R. 278, 903.

(i) any completely fabricated, individual item to which a preference rating is to be applied has a cost to the Operator of $500 or less; and

(ii) the rating which is to be applied in obtaining delivery of such an item is assigned by paragraphs (b) (1) (iv); (b) (2) (v), (vi) or (vii); (b) (3) (ii), (iii), (iv); or (b) (4) (i) or (ii).

3. This amendment shall take effect immediately.

Issued this 20th day of February 1942.

J. S. KNOWLSON,
*Director of Industry Operations.*

[F. R. Doc. 42-1542; Filed, February 20, 1942; 5:04 p. m.]

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PART 1110—GOOSE AND DUCK FEATHERS

*Conservation Order M-102—To Conserve the Supply and Direct the Distribution of Goose and Duck Feathers*

Whereas the fulfillment of requirements for the defense of the United States has created a shortage of goose and duck feathers for the combined needs of defense, private account, and export, rendering it necessary that all goose and duck feathers be used in the manufacture of products for the armed forces of the United States; and it is necessary in the public interest and to promote the National Defense to conserve the supply and direct the distribution of goose and duck feathers in the manner hereafter in this Order provided:

*Now, therefore, it is hereby ordered,* That:

§ 1110.1 *General conservation order M-102*—(a) *Applicability of Priorities Regulation No. 1.* This Order and all transactions affected thereby are subject to the provisions of Priorities Regulation No. 1 (Part 944), as amended from time to time, except to the extent that any provision hereof may be inconsistent therewith, in which case the provisions of this Order shall govern.

(b) *Definitions.* For the purposes of this Order:

(1) "Goose Feathers" means goose feathers and goose down, both domestic and imported, which have been plucked.

(2) "Duck Feathers" means duck feathers and duck down, both domestic and imported, which have been plucked.

(3) "Dealer" means any person who purchases, sorts, grades, and resells goose feathers or duck feathers.

(c) *Restrictions on sales and deliveries of goose and duck feathers.* No person except Defense Supplies Corporation shall hereafter sell or deliver any goose or duck feathers as such except to a Dealer, Defense Supplies Corporation or a manufacturer for use by such manufacturer in filling Defense Orders having a preference rating of A-1-j or better.

(d) *Restrictions on use of goose and duck feathers.* No person shall hereafter use any goose or duck feathers in the

manufacture or production of any article except for the purposes of filling Defense Orders having a preference rating of A-1-j or better.

(e) *Appeal.* Any person affected by this Order who considers that compliance therewith would work an exceptional and unreasonable hardship upon him, or that it would result in a degree of unemployment which would be unreasonably disproportionate compared with the amount of goose and duck feathers conserved, or that compliance with this Order would disrupt or impair a program of conversion from nondefense to defense work, may appeal to the War Production Board by letter or telegram, Ref: M-102, setting forth the pertinent facts and the reason he considers he is entitled to relief. The Director of Industry Operations may thereupon take such action as he deems appropriate.

(f) *Records.* All persons affected by this Order shall keep and preserve for not less than two years accurate and complete records concerning inventories, production and sales.

(g) *Communications to War Production Board.* All reports required to be filed hereunder, and all communications concerning this Order, shall, unless otherwise directed, be addressed to: War Production Board, Washington, D. C. Ref: M-102.

(h) *Violations.* Any person who wilfully violates any provision of this Order, or who by any act or omission falsifies records to be kept or information to be furnished pursuant to this Order, may be prohibited from receiving further deliveries of any Material subject to allocation and such further action may be taken as is deemed appropriate, including a recommendation for prosecution under section 35 (A) of the Criminal Code (18 U.S.C. 80).

(i) *Effective date.* This Order shall take effect immediately. (P.D. Reg. 1 Amended, Dec. 23, 1941, 6 F.R. 6680, W.P.B. Reg. 1, Jan. 26, 1942, 7 F.R. 561; E.O. 9024, Jan. 16, 1942, 7 F.R. 329; E.O. 9040, Jan. 24, 1942, 7 F.R. 527; sec. 2(a), Pub. Law 671, 76th Cong., 3d Sess., as amended by Pub. Law 89, 77th Cong., 1st Sess.)

Issued this 24th day of February, 1942.

J. S. KNOWLSON,
*Director of Industry Operations.*

[F. R. Doc. 42-1632; Filed, February 24, 1942; 11:48 a. m.]

## CHAPTER XI—OFFICE OF PRICE ADMINISTRATION

### PART 1343—FATS AND OILS AND THEIR PRODUCTS

ORDER REVOKING SCHEDULE NO. 25—ELIMINATION OF SPECULATIVE AND INFLATIONARY PRICE PRACTICES WITH RESPECT TO FATS AND OILS AND THEIR PRODUCTS

Schedule 25[1] was issued on August 28, 1941, by the Office of Price Administration and Civilian Supply for the purpose of preventing speculation, hoarding, and undue price rises through the elimination and regulation of certain trade practices. On February 3, 1942, Amendment No. 2 to Price Schedule No. 53[2] was issued by the Office of Price Administration, establishing maximum prices upon fats and oils and their products. Schedule No. 25 is no longer necessary to effectuate the above purposes. Therefore, under the authority vested in me by the Emergency Price Control Act of 1942, it is hereby directed that:

Sections 1343.1 to 1343.11, inclusive, Schedule No. 25, is hereby revoked. (Pub., No. 421, 77th Cong. 2d Sess.)

This Order of Revocation is effective February 23, 1942. Issued this 23d day of February 1942.

LEON HENDERSON,
*Administrator.*

[F. R. Doc. 42-1598; Filed, February 23, 1942; 5:07 p. m.]

[1] 6 F.R. 4491, 4684, 4685.

[2] 7 F.R. 756.

### PART 1367—FERTILIZERS

TEMPORARY MAXIMUM PRICE REGULATION NO. 1—MIXED FERTILIZER, SUPERPHOSPHATES AND POTASH

In the judgment of the Price Administrator, it is necessary, in order to effectuate the purposes of the Emergency Price Control Act of 1942, to issue a temporary regulation establishing as a maximum price or maximum prices for mixed fertilizer, superphosphate and potash, the price or prices prevailing with respect thereto within five (5) days prior to the date of issuance of such temporary regulation.

Therefore, under the authority vested in me by the Emergency Price Control Act of 1942, and in accordance with Procedural Regulation No. 1 issued by the Office of Price Administration, this Temporary Maximum Price Regulation No. 1 is hereby issued.

§ 1367.1 *Maximum prices for mixed fertilizer, superphosphate and potash.* (a) On and after February 27, 1942, to and including April 27, 1942, regardless of any contract, agreement, lease, or other obligation, no person shall sell or deliver mixed fertilizer, superphosphate or potash, in quantities of 250 pounds or more, to a consumer at prices higher than the maximum prices established herein.

(b) (1) The maximum price shall be the price as set forth in either (i) (*a*) the written or printed price schedule or list last issued, prior to February 21, 1942, and effective for any portion of the period from and including February 16, 1942, to and including February 20, 1942, by the manufacturer of the mixed fertilizer, superphosphate or potash being sold, or (*b*) the written or printed schedule or list last issued, circulated or displayed, prior to February 16, 1942, and effective for any portion of the period from and including February 16, 1942, to and including February 20, 1942, by the person making the sale (including a dealer, agent or other person). This price shall be the price stated in such schedule or list for a sale (ii) (*a*) to a consumer in the locality, (*b*) of the same quantity, grade and kind of mixed fertilizer, superphosphate or potash, (*c*) delivered in the same type of container or bag, (*d*) under the same terms of payment (time, cash, etc.), and (*e*) by the same methods and under the same conditions of delivery.

(2) Instead of the maximum price set forth in subparagraph (1) above, the maximum price may be the "average price" charged either by the manufacturer of the mixed fertilizer, superphosphate or potash being sold, or by the person making the sale (including a dealer, agent or other person), upon "sales of the same type" for the period from and including February 16, 1942 to and including February 20, 1942, minus any customary allowances for transportation or otherwise. The "average price" shall be the price obtained by dividing the total of the prices charged during that five-day period upon "sales of the same type" (before deduction of any transportation or other allowances) by the amount of goods so sold. "Sales of the same type" means sales (i) to a consumer in the same locality, (ii) of the same quantity, grade and kind of mixed fertilizer, superphosphate or potash, (iii) delivered in the same type of container or bag, (iv) under the same terms of payment (time, cash, etc.), and (v) by the same methods and under the same conditions of delivery.

The manufacturer or other person making the sale (including a dealer or an agent) may use either the maximum price established by this subparagraph (2) or the maximum price established by subparagraph (1) above.

(3) If there is no applicable maximum price under either subparagraph (1) or (2) above, then the maximum price shall be the price as set forth in the written or printed price schedule last issued, prior to February 21, 1942, and effective for any portion of the period from and including February 16, 1942, to and including February 20, 1942, by any manufacturer of mixed fertilizer, superphosphate or potash. This price shall be the price stated in such schedule or list for a sale (i) to a consumer in the same locality, (ii) of the same quantity, grade and kind of mixed fertilizer, superphosphate or potash, (iii) delivered in the same type of container or bag, (iv) under the same terms of payment (time, cash, etc.), and (v) by the same methods and under the same conditions of delivery.

(c) On and after February 27, 1942, to and including April 27, 1942, no person shall sell or contract to sell mixed fertilizer, superphosphate or potash, in quantities of 250 pounds or more, to a consumer for delivery after April 27, 1942, at prices higher than the maximum prices set forth in paragraph (b) above, or accomplish such result by postponing until after such date the acceptance or fulfillment of any order received prior thereto. No person shall establish terms of payment or conditions of delivery in connection with the sale of mixed fertilizer, superphosphate or potash, in

quantities of 250 pounds or more, to a consumer, more onerous than those in effect or available to such consumer for the period from and including February 16, 1942, to and including February 20, 1942. No person shall offer, solicit or attempt to do any of the foregoing, or offer or attempt to sell or deliver mixed fertilizer, superphosphate or potash, in quantities of 250 pounds or more, to a consumer at prices higher than the maximum prices set forth in paragraph (b) above.

(d) The provisions of this section shall not be applicable to sales or deliveries to consumers of mixed fertilizer, superphosphate or potash, received prior to February 27, 1942, by a carrier, other than a carrier owned or controlled by the person making the sale (including a dealer, agent or other person) for shipment to a consumer.*

*§§ 1367.1 to 1367.11, inclusive, issued pursuant to Pub. No. 421, 77th Cong., 2d Sess.

§ 1367.2 *Less than maximum prices.* Lower prices than those set forth in § 1367.1 above may be charged, demanded, paid or offered.*

§ 1367.3 *Conditional agreements.* On and after February 27, to and including April 27, 1942, no person shall agree to sell or deliver mixed fertilizer, superphosphate or potash, in quantities of 250 pounds or more, to a consumer at a price higher than the maximum price set forth in § 1367.1 (b) above, nor shall any person make an agreement which would provide for adjustment of the price to a price higher than such maximum price in the event that this Temporary Maximum Price Regulation No. 1 is hereafter amended or invalidated by a Court, or provide for such adjustment upon any other condition.*

§ 1367.4 *Evasion.* The price limitations set forth in this Temporary Maximum Price Regulation No. 1 shall not be evaded, whether by direct or indirect methods, in connection with an offer, solicitation, agreement, sale, delivery, purchase or receipt of mixed fertilizer, superphosphate or potash, alone or in conjunction with any other commodity or by way of any commission, service, transportation, or other charge, or discount, premium or other privilege, or by tying-agreement or other trade understanding: *Provided, however,* That nothing contained herein shall be construed to prohibit the granting of any customary allowances or discounts for transportation, quantity or otherwise, or the charging of prices lower than the maximum prices established by this Temporary Maximum Price Regulation No. 1.*

§ 1367.5 *Records and reports.* (a) Every person (including an agent) making a sale of mixed fertilizer, superphosphate or potash, in quantities of 250 pounds or more, to a consumer during the period from and including February 16, 1942, to and including April 27, 1942, shall keep for inspection by the Office of Price Administration for a period of not less than two years, complete and accurate records of each such sale, showing the date thereof; the name and address of the buyer, of the person (including an agent) making the sale, and of the manufacturer of the mixed fertilizer, superphosphate or potash; the quantity, grade and kind of the mixed fertilizer, superphosphate or potash sold; the bags or containers in which delivered; the price charged or received therefor; the terms of payment (time, cash, etc.); and the method and conditions of delivery.

(b) Not later than March 5, 1942, every manufacturer of mixed fertilizer, superphosphate or potash, who is engaged in the business of selling the same to consumers, whether by or through any agent or other person, shall file with the Office of Price Administration in Washington, D. C., one copy of each and every written or printed price schedule, whether temporary or permanent, issued by him in connection with the sale thereof to consumers from and after November 1, 1940, until February 27, 1942, together with all written or printed amendments and supplements to any of such schedules; and from and after February 27, 1942, each such person shall continue, until further notice, to file with the Office of Price Administration in Washington, D. C., one copy of any and all such price schedules, and supplements and amendments thereto, whose issuance is thereafter contemplated, at least five (5) business days prior to the contemplated effective date thereof. Neither such filing, nor the failure to object to the contents thereof, shall constitute authorization therefor, or approval thereof, by the Office of Price Administration.

(c) Not later than March 5, 1942, every manufacturer of mixed fertilizer, superphosphate or potash, who is engaged in the business of selling the same to consumers, shall mail or cause to be mailed, to his agents, written notice of the issuance and terms of this Temporary Maximum Price Regulation No. 1 and a direction to comply therewith. Such manufacturer shall also, not later than March 10, 1942, notify the Office of Price Administration in writing that he has mailed or caused to be mailed such written notice and direction.

Persons affected by this Temporary Maximum Price Regulation No. 1 shall submit such reports to the Office of Price Administration as it may, from time to time, require.*

§ 1367.6 *Enforcement.* (a) Persons violating any provision of this Temporary Maximum Price Regulation No. 1 will be subject to the civil and criminal penalties provided for by the Emergency Price Control Act of 1942.

(b) Persons who have evidence of any violation of this Temporary Maximum Price Regulation No. 1 or of any regulation or order issued by the Office of Price Administration or of any acts or practices which constitute or will constitute such a violation are urged to communicate with the nearest Field or Regional Office or the principal office of the Office of Price Administration in Washington, D. C.*

§ 1367.7 *Export sales.* The maximum prices established by this Temporary Maximum Price Regulation No. 1 shall not apply to sales of mixed fertilizer, superphosphate or potash for delivery to persons in a foreign country or in a territory or possession of the United States.*

§ 1367.8 *Import sales.* The maximum prices established by this Temporary Maximum Price Regulation No. 1 shall not apply to sales of mixed fertilizer, superphosphate or potash, in a foreign country for delivery to the United States or to a territory or possession of the United States, or to the resale thereof, after such importation, to persons in the United States, or a territory or possession of the United States.*

§ 1367.9 *Petitions for amendment.* Persons seeking modification of any provision of this Temporary Maximum Price Regulation No. 1 or an adjustment or exception not provided for therein may file petitions for amendment in accordance with the provisions of Procedural Regulation No. 1, issued by the Office of Price Administration.*

§ 1367.10 *Definitions.* (a) When used in this Temporary Maximum Price Regulation No. 1, the term:

(1) "Person" includes an individual, corporation, partnership, association, farmers' or consumers' cooperative or other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing.

(2) "Manufacturer" means a person who produces, mixes, or processes, or who markets for his own account and under his own brand or trade name, mixed fertilizer, superphosphate, potash or nitrogenous material for use as an aid to the growth of crops or plants.

(3) "Consumer" means a person purchasing mixed fertilizer, superphosphate or potash for use in aiding the growth of crops or plants (and not for resale).

(4) "Mixed fertilizer" means any substance containing any two, or more, of potash, superphosphate, and nitrogenous material, when marketed or sold as an aid to the growth of crops or plants.

(5) "Superphosphate" means any product which is obtained by mixing rock phosphate with either sulphuric acid or phosphoric acid or with both acids, when marketed or sold as an aid to the growth of crops or plants.

(6) "Potash" means muriate, chloride, or sulphate of potash, manure salts and any other substance containing potassium oxide ($K_2O$), when marketed or sold as an aid to the growth of crops or plants.

(7) "Nitrogenous material" means any organic or inorganic substance containing nitrogen, when marketed or sold as an aid to the growth of crops or plants, except when so marketed or sold without the admixture of any potash or superphosphate.

(8) "Grade" means the minimum guarantee of the plant food content of mixed fertilizer, superphosphate, or potash, expressed in terms of nitrogen, available phosphoric acid, and water soluble potash, e. g. 4-8-4, 3-8-5, etc.

(9) "Kind" as distinguished from the term "grade" refers only to mixed fertilizer and means the substances, and the proportions thereof, containing the guaranteed plant food content of mixed fertilizer, as, for example, in the case of nitrogenous material, 80% inorganic and 20% insoluble organic nitrogen; or in the case of potash, 75% sulphate of potash and 25% muriate of potash.

(b) Unless the context otherwise requires, the definitions set forth in section 302 of the Emergency Price Control Act of 1942 shall apply to other terms used herein.*

§ 1357.11 *Effective period.* This Temporary Maximum Price Regulation No. 1 (§§ 1367.1 to 1367.11 inclusive) shall become effective on February 27, 1942, and shall, unless earlier revoked or replaced, expire on April 27, 1942.*

Issued this 21st day of February 1942.

LEON HENDERSON,
*Price Administrator.*

[F. R. Doc. 42-1565; Filed, February 21, 1942; 12:44 p. m.]

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PART 1377—WOODEN CONTAINERS

TEMPORARY MAXIMUM PRICE REGULATION NO. 2—USED EGG CASES

In the judgment of the Price Administrator it is necessary and proper in order to effectuate the purposes of the Emergency Price Control Act of 1942 to establish temporarily as the maximum prices for used egg cases the prices prevailing with respect thereto within five days prior to the issuance of this Regulation.

Therefore, under the authority vested in me by the Emergency Price Control Act of 1942, and in accordance with Procedural Regulation No. 1,[1] issued by the Office of Price Administration, Temporary Maximum Price Regulation No. 2 is hereby issued.

§ 1377.1 *Maximum prices for used egg cases.* (a) On and after February 23, 1942, to and including April 22, 1942, regardless of any contract, agreement, lease, or other obligation, no egg case emptier, or used egg case dealer, trucker, peddler, or retailer shall sell or deliver used egg cases, and no person shall buy or receive used egg cases in the course of trade or business from such sellers, at prices higher than the maximum prices established in this Section; and no such person shall agree, offer, solicit or attempt to do any of the foregoing. The provisions of this Section shall not be applicable to sales or deliveries of used egg cases to a purchaser if prior to February 23, 1942, such cases had been received by a carrier, other than a carrier owned or controlled by the seller, for shipment to such purchaser.

(b) The maximum price for used egg cases sold by an egg case emptier, or a used egg case dealer, trucker, or peddler, shall be as follows:

(1) For a No. 1 used egg case, which is hereby defined as a case (i) ready to be used by an egg producer, (ii) sound and firm throughout, with no broken parts, (iii) clean or reasonably clean on the outside, (iv) clean and free of all stains on the inside, (v) free of all odors, (vi) having a one or two piece full cover, and (vii) with a full complement of clean, sound (unbroken), unstained, standard flats and fillers, the maximum price f. o. b. the point from which the case is transported to the purchaser shall be 22¢ if the case is transported to the purchaser from within the Eastern area and 26¢ if the case is transported to the purchaser from within the Mid-continent area.

(2) For a No. 2 used egg case, which is hereby defined as a case (i) ready to be used by an egg producer, (ii) sound and reasonably firm, (iii) free from odor and reasonably clean on the inside, (iv) having a one or two piece full cover, and (v) with a full complement of reasonably clean, sound, standard flats and fillers, the maximum price f. o. b. the point from which the case is transported to the purchaser shall be 17¢ if the case is transported to the purchaser from within the Eastern area and 21¢ if the case is transported to the purchaser from within the Mid-continent area.

(3) For a No. 3 used egg case, which is hereby defined as a case which does not meet the requirements (as herein provided) of a No. 1 or No. 2 case, the maximum price f.o.b. the point from which the case is transported to the purchaser shall be 12¢ if the case is transported to the purchaser from within the Eastern area and 16¢ if the case is transported to the purchaser from within the Mid-continent area.

(c) A delivered price in excess of the maximum price established in paragraph (b) hereof may be charged by an egg case emptier, or a used egg case dealer, trucker, or peddler, consisting of such maximum price plus transportation charges to the extent that transportation costs are paid or incurred by the seller in delivering the case to the purchaser; such transportation costs must be shown as a separate item in the billing or invoice.

(d) The maximum price for used egg cases sold by a retailer who purchases such cases from an egg case emptier or a used egg case dealer, trucker, or peddler, and who distributes such cases to egg producers or egg gatherers, shall be the total price paid for the case by the retailer plus 3¢.*

* §§ 1377.1 to 1377.8, inclusive, issued pursuant to Pub., No. 421, 77th Cong. 2d Sess.

§ 1377.2 *Less than maximum prices.* Lower prices than those set forth in § 1377.1 hereof may be charged, demanded, paid or offered.*

§ 1377.3 *Evasion.* The price limitations set forth in this Temporary Maximum Price Regulation No. 2 shall not be evaded, whether by direct or indirect methods, in connection with an offer, solicitation, agreement, sale, delivery, purchase or receipt of used egg cases, alone or in conjunction with any other commodity or by way of commission, service, transportation, or other charge, or discount, premium or other privilege, or by tying agreement or other trade understanding, or otherwise.*

§ 1377.4 *Records and reports.* Every person making purchases or sales subject to this Regulation of used egg cases after February 23, 1942, shall keep for inspection by the Office of Price Administration for a period of two years complete and accurate records of each such purchase or sale showing the date thereof, the name and the address of the buyer or seller, the price paid or received, and the quantity of each grade of used egg case purchased or sold.

Persons affected by this Temporary Maximum Price Regulation No. 2 shall submit such reports to the Office of Price Administration as it may, from time to time, require.*

§ 1377.5 *Enforcement.* (a) Persons violating any provision of this Temporary Maximum Price Regulation No. 2 will be subject to the civil and criminal penalties provided for by the Emergency Price Control Act of 1942.

(b) Persons who have evidence of any violation of this Temporary Maximum Price Regulation No. 2 or any other regulation or order issued by the Office of Price Administration or any acts or practices which constitute or will constitute such a violation are urged to communicate with the nearest field or regional office of the Office of Price Administration or its principal office in Washington, D. C.*

§ 1377.6 *Petitions for amendment.* Persons seeking modification of any provision of this Temporary Maximum Price Regulation No. 2 or an adjustment or exception not provided for therein may file petitions for amendment in accordance with the provisions of Procedural Regulation No. 1, issued by the Office of Price Administration.*

§ 1377.7 *Definitions.* (a) When used in this Temporary Maximum Price Regulation No. 2:

(1) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing.

(2) The term "egg case emptier" means any person who unpacks a case of eggs.

(3) The term "used egg case dealer" means any person who purchases used egg cases and (1) resells such cases after such warehousing and/or re-conditioning as may be necessary to meet trade requirements, or (2) acts as a broker of used egg cases and resells such cases without further handling.

(4) The term "trucker" of used egg cases means any person who transports by motor carrier used egg cases from egg case emptiers, or used egg case dealers or peddlers, to egg producers or retailers of used egg cases.

(5) The term "peddler" of used egg cases means any person who collects used egg cases and sells such cases without reconditioning or warehousing.

(6) The term "retailer" of used egg cases means any person other than an

[1] 7 F.R. 971.

egg case emptier or used egg case dealer, trucker, or peddler, as herein defined, who operates in a rural egg producing area an establishment which renders the service of supplying used egg cases to egg producers in that area.

(7) The term "used egg cases" means standard wooden containers designed to pack 30 dozen average size eggs.

(8) The term "Eastern area" means the states of Maine, Vermont, New Hampshire, Rhode Island, Connecticut, Massachusetts, New York, New Jersey, Pennsylvania, Virginia, West Virginia, Maryland, Delaware, North Carolina, South Carolina, Georgia, Florida, and the District of Columbia.

(9) The term "Mid-continent area" means the states of Ohio, Indiana, Michigan, Illinois, Wisconsin, Tennessee, Kentucky, Alabama, Mississippi, Louisiana, Texas, Oklahoma, Arkansas, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, and Kansas.

(b) Unless the context otherwise requires, the definitions set forth in section 302 of the Emergency Price Control Act of 1942 shall apply to other terms used herein.*

§ 1377.8 *Effective date.* This Temporary Maximum Price Regulation No. 2 (§§ 1377.1 to 1377.8, inclusive) shall become effective on February 23, 1942 and shall, unless earlier revoked or replaced, expire April 22, 1942.

Issued this 21st day of February 1942.

LEON HENDERSON,
*Price Administrator.*

[F. R. Doc. 42-1591; Filed, February 23, 1942; 11:59 a. m.]

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## CHAPTER XVI—OFFICE OF CENSORSHIP

### PART 1801—CABLE AND RADIO CENSORSHIP REGULATIONS

U. S. CABLE AND RADIO CENSORSHIP REGULATIONS [1]


Sec.
1801.1 Discretion of censor.
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§ 1801.1 *Discretion of censor.* All messages will be accepted for transmission at the sender's risk, and may be stopped, delayed, or otherwise dealt with at the discretion of the censor, without notice to the sender.*

*§§ 1801.1 to 1801.19, inclusive, issued under the authority contained in E.O. 8985, 6 F.R. 6625.

§ 1801.2 *Transmission to enemy-occupied territory.* No message will be accepted for transmission to territory under enemy occupation, unless the communication is a government message to or from one of the other American Republics, or unless special license has been granted by the Office of Censorship to send the message.*

§ 1801.3 *Information regarding delivery.* Service involving notification by the company to the sender as to the fact or time of delivery of any international message is suspended except for international press dispatches. Inquiries at Censorship Stations regarding messages can not be handled by telephone.

Patrons filing "reply prepaid" messages, and communication companies which accept "collect" messages, must do so at their own risk, since no information regarding deliveries can be given and thus no refunds made.*

§ 1801.4 *Proper address.* On every message there must be an address which will clearly identify the addressee for whom the message is intended.

Except where a cable address is permitted under these regulations, the address must be in plain language. The use of an abbreviation of the entire postal address, provided such abbreviation is sufficient in itself to insure the identification of the addressee by the censors through whose hands the message will pass, is not prohibited; but all abbreviations of address are used at the risk of the senders, and Censorship can give no assurance that any specific abbreviation will suffice in all cases to insure identification of the addressee or ready delivery of the message.

The names of large or well-known buildings such as banks, hotels, etc., are sufficient without street addresses.*

§ 1801.5 *Cable addresses.* Cable addresses are not permitted at present. However, in order to expedite the assembly of a complete file of cable addresses being used in other countries, it is requested that persons or firms who are usual patrons of the cable and radio inform the Chief Cable Censor, Washington, D. C., by letter, showing the names, addresses, and corresponding cable addresses of the foreign persons or firms to whom their messages are sent.*

§ 1801.6 *Supplementary address information.* Full name and full address as used in this section, in either (a) or (b) below, shall be understood to mean given name, middle initials, and surname; street and number, or name of office building; and town or city, with name of State or country where necessary to avoid ambiguity.

The following supplementary information will not be transmitted as a part of the message, but may, by direction of the sender and on payment by him of the landline toll, be transmitted as far as the station of the first cable censor to act on the message:

(a) *Addressee.* When any cable address or any abbreviation of a plain language address is used in a message, the full name and full address of the addressee must also be recorded on the manuscript form on which such message is filed with the communication company.

If the message is addressed to an individual acting on behalf of a firm or other organization, the name and address of such firm or organization, and the addressee's connection with it, must appear on the form as well as the name and address of the addressee.

(b) *Sender.* In addition to the signature required on the message, the full name and full address of the sender must be recorded, as supplementary information, on the manuscript form on which each message is filed with the communication company.

When a frequent patron of the cables or radio changes his address, it will expedite his traffic to give both the old and the new address on two or three of his first dispatches sent from the new address.

If the message is signed by an individual acting in behalf of a firm or organization, or by an abbreviated form of the name of that organization, the full name and full address of that organization must also be given on the form.

(c) The name of the commodity, if any, involved in the message, must be stated on the form, and should be stated in the text of the message.*

§ 1801.7 *Signature.* All messages must be signed.

The signature transmitted should, when considered in connection with the text and the addressee, be such as to identify the sender clearly, and distinguish him from any other individual, firm or organization with a similar name.

The transmitted signature of an individual must consist of the surname at least. Such signatures as "Father", "Aunt Bess", or a nickname, will not be accepted.

The transmitted signature of a firm or organization must be sufficiently complete to identify it clearly. The name of a responsible member of the firm or officer of the organization may be used, provided satisfactory information regarding him is made available to the censor.

A cable address as signature is not permitted, but where a surname or the name of an organization is also registered, the fact that it is so registered will not preclude its use as a signature.*

§ 1801.8 *Text.* Messages will not be passed unless the meaning of the text is clear to the censor.

Single-word texts satisfy this requirement only in rare instances, and then only with appreciable delay necessary for inquiry or investigation.

Messages consisting of address and signature only, with no text, are not permitted.*

§ 1801.9 *Language permitted.* All plain language messages must be in English, French, Portuguese, or Spanish. However, all press dispatches should be

[1] Strict compliance with the regulations in this part, while required, will not insure the passage of any message either by the United States or foreign censorships. Senders of messages should keep themselves informed as to foreign censorship rules through the operating companies.

filed in English; otherwise they may be subject to delay. Transit traffic may be in any plain language which is acceptable at destination.

Legitimate terms or words common in any profession or trade may be used if intelligible to the censor and not susceptible to double meaning as used.*

§ 1801.10 *Commercial codes.* The use of the following commercial codes is permitted in terminal traffic:

| *Name of code* | *Indicating symbol* |
|---|---|
| ABC Sixth Edition | ABC. |
| ACME Code and Supplement | ACME. |
| Bentley's Complete Phrase Code | BENCOM. |
| Bentley's Second Phrase Code | BENSEC. |
| Lombard General Code | LOMGEN. |
| Lombard shipping Code and Appendix. | LOMSHIP. |
| New Standard Half Word Code | STANHAF. |
| New Standard Three Letter Code | STANTER. |
| Peterson's Third Edition | PET. |

In every coded message the code used must be indicated by placing the appropriate indicating symbol in the heading of the message. The symbol is not a chargeable word so used.

Cable and radio patrons should ascertain from the communication companies whether the code is acceptable by the censorship, if any, at the destination of the message.

The use of private codes is not permitted except by special license granted by the Director of Censorship. Such licenses cannot be granted unless the licensee is in a position to furnish fifteen copies of the code book for the use of censors.

The use of code words from catalogues and price lists cannot be permitted since there is little likelihood that they can be made intelligible to the censor. (See § 1801.8)

It is advised that those issuing catalogues or price lists containing code words mark them with a statement as follows:

"During the continuance of the U. S. Cable and Radio Censorship, these code words are not permitted in cablegrams."*

§ 1801.11 *Test words.* Banks and other business institutions which have previously used test words in the conduct of their business may continue to use test words in transmitting international messages: *Provided, however,* That the Office of Censorship may, at any time, and without notice, withdraw such privilege: *And provided further,* That any user of test words shall at any time furnish such information pertinent to his international communications as may be required by the Office of Censorship.

Any bank or business institution desiring to obtain the privilege of using test words in transmitting its international messages may apply to the Office of Censorship, but before such privilege is granted, and at any time thereafter, must furnish such information as may be required by the Office of Censorship.*

§ 1801.12 *Information required from sender.* Information required by the censor from the sender in the United States in regard to a specific message may be requested when necessary by a "collect" telegram from the censor to the sender.

Any information which the sender may consider necessary to make the meaning of his cablegram or radiogram clear to the censor may be imparted in a prepaid domestic telegram addressed to the censor having jurisdiction. This telegram ("Memorandum Message") should be filed with the cablegram or radiogram to which it refers.*

§ 1801.13 *Unrelated numbers in text.* Numbers that are unrelated to the text and not easily understandable to the censor are not permitted, whether expressed in plain figures or by code words translating into plain figures.*

§ 1801.14 *Serial numbers.* Serial numbers in messages are subject to deletion, but may, at the sender's risk, be included as the first word on the message, when they can be easily understood by the censor and plainly do not convey a hidden meaning.*

§ 1801.15 *Delivery of radiograms to ships.* Due to restrictions on the use of radio by ships at sea, there can be no assurance of immediate delivery of, or reply to, radiograms addressed by the public to seagoing vessels.*

§ 1801.16 *Stock market daily reports.* Routine stock market daily reports (including curb market, cotton, grain, and similar market reports) will be expedited by the censor the same as press dispatches when received from properly recognized and trustworthy agencies. However, reports concerning individual transactions and messages between brokers, dealers, firms, and individuals relative to bids, offers, acceptances, inquiries, quotations, etc., shall be subject to all of the regulations in this part.*

§ 1801.17 *Financial transactions.* In connection with any messages relating to financial transactions, the censor may require complete information relative to the identity of the payor and payee, and the ultimate purpose of the transaction.*

§ 1801.18 *Subjects excluded.* Except in press dispatches (for which separate regulations have been issued), no reference, either open or hidden, will be made to any of the following subjects in any international communication:

(a) The location, identity, description, movement or prospective movement of any merchant vessel, aircraft, naval or military vessel or naval or military force, including the collective or individual personnel thereof, operated by the United States or other nations opposing the Axis powers. Messages pertaining to the shipment of material or movements of vessels must be so worded as not to associate any two of the following elements: (1) The name of the vessel; (2) the nature of the cargo; and (3) the name of port or arrival or departure. The specific date of arrival or departure on any present or future voyage is not permitted, but approximate date may be used, employing such expressions as "next week", or "late next month", etc. No such expression shall be more specific than one week's time. This applies to American, anti-Axis, and Neutral ships alike.

(b) The location, identity, description, test, performance, production, movement or prospective movement, of defensive or offensive weapons, installations, supplies, material, or equipment of the United States or other anti-Axis nations.

(c) The location, description, production, capacity, or specific output of existing or proposed private or government-owned or -controlled plants, yards, docks, dams, structures, experimental or other facilities, or to contracts, plans, and rates of industrial activity in connection therewith.

This extends to any process, synthesis, or operation in the production, manufacture, or reconstruction of any article the export of which is prohibited or limited by the Government.

(d) The civil, military, industrial, financial, or economic plans of the United States or other countries opposing the Axis powers, or the personal or official plans of any official thereof.

(e) The employment of any naval, military, or civil defense unit of the United States or other anti-Axis nations.

(f) Reports on production and conditions in the mining, lumbering, fishing, livestock, and farming industries, and shortages or surpluses in connection therewith.

(g) Weather conditions (past, present, or forecast).

(h) The effect of enemy operations or casualties to personnel or material, suffered by the United States or other anti-Axis nations, until the information is officially released.

(i) The fact or effect of our military or naval operations against the enemy, until the information is officially released.

(j) The number, description, location, or identity of prisoners of war.

(k) Criticism of equipment, appearance, physical condition or morale of the collective or individual armed forces of the United States or other nations opposing the Axis powers.

(l) Any data whatever concerning military or naval communication or intelligence methods or results.

(m) Any other matter, the dissemination of which might directly or indirectly bring aid or comfort to the enemy, or which might interfere with the national effort of, or disparage the foreign relations of, the United States or other anti-Axis nations.*

§ 1801.19 *Messages to military and naval personnel.* Due to the necessity of avoiding disclosure of the location of military and naval units, personal messages to naval personnel afloat or military personnel in the field, may be subject to considerable delay. At times it may be necessary, due to the exigencies of the situation, not to accept radio messages to such personnel.*

February 19, 1942.

BYRON PRICE,
*Director.*

THE WHITE HOUSE,
*February 20, 1942.*

Approved:

FRANKLIN D ROOSEVELT

[F. R. Doc. 42-1594; Filed, February 23, 1942; 12:24 p. m.]

PART 1802—RADIOTELEPHONE CENSORSHIP REGULATIONS

U. S. RADIOTELEPHONE CENSORSHIP REGULATIONS[1]

Sec.
1802.1 Transmission to enemy-occupied territory.
1802.2 Call requirements.
1802.3 Calls, "person to person", "station to station".
1802.4 Calls from hotels.
1802.5 Calls from public pay stations.
1802.6 Languages permitted.
1802.7 Subjects excluded.
1802.8 Application of regulations to incoming calls.

§ 1802.1 *Transmission to enemy-occupied territory.* No communication will be established with anyone in a locality under enemy control.*

*§§ 1802.1 to 1802.8, inclusive, issued under the authority contained in E.O. 8985, 6 F.R. 6625.

§1802.2 *Call requirements.* Before an outgoing international radiotelephone call can be completed, the patron must furnish the telephone operator with his full name, his home or business address, the number and address of the telephone instrument from which the call is put through, and the full name and address of the person called. If other than immediate service is desired, the patron may state the time at which he desires his call to be completed. Patrons will not be permitted to "hold the 'phone" while calls are being completed. It is permissible, if the censor is notified beforehand of the names and addresses of all persons participating, for personal conversations to be shared by various persons at either end of the line.*

§ 1802.3 *Calls, "person to person," "station to station."* Only "person to person" calls will be completed, except in certain cases where, in order to expedite legitimate business, permission may be granted to call a certain specifically named and located office or firm. Also, where the station addressed is suitably identified as a safe station, station-to-station calls may be permitted.*

§ 1802.4 *Calls from hotels.* Patrons calling from hotels must be identified by the hotel management or other known authority. They may call from any instrument in the hotel.*

§ 1802.5 *Calls from public pay stations.* Calls will not be completed from public pay stations or from other telephone stations where the person calling can not subsequently be identified.*

§ 1802.6 *Languages permitted.* The English, French, Spanish, and Portuguese languages will be permitted. Use of these foreign languages will be denied only in the event that translators are not available at the Censorship point.*

§ 1802.7 *Subjects excluded.* No reference, either open or hidden, will be made to any of the following subjects in any international communication:

(a) The location, identity, description, movement, or prospective movement of any merchant vessel, aircraft, naval or military vessel or naval or military force, including the collective or individual personnel thereof, operated by the United States or other nations opposing the Axis powers. Messages pertaining to the shipment of material or movements of vessels must be so worded as not to associate any two of the following elements: (1) The name of the vessel; (2) the nature of the cargo; and (3) the name of port or arrival or departure. The specific date of arrival or departure on any present or future voyage is not permitted, but approximate dates may be used, employing such expressions as "next week", or "late next month", etc. No such expression shall be more specific than one week's time. This applies to American, anti-Axis, and Neutral ships alike.

(b) The location, identity, description, test, performance, production, movement or prospective movement, of defensive or offensive weapons, installations, supplies, material, or equipment of the United States or other anti-Axis nations.

(c) The location, description, production, capacity, or specific output of existing or proposed private or government-owned or controlled plants, yards, docks, dams, structures, experimental or other facilities, or to contracts, plans, and rates of industrial activity in connection therewith. This extends to any process, synthesis, or operation in the production, manufacture, or reconstruction of any article the export of which is prohibited or limited by the Government.

(d) The civil, military, industrial, financial, or economic plans of the United States or other countries opposing the Axis powers, or the personal or official plans of any official thereof.

(e) The employment of any naval, military, or civil defense unit of the United States or other anti-Axis nations.

(f) Reports on production and conditions in the mining, lumbering, fishing, livestock, and farming industries, and shortages or surpluses in connection therewith.

(g) Weather conditions (past, present, or forecast).

(h) The effect of enemy operations or casualties to personnel or material, suffered by the United States or other anti-Axis nations, until the information is officially released.

(i) The effect of our military or naval operations against the enemy, until the information is officially released.

(j) The number, description, location, or identity of prisoners of war.

(k) Criticism of equipment, appearance, physical condition or morale of the collective or individual armed forces of the United States or other nations opposing the Axis powers.

(l) Any data whatever concerning military or naval communication or intelligence methods or results.

(m) Any other matter, the dissemination of which might directly or indirectly bring aid or comfort to the enemy, or which might interfere with the national effort, or disparage the foreign relations, of the United States or other anti-Axis nations.

(n) Any former communication by cable or radio involving the parties to the conversation or their representatives.*

§ 1802.8 *Application of regulations to incoming calls.* Where any of the regulations in this part apply specifically to outgoing calls, the general principles apply as well to incoming calls.*

February 19, 1942.

BYRON PRICE,
*Director.*

THE WHITE HOUSE,
*February 20, 1942.*

Approved:

FRANKLIN D ROOSEVELT

[F. R. Doc. 42-1592; Filed, February 23, 1942; 12:23 p. m.]

[1] Delay in completing international radiotelephone calls, and possible interruptions in the conversations, will be minimized if patrons take steps with the telephone company to familiarize themselves with United States and foreign Radiotelephone Censorship Regulations before putting in a radiotelephone call to any person outside the jurisdiction of the United States.

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PART 1803—RULES FOR COMPANIES OPERATING OVERSEAS CABLE AND RADIO CIRCUITS AND AFFILIATED LANDWIRE COMPANIES

RULES FOR OPERATING COMPANIES

Sec.
1803.1 General provisions.
1803.2 Employees.
1803.3 Continental censorship stations and jurisdiction.
1803.4 Overseas censors.
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1803.7 Primary responsibility.
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1803.12 Credit.
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1803.14 Complaints.
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1803.17 Cable addresses.
1803.18 Cable address records.
1803.19 Abstract of traffic.
1803.20 Reports of suspicious circumstances.
1803.21 Fixed holiday greetings.
1803.22 Transmission of call letters, etc. to enemy-occupied territory.
1803.23 Diversion or rerouting of traffic.
1803.24 Press dispatches.
1803.25 Statements to patrons by telephone operators.

The following instructions and rules for companies operating overseas cable and radio circuits and affiliated landwire companies concern the handling of international traffic, and are known as "Rules for Operating Companies". These rules affect only the relationship between the carriers and Censorship. It should be clearly understood that the rules are not intended to, nor do they have the effect of, authorizing action by the carriers which is in violation of the Communications Act of 1934, as amended, the rules, regulations and orders of the Federal Communications Commission

promulgated thereunder, or the tariffs filed by the carriers with the Federal Communications Commission.

§ 1803.1 *General provisions.* Such landwire traffic as is involved in the handling of international cable or radio traffic between the point of entry to or departure from the country and the cable user is subject to control of Cable and Radio Censorship.

Throughout the rules in this part, the word "cable" or "cablegram" includes also "radio" or "radiogram".

Cable and Radio Censorship desires to interfere as little as possible with legitimate business, including the business and regular operations of the communication companies and their affiliates.*

*§§ 1803.1 to 1803.25, inclusive, issued under the authority contained in E.O. 8985, 6 F.R. 6625.

§ 1803.2 *Employees.* All employees in contact with cable patrons, and all operating personnel at the sending and receiving apparatus must be thoroughly familiar with "U. S. Cable and Radio Censorship Regulations", and "U. S. Radiotelephone Censorship Regulations". They must be furnished also with such data on foreign censorship regulations as will best serve the interests of their patrons.*

§ 1803.3 *Continental censorship stations and jurisdiction.* Cable Censorship Stations have been established in New York, Miami, New Orleans, San Antonio, San Francisco, and Seattle, and will be established at Los Angeles and such other places as experience shall from time to time indicate to be necessary. The jurisdiction of each of these Cable Censorship Stations extends to all international traffic by cable, radio, ship-shore, radio, or other means, over the seaboard areas specified below:

(a) *New York.* The Atlantic seaboard north of the State of Georgia. Traffic to Mexico over the Galveston-Tampico-Vera Cruz cable of the Western Union Company shall be routed via New York for censoring.

(b) *Miami.* The seaboard of the States of Florida and Georgia.

(c) *New Orleans.* The seaboard of the States of Alabama, Mississippi, Louisiana, and Texas.

(d) *San Antonio.* The Mexican Border of the State of Texas.

(e) *San Francisco.* The Pacific seaboard of the State of California.

(f) *Seattle.* The Pacific seaboard of the States of Washington and Oregon, and traffic to or from Alaska.*

NOTE: The jurisdiction of the Los Angeles station when established will include the Pacific Seaboard of the State of California south of and including Santa Barbara, the Mexican Borders of the States of California, Arizona, and New Mexico.

§ 1803.4 *Overseas censors.* Overseas Censors have been established in the Virgin Islands, Puerto Rico, Guantanamo, Panama, Honolulu, Alaska, and Iceland.*

§ 1803.5 *Field censors.* Field Censors are established in the operating rooms of the commercial companies as a necessary contact with Censorship. Their duties are:

(a) To insure that Cable Censorship has acted upon all outgoing cable and radio traffic before transmission and upon all incoming cable and radio traffic before delivery. (See § 1803.7)

(b) To cooperate with the commercial companies to see that all readable messages comply with "U. S. Cable and Radio Censorship Regulations" before being submitted to the Censorship Stations.

(c) To cooperate with the commercial companies in preventing or mending mutilations.

(d) To pass on the commercial companies' "service" messages if communicated beyond the jurisdiction of the United States.

(e) Any other liaison required.*

§ 1803.6 *Communications between censors and operating companies.* (a) Censors will communicate directly with the officials of the commercial companies in their respective areas as regards:

(1) The enforcement of instructions, regulations, and rules already established.

(2) The establishment or adjustment of local routine arrangements not affecting other Censorship Stations or Censorship as a whole.

(b) All other communications between Cable Censorship and the commercial companies will be conducted by the Chief Cable Censor.*

§ 1803.7 *Primary responsibility.* (a) It is the primary responsibility of the commercial companies to see that all cablegrams are submitted to Cable Censorship for action either before being sent out of the country on any circuit, or before being delivered or further transmitted for delivery to the addressee after receipt in this country. Included also are abnormally routed cablegrams which might not otherwise have entered the jurisdiction of the United States.

(b) All transit traffic irrespective of code or language except traffic originating in or addressed to enemy-occupied territory will be passed by the Field Censor at the point of departure from continental United States. The Field Censor will retain "Ditto" copy. Transit traffic originating in or addressed to enemy-occupied territory shall pass through full censorship at the point of departure from the United States.*

§ 1803.8 *Landlines and domestic radio circuits.* Commercial companies operating landwire communication facilities within the jurisdiction of the United States will route all cable or radiograms as follows:

(a) *Outgoing terminal international traffic.* Outgoing terminal international traffic carried by landwire telegraph will be sent to the office of the cable or radio company where the message is to be transmitted out of the country. This company, before transmitting the message, will submit it, as provided in § 1803.7, for censoring to the Censorship Station having jurisdiction. (See §§ 1803.3 and 1803.5 (a))

(b) *Incoming terminal international traffic.* Incoming terminal international traffic entails no responsibility on the part of the landline companies, except that, in cases where jurisdiction is surrendered by one Continental Censor to another, passmarks, etc., must be transmitted as indicated. (See § 1803.11 (b))

(c) *Marine radiograms.* Marine radiograms will be sent to the office of the radio company over whose facilities the message is to be transmitted. This company, before transmitting the message, will submit it for censoring to the Censorship Station having jurisdiction. (See §§ 1803.3 and 1803.5 (a)) Companies filing such radiograms must ascertain whether messages are replies to previous cablegrams or radiograms and, if so, how and when such previous messages were routed. In order that censors may achieve a clear understanding of messages, it is sometimes necessary to consider the message to which the one being handled is a reply. Therefore, it may be necessary that a reply message be censored at the continental station which censored the original message.

(d) *Shipboard radio stations.* All persons filing radiograms on board ship shall register their full names and addresses and, if the radiogram is in answer to a message censored by the U. S. authorities, shall also state when and by what communication company such original message was handled. Radio companies shall furnish the censor with this information by service message. This section applies, however, only to vessels from which radio transmissions are permitted under wartime conditions. (See regulations covering the use, control, supervision, inspection or closure of radio stations on all vessels under the jurisdiction of the United States; 7 F.R. 42)

(e) *Domestic point-to-point radio traffic.* Point-to-point commercial radio traffic which can be heard outside the jurisdiction of the United States may be examined by censorship before being transmitted by radio, and may by this authority be suppressed or diverted to landlines for transmission. This is an exception to § 1803.8 (a) which applies to landline telegraph only.*

§ 1803.9 *Copies.* With respect to either incoming or outgoing international messages the operating company shall deliver to Censorship two copies of each message; namely, the original hard copy and a "Ditto" copy. The operating company may retain a carbon copy of each message for accounting purposes. If, because of physical location, it is necessary to transmit messages to Censorship by teletype, then Censorship will make the required copies.*

§ 1803.10 *Files.* It is of first importance to Censorship that the companies preserve, during the entire continuance of the Censorship, all messages now on file in the offices of the companies and all messages that may be received either for transmission or for delivery during the continuance of Censorship, and that such files be made available to Censorship if required.*

§ 1803.11 *Methods of censoring, and action in connection therewith*—(a) *Types of action.* Censors may: (1) Pass, (2) Delay, (3) Paraphrase, (4) Delete a part, (5) Suppress, (6) Cancel or permit cancellation of, (7) Return for correction (technical irregularity), or (8) Refer to Chief Cable Censor for his action or advice.

Every message received in Censorship will eventually receive one of the treatments listed above.

(b) *Censorship marks.* Censors in acting on messages may place thereon either in the preamble, or in Memorandum Messages (MM's) following, certain censorship indicators for the information of other censors. Such additions made to messages by censors *will not be removed by the personnel of the operating companies,* but will be transmitted by the operating companies until removed by a censor. MM's will be charged for at Government rates and billed to the Office of Censorship, Washington, D. C. Censor's "Passmarks", inserted in the preamble, will be carried free, but if lost from a message and recovered by a "service" message, will be replaced at the expense of the company.

Censorship marks, etc., will be removed from traffic by the censor who last handles the messages either before transmission beyond United States Censorship jurisdiction or before release for delivery to the addressee.

(c) *Technical irregularities.* Operating companies are expected to notify by service message the station of origin of any messages when a cablegram does not conform to Censorship Regulations or is badly multilated or garbled, and for such reason is "Returned for Correction" by the censor. Operating companies should not accept messages not conforming to Censorship Regulations, and the burden of obtaining their technical readjustment is therefore on the company. Technical irregularities must be corrected either by the sender or by the operating company before a message can be released by a censor.

In case the technical irregularity is, in the censor's opinion, not capable of being readjusted, the censor, instead of returning the message for correction, may cancel the message because of technical irregularities. (See § 1803.11 (h))

(d) *Inquiries to senders.* Explanations required by a Censor from a cable sender in the United States as to any message filed by him may be obtained by a "collect" message from the censor to the sender, or by a free service message to the office of origin, at the discretion of the censor.

(e) Censorship requests that the operating companies report to the originating censor the inability of a company to obtain a reply to a service message or to deliver an inquiry, and the reason therefor. This cooperation will make it possible to censor immediately cablegrams that otherwise might be held in expectation of receiving either a reply from the sender, or action by the office of origin.

(f) *Non-delivery.* When a cablegram is *refused* by an addressee, no further, and *no other,* attempt to deliver to the same, or to any other addressee, will be made without receiving permission from the censor who passed the cablegram. However, the operating company is invited to advise the censor as to some other addressee or address where it is believed delivery is intended or will be accepted.

When an operating company is unable immediately to deliver a message, but learns later that the addressee has moved to another city, the company shall *not* forward the message, but shall return it to the censor, with the explanation, and the new address.

(g) When Censorship deletes or paraphrases a message, it shall be re-typed by the Censor on an operating company form which shall be identical with the form used by the operating company in the transmission of the message to Censorship, and returned to the operating company for transmission or delivery.

(h) *Action not to be revealed.* All operating companies, their executives or employees, are required *not* to reveal the action taken by a censor on commercial traffic other than press dispatches, except by written permission of, and to the extent prescribed by, the Director of Censorship. (See § 1803.24.) The one exception to this rule is that *cancellation* of a message for any reason carries with it the requirement that the operating company notify the sender and consider a refund.

In this connection, before making delivery of a message, operating companies will insure that the delivery copy does not reveal any action of the censor, such as deletion, paraphrase, indication of a difference between the number of words charged for and the number of words delivered, passmarks, impressions of rubber stamps, etc.

(i) *Copies.* The operating companies may furnish a patron, upon request, a copy of previously delivered message, provided it was passed by the censor and is in the exact censored form and does not reveal any action of or change by the censor.*

§ 1803.12 *Credit.* When extending credit to the sender of a cablegram, operating companies will charge for the actual number of words filed, and not merely for the actual number of words transmitted. The entire number of words filed will be charged for even if the message is not returned by the censor for transmission. Credits for words not transmitted will be allowed only if and when permission to consider refund has been granted by the Director of Censorship.

*Collect messages.* In the case of a deleted "Receiver to Pay" or "Collect" cablegram, with the single exception of recognized Press Cablegrams, collection is required to be made for the actual number of words delivered, and not for the actual number of words transmitted.*

§ 1803.13 *Time of delivery.* No information regarding the fact or time of delivery of messages will be furnished to patrons without the permission of the Director of Censorship. (See § 1803.11 (h).) For this reason, patrons filing "reply prepaid" messages and communication companies which accept "collect" messages must do so at their own risk.*

§ 1803.14 *Complaints.* (a) When complaints are received by the operating companies as to errors in transmission, mutilation, omission, delay, etc., the following rules shall govern:

When the company ascertains that the difficulty was due to some irregularity or error made by it, or an affiliate, as a matter of company operation, the matter may be disposed of as the company sees fit, without reference either to the local censor or to the Director of Censorship.

When the company ascertains that the error or irregularity complained of is due to some action taken by a censor, the complaint is required to be referred to the Director of Censorship without, of course, disclosing to the cable patron that this has been done and without in either case entering into explanations. (See § 1803.11 (h).)

(b) When complaints of non-delivery are received by the operating companies, the matter is required to be referred to the Director of Censorship, and *no information* will be given out by the company. This course may be adhered to even though the company's records may show that the cablegram in question was passed by Censorship.

There is one exception to this rule: When a cablegram is cancelled by the censor, the company is expected to notify the sender. (See § 1803.11 (h).)*

§ 1803.15 *Refunds.* (a) The interest of Censorship in matters of refund extends only to the control of the possible revelation of the action of Censorship by the adjustment of a refund between an operating company and a patron. Where secrecy is necessary, refunds are not permissible, since they would disclose the fact that a message has been censored. Where secrecy is not necessary, the granting of a refund is not subject to objection *as far as Censorship is concerned.* If carriers, however, determine to make refunds in such cases, they must assume the responsibility that such action is consistent with the Communications Act of 1934, the rules, regulations and orders of the Federal Communications Commission, and the tariffs filed by the carriers.

(b) Requests for refund must be made to the operating company and not to Censorship. When such a request is made to a censor, he will reply that such request must be made to the company with which the message was filed for transmission, but the following rules will be observed:

(1) When requests for refunds are received by an operating company, they will not be considered until permission has been given by the Director of Censorship, except in the case of cancelled cablegrams. (See § 1803.11 (h))

(2) Each application for refund must be accompanied by a copy of the cablegrams with the full name and address of the addressee and sender thereof, and a written statement from the addressee

that a cablegram in question has not been delivered.

(c) The "U. S. Cable and Radio Censorship Regulations" (Regulation 4) provide that no information whatever concerning the treatment or disposition of a cablegram may be given to the public. Therefore, in forwarding to the Director of Censorship requests from cable users for refunds, it is unnecessary to inquire what explanations to make to the sender. The following procedure will be observed:

(1) In answer to a patron's request for information concerning the disposition of a message, or for a report of the service on a message, it will be understood that the company will reply stating that "U. S. Cable and Radio Censorship Regulations" forbid giving any information, calling attention to Regulation 4.

(2) The only inquiry that need then be forwarded to the Director of Censorship with refund papers will be whether or not the Director of Censorship grants permission to consider the patron's request.

(3) Letters regarding refunds are required in duplicate, and must be accompanied by supporting papers and data, including the original request from the cable user, statement of non-receipt of the message in question, and copy of the message. The reply will be simply that permission is or is not given, and no explanatory notes are required to be given by, nor expected from, the Director of Censorship.

(4) In order to avoid possible injustice, and inadvertent errors, it may be suggested to the patron that formal complaint in writing be made to the Director of Censorship, sending a copy of the message in question, a statement of the circumstances under which it was sent, explanation of the text, and full information concerning himself, his correspondent (addressee), his business, and any person or firm mentioned. Such complaints will be investigated carefully, but the Director of Censorship will rely upon the operating companies to see that care and discretion are employed in making such suggestions to patrons.*

§ 1803.16 *Code.* "U. S. Cable and Radio Censorship Regulations" prohibit the use of private codes. However, censors are instructed that the use of the communication company's private code may be permitted on the company's own circuit for official business, provided a copy of the code is in the possession of the censor. Field Censors may pass "service" messages themselves, if such messages are perfectly clear to them and legitimate. But nothing in this paragraph shall be construed as excepting such company messages in private code from the scrutiny and control of the censor.*

§ 1803.17 *Cable addresses.* (a) "U. S. Cable and Radio Censorship Regulations" prohibit the use of cable addresses until approved by the Director of Censorship. This means that all the cable addresses of all companies are no longer officially in existence.

(b) However, it may be expected that the Director of Censorship will announce a modification of that regulation.

(c) Censorship will not undertake to usurp the peacetime system of the registration of addresses, but will control it. Addresses will continue to be registered with the operating companies, and the companies will charge the proper fee for the service, but the companies will not accept new registrations, nor renew old ones, nor make any alterations, transfers, or changes of any kind, except upon the presentation by the applicant of the necessary authority from the Director of Censorship.

(d) Applicants for cable addresses, or for renewals, transfers, or changes, shall be instructed to apply in writing to the Director of Censorship for exactly what they want. The application must state:

(1) Exactly where they desire to register the address;

(2) Exactly the code word and its cable address that they desire to register; and

(3) That the substance of (2) is acceptable for registration at the place the registration is desired.

(e) When applications are granted, the Director of Censorship will so inform the applicant in writing, stating exactly what is granted. A copy of the letter of authority will be sent to the place where the registration is desired to be made. Before accomplishing the registration, the authority presented by the applicant must be checked against the copy from the Director of Censorship.

(f) If the papers are not in agreement, the registration will be rejected, and both copies of the authority will be returned to the Director of Censorship by the office rejecting the application, with an appropriate statement of the circumstances. This should be done without the knowledge of the applicant, if possible.

(g) In some cases, for well-known firms, organizations, and individuals, the Director of Censorship, in the interest of efficiency and time saving, may authorize future periodic renewals of registered addresses without further reference to him. Such cases will be handled with particular care by the registration bureaus. If periodic renewals are desired, the letter of application must cover this point in full. (See paragraph (d) of this section.)

(h) When a cable user or company submits evidence of the exclusive and continued use of an address, which has thereby become a business or personal asset, Censorship will gladly cooperate in confirming such a cable address.*

§ 1803.18 *Cable address records.* (a) All cable address records shall be opened and made available to censors at any time, both for their own information when required, and to enable Censorship to investigate old registrations when necessary in connection with applications for new registrations, or for any other reason.

(b) If the cable address is not available or on record with the company at the place of the Censorship Station, it must be obtained through the company's connections and affiliates.*

§ 1803.19 *Abstract of traffic.* The operating companies may be required by the Director of Censorship to furnish the Cable Censor at each Censorship Station a daily abstract of all international cable and radio traffic entering or leaving the country at said Censorship Stations or under the jurisdiction thereof, indicating for each message: (1) Number of words; (2) where from; (3) destination; (4) sent to (addressee); and (5) signed by.*

§ 1803.20 *Reports of suspicious circumstances.* The Director of Censorship and all local censors will welcome any information of suspicious circumstances in connection with the filing of messages. This may be a rare occurrence, but if it uncovers only one enemy effort it will be worth while. Agents of the operating companies may communicate such circumstances by MM on the message. It should be pointed out to said agents that they should not consider themselves as exercising the functions of Censorship, and should not alter or delay a message without the knowledge of the patron. Their action would be in the nature of that of any citizen rendering patriotic assistance to his government, which is the natural obligation of all citizens.*

§ 1803.21 *Fixed holiday greetings.* Hereafter no fixed greeting ("canned") messages or "XLT" messages will be accepted without the permission of the Director of Censorship, whose decision will be based upon existing circumstances and published in sufficient time prior to holidays.*

§ 1803.22 *Transmission of call letters, etc., to enemy-occupied territory.* No communication company will permit the transmission of any call letters, signals, service messages or any communication whatever intended for reception in enemy-occupied territory without the specific authority of the Censor in each case.*

§ 1803.23 *Diversion or rerouting of traffic.* Censors may divert traffic from one carrier to another, or reroute traffic, at their discretion, when such action is necessary in the public interest.*

§ 1803.24 *Press dispatches.* The following action is authorized in connection with the handling of press dispatches:

(a) Communications companies handling press dispatches are authorized to inform any recognized news agency and correspondent of the fact and the time of transmission of any bona fide news dispatch, including news service dispatch, filed by that agency or correspondent.

(b) The communication company may also inform the news agency or correspondent of the actual number of words transmitted in any of his news dispatches and may make arrangements with the news agency to charge for the number of words transmitted rather than for the number of words filed.

(c) Communication companies which offer their facilities to the press on a time basis may keep the news agencies informed of the copy on hand in order that available transmission time may be fully utilized.*

§ 1803.25 *Statements to patrons by telephone operators.* In connection with

international radiotelephone communications, when telephone operators are questioned by patrons as to the need for the information required, the patron may be told that the information is required under Government Regulations.*

February 19, 1942.

BYRON PRICE,
*Director.*

THE WHITE HOUSE,
*February 20, 1942.*

Approved:

FRANKLIN D ROOSEVELT

[F. R. Doc. 42-1593; Filed, February 23, 1942; 12:23 p. m.]

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## TITLE 46—SHIPPING

### CHAPTER III—WAR SHIPPING ADMINISTRATION

[General Order No. 1]

PART 301—REGULATIONS AFFECTING MARITIME CARRIERS

UNIFORM TIME CHARTER FOR ALL DRY CARGO VESSELS

Whereas, vessels in addition to those otherwise available are necessary for transportation of foreign commerce of the United States or of commodities essential to the national defense and to the prosecution of the war, and

Whereas, from time to time the War Shipping Administration will deem certain vessels suitable for such transportation;

Now, therefore;

§ 301.1 *Uniform time charter for all dry cargo vessels.* (a) The attached form of Time Charter consisting of Part I and Part II is hereby adopted as the uniform time charter for all dry cargo vessels.[1]

(b) Appropriate special provisions shall be inserted as the owner and the War Shipping Administration shall agree. (E.O. 9054, 7 F.R. 837)

E. S. LAND,
*Administrator.*

FEBRUARY 20, 1942.

[F. R. Doc. 42-1557; Filed, February 21, 1942; 11:45 a. m.]

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[General Order No. 2]

PART 301—REGULATIONS AFFECTING MARITIME CARRIERS

§ 301.2 *Information required from ship owners offered charters.* (a) All owners who are American citizens, within the meaning of section 2 of the Shipping Act, 1916, as amended, of ocean-going passenger and dry cargo vessels of one thousand gross register tons or more shall, and all such shipowners of other nationalities (except of nations with which the United States of America is at war) may, file with the War Shipping Administrator within ten days after the effective date hereof with respect to each of such vessels owned by them the following information as set forth in the following form:

WAR SHIPPING ADMINISTRATION,
*Washington, D.C.*
Attention: Charter Section.

VESSEL DATA

1. Name and Ex Names of Vessel: SS/MS_____
2. Flag_____ Official Number_____
3. (a) When Built____ (b) Classed_____ at_____
4. Present Owner (Correct Corporate Name) _____ Incorporated under laws of_____
5. If now under charter, name of charterer _____ Form of Charter (Bareboat or Time)_____ Period of Charter_____
6. Name and address for Notices and Payments under any Charter to United States_____
7. (a) Bulk Cargo Capacity:_____(grain/bale) cubic feet (b) Deadweight capacity for cargo, fresh water and stores _____ ton (of 2,240 lbs.), including permanent bunkers of_____ (tons/barrels) of fuel on mean draft (_____normal Summer freeboard) of _____ft. and____in.
8. Gross tonnage_____ (b) Net tonnage _____
9. Passenger Capacity by Classes_____
10. Capacity of Accommodations for Crew_____
11. Refrigerated Space for Commercial Cargo_____
    Temperature Range_____
12. Maximum Warranted Capacity of gear in tons:_____
13. Speed in Knots (U. S. Maritime Commission formula)_____
14. Daily Fuel Consumption at such speed_____
    State kind of fuel used_____
15. Horsepower_____ {Indicated / Shaft}
16. Any special features of the ship or any pertinent factors which the undersigned wishes to have considered in arranging terms and rate of hire:

The undersigned agrees to advise you of any changes in the foregoing information from time to time.

_____
By:_____
_____
(Date)

(b) Such information shall constitute the representations of the owner with respect to the vessel for which it is filed for the purposes of any charter which shall be offered by the Administrator to such owner.

(c) Where any such owner has heretofore filed any such information with the United States Maritime Commission, such information may be incorporated by reference in a letter setting forth so much of the foregoing information beyond that filed with said Commission as is required by this General Order. (E.O. 9054, 7 F.R. 837)

E. S. LAND,
*Administrator.*

FEBRUARY 20, 1942.

[F. R. Doc. 42-1558; Filed, February 21, 1942; 11:45 a. m.]

[1] Filed as part of the original document.

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## *Notices*

### WAR DEPARTMENT.

[AG 210.1 Sig. Corps (2-12-42) RB-A]

APPOINTMENTS OF SECOND LIEUTENANTS, ARMY OF THE UNITED STATES (SIGNAL CORPS)

1. Vacancies exist for the immediate appointment of a limited number of Second Lieutenants in the Army of the United States (Signal Corps) under the following conditions:

(a) Applicants must have a college degree or its practical equivalent in electrical engineering or electronic physics.

(b) Applicants for commissions may be civilians or enlisted personnel in any component of the Army of the United States in either active or inactive status.

(c) Applicants for commissions must be between 18 and 46 years of age, and must be able to meet the prescribed physical standards.

(d) Commissioned personnel who meet the physical and educational qualifications, and who wish to transfer to the signal Corps in grade, may make application therefor.

(e) Personnel commissioned under this authority will be ordered to active duty at Fort Monmouth, N. J., for a brief course of military instruction. Their training will be continued at other locations to be designated.

2. Applications will be submitted by letter to the Chief Signal Officer, Washington, D. C., giving name, address, age, military status, if any, and an outline of technical qualifications and experience. (Act of Sept. 22, 1941, Public Law 252, 77th Congress)

Dated: February 17, 1942.

[SEAL] E. S. ADAMS,
*Major General,*
*The Adjutant General.*

[F. R. Doc. 42-1552; Filed, February 21, 1942; 11:11 a. m.]

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### DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. B-211]

IN THE MATTER OF C. H. AMSLER AND C. W. AMSLER, INDIVIDUALLY AND AS CO-PARTNERS DOING BUSINESS AS C. H. AND C. W. AMSLER, A PARTNERSHIP, CODE MEMBER, DEFENDANTS

NOTICE OF AND ORDER FOR HEARING

A complaint dated February 5, 1942, pursuant to the provisions of sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, having been duly filed on February 10, 1942, by Bituminous Coal Producers Board for District No. 1, a District Board, complainant, with the Bituminous Coal Division alleging willful violation by the defendants of the Bituminous Coal Code or rules and regulations thereunder;

*It is ordered,* That a hearing in respect to the subject matter of such complaint be held on March 27, 1942, at 10 a. m., at a hearing room of the Bituminous Coal Division at Room 203, Post Office Building, Altoona, Pennsylvania.

*It is further ordered,* That Joseph A. Huston or any other officer or officers of the Bituminous Coal Division duly designated for that purpose shall preside at the hearing in such matter. The officer so designated to preside at such hearing is hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to such places as he may direct by announcement at said hearing or any adjourned hearing or by subsequent notice, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to said defendants and to all other parties herein and to all persons and entities having an interest in such proceeding. Any person or entity eligible under § 301.123 of the Rules and Regulations Governing Practice and Procedure Before the Bituminous Coal Division in Proceedings Instituted Pursuant to sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, may file a petition for intervention not later than five (5) days before the date herein set for hearing on the complaint.

Notice is hereby given, that answer to the complaint must be filed with the Bituminous Coal Division at its Washington office or with any one of the statistical bureaus of the Division, within twenty (20) days after date of service thereof on the defendants; and that any defendant failing to file an answer within such period, unless otherwise ordered, shall be deemed to have admitted the allegations of the complaint herein and to have consented to the entry of an appropriate order on the basis of the facts alleged.

All persons are hereby notified, that the hearing in the above-entitled matter and orders entered therein may concern, in addition to the matters specifically alleged in the complaint herein, other matters incidental and related thereto, whether raised by amendment of the complaint, petition for intervention, or otherwise, and all persons are cautioned to be guided accordingly.

The matter concerned herewith is in regard to the complaint filed by said complainant, alleging willful violation by the above-named defendants of the Bituminous Coal Code or rules and regulations thereunder as follows: That said defendants whose address is Marble, Pennsylvania, wilfully violated section 4 Part II (e) and (g) of the Act and Part II (e) and (g) of the Code by:

(a) Selling and delivering at $2.30 per net ton to the White Swan Laundry Company, Oil City, Pennsylvania, during the period June 23 to August 7, 1941, both dates inclusive, approximately 62 tons of run of mine coal, Size Group 3, produced by said defendants at their Amsler Mine, Mine Index No. 3138, located in Clarion County, Pennsylvania, in Subdistrict 1, District No. 1, whereas the applicable minimum price for said coal is $2.20 per net ton f. o. b. said mine as contained in the Schedule of Effective Minimum Prices for District No. 1 for Truck Shipments as amended by Order of the Director dated June 21, 1941, entered in Docket No. A-853, Part II;

(b) Selling and delivering at $2.30 per net ton to the White Swan Laundry Company, Oil City, Pennsylvania, during the period August 8 to August 15, 1941, both dates inclusive, approximately 20 tons of run of mine coal, Size Group 3, produced by said defendants at their aforesaid mine, whereas the applicable minimum price for said coal was $2.15 per net ton f. o. b. said mine as contained in said schedule as amended by Order of the Director dated August 8, 1941, in Docket No. A-356; and

(c) Selling and delivering at $3.00 per net ton to the Norwich Chemical Company, Smithport, Pennsylvania, during the period July 11 to 15, 1941, both dates inclusive, approximately 12 tons of run of mine coal, Size Group No. 3, produced by said defendants at said mine, whereas the applicable minimum price established for said coal was $2.20 per net ton f. o. b. said mine as contained in said schedule as amended by Order of the Director dated June 21, 1941, entered in Docket No. A-853, Part II.

The delivered price of $2.30 per net ton referred to in (a) and (b) hereof and the delivered price of $3.00 per net ton referred to in (c) hereof included haulage charges for transporting said coal by truck from said mine to said purchasers, the coal referred to in (a) and (b) hereof having been hauled approximately 20 miles and that referred to in (c) hereof, a distance of approximately 50 miles. Said defendants sold and delivered said coal contrary to the provisions of Price Instruction No. 6 as amended, in Supplement No. 1 to the Price Schedule referred to herein, by failing to add to the applicable minimum f. o. b. mine prices provided in said orders, amounts at least equal, as nearly as practicable, to the actual transportation charges, handling charges or incidental charges of whatsoever kind or character from the transportation facilities at the mine to the points from which all such charges were assumed and directly paid by the purchasers. Said transactions, therefore, constituted sales and deliveries of coal at prices below the minimums established therefor.

Dated: February 21, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1569; Filed, February 23, 1942; 11:15 a. m.]

[Docket No. B-219]

IN THE MATTER OF FREEBROOK CORPORATION, CODE MEMBER, DEFENDANT

NOTICE OF AND ORDER FOR HEARING

A complaint dated February 4, 1942, pursuant to the provisions of sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, having been duly filed on February 10, 1942, by Bituminous Coal Producers Board for District No. 1, a District Board, complainant, with the Bituminous Coal Division alleging willful violation by the defendant of the Bituminous Coal Code or rules and regulations thereunder;

*It is ordered,* That a hearing in respect to the subject matter of such complaint be held on March 26, 1942, at 10 a. m., at a hearing room of the Bituminous Coal Division at Room 203, Post Office Building, Altoona, Pennsylvania.

*It is further ordered,* That Joseph A. Huston or any other officer or officers of the Bituminous Coal Division duly designated for that purpose shall preside at the hearing in such matter. The officer so designated to preside at such hearing is hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to such places as he may direct by announcement at said hearing or any adjourned hearing or by subsequent notice, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to said defendant and to all other parties herein and to all persons and entities having an interest in such proceeding. Any person or entity eligible under § 301.123 of the Rules and Regulations Governing Practice and Procedure Before the Bituminous Coal Division in Proceedings Instituted Pursuant to sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, may file a petition for intervention not later than five (5) days before the date herein set for hearing on the complaint.

Notice is hereby given, that answer to the complaint must be filed with the Bituminous Coal Division at its Washington office or with any one of the statistical bureaus of the Division, within twenty (20) days after date of service thereof on the defendant; and that any defendant failing to file an answer within such period, unless otherwise ordered, shall be deemed to have admitted the allegations of the complaint herein and to have consented to the entry of an appropriate order on the basis of the facts alleged.

All persons are hereby notified, That the hearing in the above-entitled matter and orders entered therein may concern,

in addition to the matters specifically alleged in the complaint herein, other matters incidental and related thereto, whether raised by amendment of the complaint, petition for intervention, or otherwise, and all persons are cautioned to be guided accordingly.

The matter concerned herewith is in regard to the complaint filed by said complainant, alleging willful violation by the above-named defendant of the Bituminous Coal Code or rules and regulations thereunder as follows:

That said defendant, whose address is 293 Main Street, Brookville, Pennsylvania, wilfully violated section 4 Part II (e) of the Act, Part II (e) of the Code, and Rule 1 of Section III of the Marketing Rules and Regulations, by selling, during the period October 1, 1940 to February 28, 1941, both dates inclusive, at prices ranging from $2.05 per net ton f. o. b. the McWilliams Mine to $2.15 per net ton f. o. b. the Freebrook No. 7 Mine, approximately 27,249.35 tons of run of mine coal produced by said defendant at its Freebrook No. 7 Mine, Mine Index No. 664, located in Indiana County, Pennsylvania, in Subdistrict 5 of District No. 1 and at its McWilliams Mine, Mine Index No. 583, located in Armstrong County, Pennsylvania, in Subdistrict No. 11 of District No. 1, to the Pittsburg and Shawmut Coal Company, a Registered Distributor, Registration No. 7349, whose address is Kittanning, Pennsylvania, which coal was physically handled by said distributor and allowing said distributor unauthorized excessive distributor's discounts in the form of commissions, deductions for reject coal, amounts paid for railroad car stop-over, transfer, cleaning and sizing charges in the amount of $12,329.77 on coal purchased for resale. Said coal was classified as Size Group 3 in the Schedule of Effective Minimum Prices for District No. 1 For All Shipments Except Truck and priced at $2.15 per net ton f. o. b. the McWilliams Mine, and $2.25 per net ton f. o. b. the Freebrook No. 7 Mine.

That said defendant also wilfully violated Section 4 Part II (i) (8) of the Act, Part II (i) (8) of the Code and Rule 3 of Section XII and Rule 8 of section XIII of the Marketing Rules and Regulations, by filing on March 31, 1941, for the period of October 1, 1940 to February 28, 1941, copies 28, 1941, copies of false and untrue invoices with the Statistical Bureau for District No. 1, in that the transactions referred to above were reported as coal "sold to various railroads by the Pittsburg & Shawmut Coal Company, Kittanning, Pennsylvania," whereas in fact said coal was purchased by said Pittsburg & Shawmut Coal Company and shipped from said mines over the Pittsburg & Shawmut Railroad Company to the Ringgold Cleaning and Preparation Plant, located at Ringgold, Pennsylvania, cleaned, prepared, otherwise physically handled, and sold by the Pittsburgh & Shawmut Coal Company to various purchasers. Said Code member thereby subjected itself to the appropriate penalties prescribed by the Act, the Bituminous Coal Code and Section XIV of the Marketing Rules and Regulations by its wilful violation of said requirements.

That said defendant also wilfully violated Order No. 14 dated July 15, 1937, and adopted as an Order of the Division by the Secretary of the Interior on July 1, 1939, Rule 3 of Section V and Rule 7 of Section VI of the Marketing Rules and Regulations, in that said code member did not file with the Statistical Bureau for District No. 1 during the period October 1, 1940 to February 28, 1941 (a) copies of certain contracts entered into for the sale of coal to the Pittsburg & Shawmut Coal Company, Kittanning, Pennsylvania, within 15 days after enterng into said contracts and (b) copies of certain spot orders for the sales of coal, referred to above, to the Pittsburg & Shawmut Coal Company, Kittanning, Pennsylvania, accepted by said code member, within 10 days from the date of accepting said spot orders, as is prescribed in said orders and regulations.

Dated: February 21, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1570; Filed, February 23, 1942; 11:16 a. m.]

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[Docket No. A-1325]

PETITION OF BITUMINOUS COAL CONSUMERS' COUNSEL FOR THE ESTABLISHMENT OF THE SAME PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS PRODUCED AT MINES IN SUBDISTRICT 4 OF DISTRICT NO. 13 FOR SHIPMENTS BY RIVER AS ARE APPLICABLE TO SUCH COALS FOR TRUCK SHIPMENTS

NOTICE OF AND ORDER FOR HEARING

A petition, pursuant to the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party;

*It is ordered,* That a hearing in the above-entitled matter under the applicable provisions of said Act and the rules of the Division be held on March 16, 1942, at 10 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, Chancery Court Room, Chattanooga, Tennessee.

*It is further ordered,* That Joseph A. Huston or any other officer or officers of the Division duly designated for that purpose shall preside at the hearing in such matter. The officers so designated to preside at such hearing are hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to all parties herein and to persons or entities having an interest in this proceeding and eligible to become a party herein. Any person desiring to be admitted as a party to this proceeding may file a petition of intervention in accordance with the rules and regulations of the Bituminous Coal Division for proceedings instituted pursuant to section 4 II (d) of the Act, setting forth the facts on the basis of which the relief in the original petition is supported or opposed or on the basis of which other relief is sought. Such petitions of intervention shall be filed with the Bituminous Coal Division on or before March 11, 1942.

All persons are hereby notified that the hearing in the above-entitled matter, and any orders entered therein, may concern, in addition to the matters specifically alleged in the petition, other matters necessarily incidental and related thereto, which may be raised by amendment to the petition, petitions of intervention or otherwise, or which may be necessary corollaries to the relief, if any, granted on the basis of this petition.

The matter concerned herewith is in regard to the petition of Bituminous Coal Consumers' Counsel for the establishment of the same price classifications and minimum prices f. o. b. mine for the coals produced at mines in Subdistrict 4 of District No. 13 for shipments by river as are applicable to such coals for truck shipments.

Dated: February 21, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1571; Filed, February 23, 1942; 11:16 a. m.]

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[Docket No. B-204]

IN THE MATTER OF HERMAN J. MORRISON, CODE MEMBER, DEFENDANT

NOTICE OF AND ORDER FOR HEARING

A complaint dated January 8, 1942, pursuant to the provisions of sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, having been duly filed on January 24, 1942, by Bituminous Coal Producers Board for District No. 1, a District Board, complainant, with the Bituminous Coal Division alleging willful violation by the defendant of the Bituminous Coal Code or rules and regulations thereunder;

*It is ordered,* That a hearing in respect to the subject matter of such complaint be held on March 27, 1942, at 10 a. m., at a hearing room of the Bituminous Coal Division at Room 203, Post Office Building, Altoona, Pennsylvania.

*It is further ordered,* That Joseph A. Huston, or any other officer or officers of the Bituminous Coal Division duly designated for that purpose shall preside at the hearing in such matter. The officer so designated to preside at such hearing is hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, to continue

said hearing from time to time, and to such places as he may direct by announcement at said hearing or any adjourned hearing or by subsequent notice, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to said defendant and to all other parties herein and to all persons and entities having an interest in such proceeding. Any person or entity eligible under § 301.123 of the Rules and Regulations Governing Practice and Procedure Before the Bituminous Coal Division in Proceedings Instituted Pursuant to sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, may file a petition for intervention not later than five (5) days before the date herein set for hearing on the complaint.

Notice is hereby given, that answer to the complaint must be filed with the Bituminous Coal Division at its Washington office or with any one of the statistical bureaus of the Division, within twenty (20) days after date of service thereof on the defendant; and that any defendant failing to file an answer within such period, unless otherwise ordered, shall be deemed to have admitted the allegations of the complaint herein and to have consented to the entry of an appropriate order on the basis of the facts alleged.

All persons are hereby notified, that the hearing in the above-entitled matter and orders entered therein may concern, in addition to the matters specifically alleged in the complaint herein, other matters incidental and related thereto, whether raised by amendment of the complaint, petition for intervention, or otherwise, and all persons are cautioned to be guided accordingly.

The matter concerned herewith is in regard to the complaint filed by said complainant, alleging willful violation by the above-named defendant of the Bituminous Coal Code or rules and regulations thereunder as follows:

That the said defendant, Herman J. Morrison, whose address is Brockway, Pennsylvania, and who operates the Morrison Mine, Mine Index No. 1803, located in Jefferson County, Pennsylvania, in District No. 1, wilfully violated section 4 Part II (e) and (g) of the Act and Part II (e) and (g) of the Code by selling and delivering during the months commencing with October 1940 and including July 1941, to the Brockway Clay Products Company, Brockway, Pennsylvania, approximately 8,048 tons of run of mine coal produced by said defendant at said mine at $2.15 per net ton delivered to the said purchaser's plant at Brockway, a distance of 4 miles from said mine, whereas said coal was classified as Size Group 3 and priced at $2.15 per net ton f. o. b. said mine as shown in the Schedule of Effective Minimum Prices for District No. 1 for Truck Shipments, to which price there must be added an amount at least equal as nearly as practicable to the actual transportation charges, handling charges, or incidental charges of whatsoever kind or character (exclusive of customary costs of mine operations) from the transportation facilities at the said mine to the point from which all such charges were assumed and directly paid by the purchaser, pursuant to Price Instruction No. 6 of the said schedule, as amended.

That said defendant wilfully violated Orders Nos. 296 and 297, dated September 23, 1940 and October 22, 1940, respectively, by failing to comply with the provisions of said orders during the period from October 1, 1940 to January 1, 1941, in that said defendant failed to maintain and file with the Division, records, sales slips, other memoranda and reports on all coal sold and shipped by truck or wagon within the time and in the manner prescribed in said orders.

That said defendant wilfully violated Orders Nos. 307 and 308, dated December 11, 1940, and January 14, 1941, respectively, by failing to comply with the said orders during the period from January 1, 1941, to April 1941, in that the said defendant failed to maintain and file with the Division said records and data on all coal sold and shipped by truck or wagon within the time and in the manner prescribed in said orders.

That the said defendant wilfully violated Orders Nos. 308 and 312, dated January 14, 1941 and February 24, 1941, respectively, by failing to comply with the said orders during the period from April through July 1941, in that the said defendant failed to maintain and file with the Division certain records and data on all coal sold and shipped by truck or wagon within the time and in the manner prescribed in said orders.

Dated: February 20, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1572; Filed, February 23, 1942; 11:17 a. m.]

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[Docket No. B-186]

IN THE MATTER OF GEORGE B. REED AND J. S. WALLACE, INDIVIDUALLY AND AS CO-PARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF THE REED COAL COMPANY, CODE MEMBER, DEFENDANT

NOTICE OF AND ORDER FOR HEARING

A complaint dated January 13, 1942, pursuant to the provisions of sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, having been duly filed on January 15, 1942, by Bituminous Coal Producers Board for District No. 10, a District Board, complainant, with the Bituminous Coal Division alleging willful violation by the defendant of the Bituminous Coal Code or rules and regulations thereunder;

*It is ordered,* That a hearing in respect to the subject matter of such complaint be held on March 23, 1942, at 10 a. m., at a hearing room of the Bituminous Coal Division at the Circuit Court Room, Peoria, Illinois.

*It is further ordered,* That Edward J. Hayes or any other officer or officers of the Bituminous Coal Division duly designated for that purpose shall preside at the hearing in such matter. The officer so designated to preside at such hearing is hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to such places as he may direct by announcement at said hearing or any adjourned hearing or by subsequent notice, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to said defendant and to all other parties herein and to all persons and entities having an interest in such proceeding. Any person or entity eligible under § 301.123 of the Rules and Regulations Governing Practice and Procedure Before the Bituminous Coal Division in Proceedings Instituted Pursuant to sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, may file a petition for intervention not later than five (5) days before the date herein set for hearing on the complaint.

Notice is hereby given, that answer to the complaint must be filed with the Bituminous Coal Division at its Washington office or with any one of the statistical bureaus of the Division, within twenty (20) days after date of service thereof on the defendant; and that any defendant failing to file an answer within such period, unless otherwise ordered, shall be deemed to have admitted the allegations of the complaint herein and to have consented to the entry of an appropriate order on the basis of the facts alleged.

All persons are hereby notified, that the hearing in the above-entitled matter and orders entered therein may concern, in addition to the matters specifically alleged in the complaint herein, other matters incidental and related thereto, whether raised by amendment of the complaint, petition for intervention, or otherwise, and all persons are cautioned to be guided accordingly.

The matter concerned herewith is in regard to the complaint filed by said complainant, alleging willful violation by the above-named defendant of the Bituminous Coal Code or rules and regulations thereunder as follows:

1. That George B. Reed, 633 Custer Place, Canton, Illinois, and J. S. Wallace, 520 Harding Avenue, Detroit, Michigan, individually and as co-partners, doing business under the name and style of the Reed Coal Company, 633 Custer Place, Canton, Illinois, wilfully violated Section 4 II (e) of the Act and Part II (e) of the Code, section 4 II (i) 8 of the Act and Part II (i) 8 of the Code, Rule 8 of Section XIII of the Marketing Rules and Regulations, by selling to the Toledo, Peoria

and Western Railroad during the month of July 1941, through the Ed Fox Coal Company, Pekin, Illinois, Registered Distributor, Registration No. 3133, as sales agent for said code member, approximately two cars (Car Nos., T. P. & W. Nos. 452 and 466) of run of mine coal produced at the Reed Coal Company Mine, Mine Index No. 717, located in Fulton County, Illinois, at $1.40 per net ton f. o. b. railroad cars located in Glasford, Illinois, falsely invoicing it as screenings whereas said coal was classified as Size Group 7 and priced at $2.00 per net ton f. o. b. cars, Glasford, Illinois, as set forth in the Supplement annexed to and made a part of Order dated April 7, 1941, granting temporary and conditionally final relief in Docket No. A-770, which transactions constituted (a) sales of coal at prices which were 60 cents below the minimum established therefor; and (b) an intentional misrepresentation of the size of said coal.

2. That said code member wilfully violated Rule 13 of section II of the Marketing Rules and Regulations, by paying to the said Ed Fox Coal Company, Pekin, Illinois, a commission of 10 cents per net ton for sales on said code member's behalf of approximately four cars (Car Nos. C. B. & Q. No. 78331, C. B. & Q. No. 166116, T. P. & W. No. 452 and T. P. & W. No. 466) during the period from July 5, 1941 to July 16, 1941, both dates inclusive, which commissions were and are 5 cents per net ton in excess of the maximum discounts allowable to a registered distributor on sales of on-line railroad fuel as established by Order of the Director dated June 19, 1940, in General Docket No. 12, and which commissions were paid pursuant to a sales agency agreement entered into between said code member and said Ed Fox Coal Company on or about June 1, 1941, and filed with the Division on or about June 20, 1941, and although at the time of said transactions said code member had not filed an application for permission to pay commissions in excess of the maximum discounts allowable to a registered distributor, as required by Rule 13 of section II of the Marketing Rules and Regulations.

Dated: February 20, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1573; Filed, February 23, 1942; 11:17 a. m.]

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[Docket No. B-217]

IN THE MATTER OF LOUIS GODIN & CHARLES JOHNSON, INDIVIDUALLY AND AS CO-PARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF GODIN & JOHNSON, DEFENDANTS

NOTICE OF AND ORDER FOR HEARING

A complaint dated February 5, 1942, pursuant to the provisions of sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, having been duly filed on February 10, 1942, by Bituminous Coal Producers Board for District No. 1, a district board, complainant, with the Bituminous Coal Division alleging willful violation by the defendant of the Bituminous Coal Code or rules and regulations thereunder;

*It is ordered,* That a hearing in respect to the subject matter of such complaint be held on March 23, 1942, at 10 a. m., at a hearing room of the Bituminous Coal Division at Room 203, Post Office Building, Altoona, Pennsylvania.

*It is further ordered,* That Joseph A. Huston or any other officer or officers of the Bituminous Coal Division duly designated for that purpose shall preside at the hearing in such matter. The officer so designated to preside at such hearing is hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to such places as he may direct by announcement at said hearing or any adjourned hearing or by subsequent notice, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to said defendant and to all other parties herein and to all persons and entities having an interest in such proceeding. Any person or entity eligible under § 301.123 of the Rules and Regulations Governing Practice and Procedure Before the Bituminous Coal Division in Proceedings Instituted Pursuant to sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, may file a petition for intervention not later than five (5) days before the date herein set for hearing on the complaint.

Notice is hereby given, that answer to the complaint must be filed with the Bituminous Coal Division at its Washington office or with any one of the statistical bureaus of the Division, within twenty (20) days after date of service thereof on the defendant; and that any defendant failing to file an answer within such period, unless otherwise ordered, shall be deemed to have admitted the allegations of the complaint herein and to have consented to the entry of an appropriate order on the basis of the facts alleged.

All persons are hereby notified, that the hearing in the above-entitled matter and orders entered therein may concern, in addition to the matters specifically alleged in the complaint herein, other matters incidental and related thereto, whether raised by amendment of the complaint, petition for intervention, or otherwise, and all persons are cautioned to be guided accordingly.

The matter concerned herewith is in regard to the complaint filed by said complainant, alleging willful violation by the above-named defendant of the Bituminous Coal Code or rules and regulations thereunder as follows:

That the said defendants, whose addresses are Houtzdale, Pennsylvania, and whose code membership became effective as of November 8, 1939, wilfully violated sections 4 II (e) and (g) of the Bituminous Coal Act of 1937 and Parts II (e) and (g) of the Bituminous Coal Code as follows: (a) by selling and delivering to the Woodward Township School District during the period from October 22, 1940, to March 5, 1941, both dates inclusive, approximately 58.45 tons of run of mine coal produced by said defendants at their Atlantic No. 3 Mine, Mine Index No. 2319, located in Clearfield County, Pennsylvania, in Subdistrict 14 of District No. 1, at a price of $2.25 per net ton f. o. b. the bins of said School District located in Clearfield County, Pennsylvania, a distance of approximately 3.5 miles from said mine, whereas said coal was classified as Size Group 3 and priced at $2.25 per net ton f. o. b. said mine as set forth in Supplement No. 2 to the Schedule of Effective Minimum Prices for District No. 1 for Truck Shipments; and (b) by failing to add to the applicable f. o. b. mine price provided in said supplement an amount at least equal, as nearly as practicable, to the actual transportation charges, handling charges or incidental charges of whatsoever kind or character (exclusive of customary costs of mine operation) from the transportation facilities at the mine to the above-named School District, as required by Price Instruction No. 6 as amended by Supplement No. 1 to said schedule.

Dated: February 20, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1574; Filed, February 23, 1942; 11:17 a. m.]

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[Docket No. B-146]

IN THE MATTER OF ZIMMERMAN COAL COMPANY, REGISTERED DISTRIBUTOR, REGISTRATION NO. 9985, RESPONDENT

ORDER POSTPONING HEARING

The above-entitled matter having heretofore been scheduled for hearing on March 5, 1942, at 10:00 a. m. at a hearing room of the Bituminous Coal Division at the Post Office Building, Terre Haute, Indiana; and

It appearing to the Acting Director that it is advisable to postpone said hearing;

*Now, therefore, it is ordered,* That the above-entitled matter be, and the same hereby is postponed from 10:00 o'clock in the forenoon of March 5, 1942, to a date and place to be hereafter designated by an appropriate Order of the Division.

Dated: February 21, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1575; Filed, February 23, 1942; 11:18 a. m.]

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[Docket No. B-185]

IN THE MATTER OF OLD BEN COAL CORPORATION, REGISTERED DISTRIBUTOR, REGISTRATION NO. 6983

ORDER POSTPONING HEARING

The above-entitled matter having been heretofore scheduled, by Order dated

January 26, 1942, for hearing at 10:00 a. m. on March 2, 1942, at a hearing room of the Bituminous Coal Division in Room 705, United States Custom Court Building, Chicago, Illinois; and

Said Old Ben Coal Corporation having requested the postponement of said hearing; and

The Acting Director deeming it advisable that said hearing be postponed;

*Now, therefore, it is ordered,* That the hearing in the above-entitled matter be and the same is hereby postponed to a date and place to be hereafter designated by a proper Order.

Dated: February 20, 1942.

[SEAL] DAN H. WHEELER, *Acting Director.*

[F. R. Doc. 42-1576; Filed, February 23, 1942; 11:18 a. m.]

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[Docket No. B-98]

IN THE MATTER OF H. G. LUCAS, CODE MEMBER, DEFENDANT

ORDER REVOKING AND CANCELLING CODE MEMBERSHIP

District Board 1 having filed a complaint with the Bituminous Coal Division on November 19, 1941, pursuant to the provisions of sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, alleging wilful violation by Harry G. Lucas,[1] a code member, of the Bituminous Coal Code and the rules and regulations thereunder as follows:

That the defendant, with full knowledge of the requirements contained in the Schedule of Effective Minimum Prices for District 1 for Truck Shipments, and with intent to violate the same and in violation thereof, sold coal falling within the description of Size Group 3 (Mine Run Coal), produced by the defendant at his Lucas Mine, Mine Index No. 1702, in District 1, at a price of $2.00 per net ton f. o. b. the mine, when the effective minimum price applicable thereto was $2.20 per net ton f. o. b. the mine;

Pursuant to Orders of the Director and the Acting Director and after notice to all interested persons, a hearing having been held in this matter on December 15, 1941, before Joseph A. Huston, a duly designated Examiner of the Division at a hearing room thereof;

All parties having joined in waiving the preparation and filing of a report by the Examiner; the record of the proceeding thereupon having been submitted to the undersigned for consideration; the undersigned having made Findings of Fact, Conclusions of Law and having rendered an Opinion, which are filed herewith;[2]

*Now, therefore, it is ordered,* That effective fifteen (15) days from the date of this order the code membership of the defendant, Harry G. Lucas, be and it hereby is cancelled.

*It is further ordered,* That prior to the reinstatement of the defendant to membership in the Code there shall be paid to the United States a tax, as provided in section 5 (c) of the Act, in the amount of $794.51.

Dated: February 20, 1942.

[SEAL] DAN H. WHEELER, *Acting Director.*

[F. R. Doc. 42-1577; Filed, February 23, 1942; 11:18 a. m.]

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[Docket No. B-72]

IN THE MATTER OF THE B & B COAL COMPANY, A CORPORATION, REGISTERED DISTRIBUTOR, REGISTRATION NO. 0339, RESPONDENT

ORDER FOR RESTORATION OF REGISTRATION

The Acting Director having entered an Order in the above-entitled matter dated January 5, 1942, suspending the registration of the respondent, The B & B Coal Company, as a distributor, Registration No. 0339, for a period of thirty (30) days from the date of service of said Order; and

Said Order having been served upon the respondent on January 12, 1942; and

The B & B Coal Company, respondent herein, having duly filed with the Division on February 7, 1942, an affidavit dated February 5, 1942, pursuant to the provisions of said Order dated January 5, 1942, and § 304.15 of the Rules and and Regulations for the Registration of Distributors; and

It appearing to the Acting Director that said affidavit of The B & B Coal Company sufficiently complies with the provisions of said Order dated January 5, 1942, and § 304.15 of the Rules and Regulations for the Registration of Distributors;

*Now, therefore, it is ordered,* That the registration of The B & B Coal Company as a distributor, be, and it is hereby restored as of February 12, 1942.

Dated: February 19, 1942.

[SEAL] DAN H. WHEELER, *Acting Director.*

[F. R. Doc. 42-1578; Filed, February 23, 1942; 11:19 a. m.]

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APPLICATIONS FOR REGISTRATION AS DISTRIBUTORS

An application for registration as a distributor has been filed by each of the following and is under consideration by the Acting Director:

| *Name and address* | *Date application filed* |
|---|---|
| Haverhill Coal Co., 1606 First Nat'l Bank Bldg., Pittsburgh, Pa | Feb. 9, 1942 |
| M. L. Hoekstra, Hoekstra Coal & Supply, 228 E. Parson St., Galion, Ohio | Feb. 10, 1942 |
| Michigan Foundation Co., Inc., 110 W. Jefferson Ave., Trenton, Mich | Feb. 7, 1942 |
| Speed Shipping Co., 16½ E. Government St., Pensacola, Fla | Feb. 4, 1942 |
| John R. Taylor, Madisonville, Ky | Feb. 4, 1942 |
| L. M. Muldrow, Walker Coal Sales Co., Jasper, Ala | Feb. 11, 1942 |
| Wilmington Coal Mng. Corp., Morris, Ill | Feb. 9, 1942 |
| Francis P. Young, Francis P. Young Coal Co., 2600 N. American St., Philadelphia, Pa | Feb. 4, 1942 |

Any district board, code member, distributor, the Consumers' Counsel, or any other interested person, who has pertinent information concerning the eligibility of any of the above-named applicants for registration as distributors under the provisions of the Bituminous Coal Act and the Rules and Regulations for the Registration of Distributors, is invited to furnish such information to the Division on or before March 23, 1942. This information should be mailed or presented to the Bituminous Coal Division, 734 15th Street NW., Washington, D. C.

Dated: February 21, 1942.

[SEAL] DAN H. WHEELER, *Acting Director.*

[F. R. Doc. 42-1579; Filed, February 23, 1942; 11:19 a. m.]

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[Docket No. B-213]

IN THE MATTER OF THOMAS B. BLEAKNEY, AN INDIVIDUAL, CODE MEMBER, DEFENDANT

NOTICE OF AND ORDER FOR HEARING

A complaint dated February 5, 1942, pursuant to the provisions of sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, having been duly filed on February 10, 1942, by Bituminous Coal Producers Board for District No. 1, a District Board, complainant, with the Bituminous Coal Division alleging willful violation by the defendant of the Bituminous Coal Code or rules and regulations thereunder;

*It is ordered,* That a hearing in respect to the subject matter of such complaint be held on March 25, 1942, at 10 a. m., at a hearing room of the Bituminous Coal Division at Room 203, Post Office Building, Altoona, Pennsylvania.

*It is further ordered,* That Joseph A. Huston or any other officer or officers of the Bituminous Coal Division duly designated for that purpose shall preside at the hearing in such matter. The officer so designated to preside at such hearing is hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to such places as he may direct by announcement at said hearing or any adjourned hearing or by subsequent notice, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to said defendant and to all other parties herein and to all persons and entities having an interest in such proceeding. Any person or entity eligible under § 301.123 of the Rules and Regulations Governing Practice and Procedure Before the Bituminous Coal Division in Proceedings Instituted Pursuant to sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, may file a petition for intervention not later than five (5) days

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[1] Harry G. Lucas and H. G. Lucas are one and the same person.

[2] Not filed with the original document.

before the date herein set for hearing on the complaint.

Notice is hereby given, that answer to the complaint must be filed with the Bituminous Coal Division at its Washington office or with any one of the statistical bureaus of the Division, within twenty (20) days after date of service thereof on the defendant; and that any defendant failing to file an answer within such period, unless otherwise ordered, shall be deemed to have admitted the allegations of the complaint herein and to have consented to the entry of an appropriate order on the basis of the facts alleged.

All persons are hereby notified, that the hearing in the above-entitled matter and orders entered therein may concern, in addition to the matters specifically alleged in the complaint herein, other matters incidental and related thereto, whether raised by amendment of the complaint, petition for intervention, or otherwise, and all persons are cautioned to be guided accordingly.

The matter concerned herewith is in regard to the complaint filed by said complainant, alleging willful violation by the above-named defendant of the Bituminous Coal Code or rules and regulations thereunder as follows:

That said defendant, whose address is Shelocta, Pennsylvania, wilfully violated section 4, Part II (e) of the Act and Part II (e) of the Code

(a) By selling to various purchasers during the period from October 1, 1940, to November 25, 1940, both dates inclusive, approximately 68.9 tons of run of mine coal produced by said defendant at his Bleakney Mine, Mine Index No. 1107, located in Armstrong County, Pennsylvania, in Subdistrict 22 of District No. 1, at $1.875, $2.00 and $2.125 per net ton, whereas said coal was classified as Size Group No. 3 and priced at $2.15 per net ton f. o. b. the mine in the Schedule of Effective Minimum Prices for District No. 1 For Truck Shipments; and

(b) By selling to C. E. Coblers, whose address is Indiana, Pennsylvania, on or about November 11, 1940, approximately 1,600 pounds (.8 net tons) of slack sized coal produced by said defendant at his said mine at $1.75 per net ton f. o. b. the mine, contrary to the provisions of Price Instruction No. 4 of the Schedule referred to in (a) hereof, whereas the size of said coal falls within a size group for which no price is listed; therefore, such size should have been sold at the price and classification applicable to the size group for the next larger size for which a price is listed for the same mine; therefore, said coal should have been sold at $2.15 per net ton f. o. b. said mine.

That said defendant also wilfully violated Orders Nos. 296 and 297, dated September 23, 1940, and October 22, 1940, respectively, by failing, during the month of December, 1940, to maintain and file with the Bituminous Coal Division copies of all records, sales slips, other memoranda and reports relating to sales and shipments of bituminous coal produced by said code member.



That said defendant also wilfully violated Orders Nos. 307, 308 and 312 dated December 11, 1940, January 14, 1941, and February 24, 1941, respectively, by failing, during the period from January 1, 1941, to April 1, 1941, both dates inclusive, in violation of Orders Nos. 307 and 308 and from April 2, 1941, to date, in violation of Orders Nos. 308 and 312, to maintain and file with the Statistical Bureau of the Division for District No. 1, as is prescribed in said Orders, copies of all truck tickets, sales slips, other memoranda or records relating to sales and shipments of bituminous coal produced by said code member and shipped by truck or wagon.

Dated: February 21, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1603; Filed, February 24, 1942; 10:21 a. m.]

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[Docket No. A-1256]

PETITION OF DISTRICT BOARD NO. 18 FOR THE ESTABLISHMENT AND THE REVISION OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF CERTAIN MINES AND FOR THE REVISION OF CERTAIN SUBDISTRICT CLASSIFICATIONS IN DISTRICT NO. 18

MEMORANDUM OPINION AND ORDER GRANTING TEMPORARY RELIEF AND NOTICE OF AND ORDER FOR HEARING

An original petition, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, has been duly filed with this Division by the above-named party. The petitioner requests relief, both temporary and permanent, in the following matters:

(1) The establishment of price classifications and minimum prices for the coals of certain mines in Valencia County, New Mexico, and in Subdistrict No. 2 in District No. 18, for shipment by truck.

(2) The establishment of price classifications and minimum prices for the coals of certain mines in Subdistrict No. 8 in District No. 18, for shipment by truck. The petition alleges that these mines, fifteen in number, are operated by new acceptants of the Bituminous Coal Code; that the coals of four of them possess marketing factors similar to the previously classified and priced coals in Subdistrict 8; that the coals of eleven of those mines possess marketing factors superior to and values in excess of the previously classified and priced coals in that subdistrict and, consequently, should be subject to minimum prices in excess of the prices that are applicable to the latter coals.

(3) The revision of the effective minimum prices for the coals, for shipment by truck, being produced in Subdistrict No. 8. The petition alleges that the effective minimum prices for those coals are based upon and reflect their past depressed market values which were the result of competition with the heretofore unpriced coals produced by the new code acceptants mentioned in paragraph (2) hereof; that due to the elimination of that unregulated competition by reason of the fifteen operators having joined the Code, and in order to reflect more accurately the relative market value of those coals as compared with competing coals produced in other subdistricts, the effective minimum prices for the Subdistrict No. 8 coals should be raised, in Size Group 2, from $2.50 to $3.00 per ton and in Size Group 11, from 50 cents to 75 cents per ton.

(4) The revision of the boundaries of Subdistrict No. 1—Gallup in District No. 18. The petition alleges that one of the mines referred to in paragraph (1) hereof, namely the Taylor Mine, is located in Valencia County, New Mexico, which county is not presently within any subdistrict in District No. 18; that the coals of the Taylor Mine possess marketing factors similar to those previously priced and produced generally in Subdistrict No. 1—Gallup and that, accordingly, the boundaries of that subdistrict should be extended to include Valencia County.

(5) The revision of the boundaries of Subdistrict No. 8—San Juan in District No. 18. The petition alleges that the group of eleven mines mentioned in paragraph (2) hereof, the coals of which are allegedly superior to the other coals being produced in Subdistrict No. 8, are located in the territory described as follows:

> That part of San Juan County, New Mexico, lying north of the San Juan River and west of the Hogback; and

that such territory should be excluded from Subdistrict No. 8 and should be classified as Subdistrict No. 10.

(6) The revision of the effective minimum price for the coals in Size Group 9, and the establishment of a minimum price for the coals in Size Group 11 produced at the Kinney No. 1 Mine (Mine Index No. 12) in Subdistrict No. 6 in District No. 18 for all shipments.

The petition does not set forth sufficient facts to warrant the granting of any relief prior to a hearing with respect to the requested revisions of the subdistrict boundaries or the requested revisions of the presently effective minimum prices for coals being produced in Subdistricts Nos. 6 and 8. It appears, however, that an adequate showing of necessity has been made for the granting of temporary relief with respect to the establishment of price classifications and minimum prices for the coals to be produced at the mines operated by the new code acceptants in Valencia County, New Mexico, and in Subdistricts Nos. 2 and 8; also, as to such Subdistrict No. 8 coals, that the minimum prices should reflect the alleged differentials, in their market values, but that the level of such prices should be based upon and correlated with the level of the presently effective minimum prices for the coals of the other mines in Subdistrict 8 rather than the higher price level requested for the latter coals.

The petition also requests the establishment of minimum prices for coals in additional size groups being produced in

Subdistrict No. 8. It appears that an adequate showing of necessity has been made for the granting of temporary relief in this respect but that the level of such prices should be based upon and correlated with the level of the presently effective minimum prices for those coals in other size groups rather than the higher price level requested for those coals.

*It is ordered,* That a hearing in the above-entitled matter under the applicable provisions of said Act and the rules of the Division be held on March 23, 1942, at 10 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, 734 Fifteenth Street NW., Washington, D. C. On such day the Chief of the Records Section in room 502 will advise as to the room where such hearing will be held.

*It is further ordered,* That W. A. Cuff or any other officer or officers of the Division duly designated for that purpose shall preside at the hearing in such matter. The officers so designated to preside at such hearing are hereby authorized to conduct said hearing to administer oaths and affirmations, examine witnesses, subpoena witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to prepare and submit proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to all parties herein and to persons or entities having an interest in this proceeding and eligible to become a party herein. Any person desiring to be admitted as a party to this proceeding may file a petition of intervention in accordance with the rules and regulations of the Bituminous Coal Division for proceedings instituted pursuant to section 4 II (d) of the Act, setting forth the facts on the basis of which the relief in the original petition is supported or opposed or on the basis of which other relief is sought. Such petitions of intervention shall be filed with the Bituminous Coal Division on or before March 18, 1942.

All persons are hereby notified that the hearing in the above-entitled matter and any orders entered therein, may concern, in addition to the matters specifically alleged in the petition, other matters necessarily incidental and related thereto, which may be raised by amendment to the petition, petitions of intervention or otherwise, or which may be necessary corollaries to the relief, if any, granted on the basis of this petition.

The matter concerned herewith is in regard to the petition of District Board No. 18 for:

(1) The establishment of price classifications and minimum prices in cents per net ton for the coals, for shipment by truck, of the Mount Taylor Mine of T. J. Coghill in Valencia County, New Mexico, as follows:

| Size groups | 1 | 2 | 4 | 6 | 7 | 8 | 9 | 11 | 12 | 13 | 15 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Prices | 450 | 425 | 400 | 350 | 325 | 300 | 240 | 190 | 170 | 130 | 325 |

(2) The establishment of price classifications and minimum prices in cents per net ton for the coals, for shipment by truck, of the Omero Mine of Antonio Simoni in Subdistrict No. 2 in District No. 18, as follows:

| Size groups | 1 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 11 | 12 | 13 | 14 | 15 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Prizes | 385 | 375 | 370 | 350 | 350 | 325 | 300 | 215 | 190 | 170 | 130 | 325 | 326 |

(3) The establishment of a minimum price of $2.50 per net ton for the coals in Size Group 11 and an increase from $2.15 to $2.50 per net ton in the effective minimum prices for the coals in Size Group 9 produced at the Kinney Mine No. 1 (Mine Index No. 12) in Subdisirict No. 6 in District No. 18, for all shipments:

(4) The establishment of price classifications and minimum prices in cents per net ton for the coals of Mine No. 6 of the Clah Chee Begay, of Mine No. 5 of Juan Begay, of Mine No. 3 of Thomas Dan and of Mine No. 4 of Warner Watson, those mines being located in Subdistrict No. 8 in District No. 18, for shipment by truck, as follows:

| Size groups | 1 | 2 | 8 | 9 | 10 | 11 | 15 |
|---|---|---|---|---|---|---|---|
| Prices | 350 | 300 | 175 | 150 | 100 | 75 | 200 |

(5) The establishment of price classifications and minimum prices in cents per net ton for the coals of Mine No. 10 of Ben Begay, of Mine No. 11 of Fred Begay, of Mine No. 1 of Cuyler Benally, of Mine No. 8 of Daniel Benally, of Mine No. 9 of Mark Dan, of Mine No. 5 of Shorty Duncan, of Mine No. 7 of Tom Foster, of Mine No. 3 of Richard Hobson, of Mine No. 2 of Tom Lee, of Mine No. 4 of H. B. Lewis and of Mine No. 6 of Jim Smart in Subdistrict 10 of District No. 18, for shipment by truck, as follows:

| Size groups | 1 | 2 | 8 | 9 | 10 | 11 | 15 |
|---|---|---|---|---|---|---|---|
| Prices | 375 | 325 | 200 | 175 | 125 | 100 | 225 |

(6) Revision of the effective minimum prices for the coals in certain size groups produced at all mines in Subdistrict No. 8 in District No. 18, and, more particularly, for an increase from $2.50 to $3.00 and from 50 cents to 75 cents per net ton for those coals in Size Groups 2 and 11, respectively:

(7) Revision of the boundaries of Subdistrict No. 1—Gallup in District No. 18 to include therein Valencia County, New Mexico;

(8) Revision of the boundaries of Subdistrict No. 8—San Juan in District No. 18 to exclude therefrom and to place within a new subdistrict that part of San Juan County, New Mexico, lying north of the San Juan River and west of the Hogback and to designate that territory as Subdistrict No. 10—Hogback.

No petitions of intervention having been filed with the Division in the above-entitled matter and, as indicated above, a reasonable showing of necessity having been made for the granting of temporary relief in the manner hereinafter set forth and the following action being deemed necessary in order to effectuate the purposes of the Act;

*It is further ordered,* That, pending final disposition of the above-entitled matter, the temporary relief is granted as follows: Commencing forthwith, the Schedule of Effective Minimum Prices for District No. 18 For All Shipments is supplemented to include the price classifications and minimum prices set forth in the Schedule marked "Supplement R and T" annexed hereto and hereby made a part hereof.

Notice is hereby given that applications to stay, terminate or modify the temporary relief granted herein, may be filed pursuant to the Rules and Regulations Governing Practice and Procedure before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

Dated: February 23, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1604; Filed, February 24, 1942 10:21 a. m.]

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[Docket No. B-142]

IN THE MATTER OF SAHARA COAL COMPANY, CODE MEMBER, DEFENDANT

ORDER EXTENDING TIME TO FILE APPLICATION BASED UPON ADMISSIONS FOR DISPOSITION OF COMPLIANCE PROCEEDING WITHOUT FORMAL HEARING, EXTENDING TIME TO FILE ANSWER, AND POSTPONING HEARING

The above-entitled matter having been scheduled for hearing on February 27, 1942, at 10 o'clock a. m. at a hearing room of the Bituminous Coal Division at Room 705, United States Customs Court, Chicago, Illinois, pursuant to a Notice of and Order for Hearing entered herein on January 14, 1942, and said Notice of and Order for Hearing having been served upon defendant on January 23, 1942; and

A motion having been filed by said defendant on February 14, 1942 requesting an extension of time within which to file its answer to the complaint herein from February 12 to February 21, 1942; and

The defendant having filed with the Division on February 16, 1942 a request for an extension of time within which to file its application for disposition of the above-entitled proceeding without formal hearing, pursuant to § 301.132 of the Rules and Regulations of the Division, and having submitted therewith such application; and

The Acting Director deeming it advisable that said motion and request of the defendant, respectively, be granted and that under such circumstances the hearing herein be postponed;

*Now, therefore, it is ordered,* That the time within which defendant must file its verified application pursuant to said § 301.132 of the Rules of Practice and Procedure Before the Division, be and the same hereby is extended to and including February 16, 1942, the date on which said application was submitted;

*It is further ordered,* That the time within which defendant shall file its answer herein be and it hereby is extended to a date ten days after the date of final determination on said verified application pursuant to § 301.132 (f) of the Rules of Practice and Procedure Before the Division; and

*It is further ordered,* That the hearing in the above-entitled matter be postponed from 10 a. m. on February 27, 1942 to a date and place to be hereafter designated by an appropriate order of the Division.

Dated: February 23, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1605; Filed, February 24, 1942; 10:21 a. m.]

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[Docket Nos. B-192, B-194]

IN THE MATTERS OF IRA P. FOSTER, AND SCOTT L. REARICK, CODE MEMBERS, DEFENDANTS

ORDER ADVANCING AND CONSOLIDATING HEARINGS

The above-entitled matters having been heretofore scheduled for hearings on March 10, 1942, at 10 a. m. at a hearing room of the Bituminous Coal Division at the Armstrong County Court House, Kittanning, Pennsylvania, by Orders of the Acting Director, dated February 2, 1942, and February 3, 1942, respectively; and

By Waiver and Agreement filed with the Division on February 18, 1942, each of said defendants having waived the thirty (30) days' written notice of the issues and date of the respective hearings, and requested that the above-entitled matters be consolidated and heard jointly with the matters of O. E. Houser, et al., Dockets Nos. B-172, et al., heretofore set for hearing on February 24, 1942, at 10 a. m. at a hearing room of the Bituminous Coal Division at the Armstrong County Court House at Kittanning, Pennsylvania, pursuant to an Order of the Acting Director dated February 5, 1942, and said defendants, having waived and relinquished all rights with respect to the advancement and consolidation of the hearings in the above-entitled matters, the conduct of said hearings, and in all other respects; and

The Acting Director deeming it advisable that the requests to advance and consolidate the hearings in the above-entitled matters should be granted;

*Now, therefore, it is ordered,* That the hearings in the above-entitled matters be, and the same hereby are, advanced from 10 a. m. on March 10, 1942, to 10 a. m. on February 24, 1942, at a hearing room of the Bituminous Coal Division at the Armstrong County Court House at Kittanning, Pennsylvania, and before the officer or officers heretofore designated to preside; and

*It is further ordered,* That the above-entitled matters are hereby consolidated for the purpose of hearing only with the matters of O. E. Houser, et al., Dockets No. B-172, et al., heretofore set for hearing on February 24, 1942, at 10 a. m. at a hearing room of the Bituminous Coal Division at the Armstrong County Court House, Kittanning, Pennsylvania, pursuant to an order of the Acting Director dated February 5, 1942; and

*It is further ordered,* That the Notices of and Orders for Hearings in the above-entitled matters, dated February 2, 1942, and February 3, 1942, respectively, shall in all other respects remain in full force and effect.

Dated: February 21, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1606; Filed, February 24, 1942; 10:21 a. m.]

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[Docket No. 1744-FD]

IN THE MATTER OF CARL NYMAN, DEFENDANT

ORDER REVOKING AND CANCELLING CODE MEMBERSHIP

A complaint having been filed with the Bituminous Coal Division on June 16, 1941, by District Board 20, pursuant to sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937 alleging wilful violation by Carl Nyman (National Coal Mine), a code member in District 20, the defendant, of the Bituminous Coal Code and rules and regulations thereunder, as follows:

That on various dates since January 9, 1941, the defendant sold and delivered various amounts of 1⅝" lump and slack coal produced at defendant's mine (Mine Index No. 179) to various purchasers, at prices below the effective minimum price established for such coal;

Pursuant to an Order of the Acting Director and after notice to interested persons, a hearing in this matter having been held before D. C. McCurtain, a duly designated Examiner of the Division, at a hearing room thereof, in Price, Utah, at which all interested persons were afforded an opportunity to be present, adduce evidence, cross-examine witnesses and otherwise be heard, and the complainant and the defendant having appeared at the hearing;

The preparation of a report by the Examiner having been waived and the record in the proceedings having thereupon been submitted to the undersigned;

The undersigned having made Findings of Fact and Conclusions of Law and having rendered an Opinion in this matter, which are filed herewith;[1]

*Now, therefore, it is ordered,* That, effective fifteen (15) days from the date of this Order, the code membership of the defendant, Carl Nyman (National Coal Mine), operating in Carbon County, Utah, District 20, be, and it hereby is, revoked and cancelled.

*It is further ordered,* That prior to any reinstatement of the defendant, Carl Nyman (National Coal Mine), to membership in the Code, the defendant shall pay to the United States a tax in the amount of $114.60, as provided in section 5 (c) of the Bituminous Coal Act of 1937.

Dated: February 23, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1607; Filed, February 24, 1942; 10:22 a. m.]

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[Docket No. 1872-FD]

IN THE MATTER OF THE APPLICATIONS OF WHEELING VALLEY COAL CORPORATION FOR PERMISSION TO PAY, UNDER CERTAIN SALES AGENCY CONTRACTS, SALES AGENTS' COMMISSIONS IN EXCESS OF THE AMOUNTS PRESCRIBED AS MAXIMUM DISTRIBUTORS' DISCOUNTS, AS PROVIDED BY RULE 13, SECTION II OF THE MARKETING RULES AND REGULATIONS

ORDER GRANTING REQUEST FOR DISMISSAL OF HEARING AND DENYING PERMISSION TO PAY SALES AGENCY COMMISSIONS IN EXCESS OF MAXIMUM DISCOUNTS ALLOWED REGISTERED DISTRIBUTORS

An application having been filed by the Wheeling Valley Coal Corporation, Wheeling, West Virginia, pursuant to Rule 13 of Section II of the Marketing Rules and Regulations, for permission to pay agency commissions to the Pocahontas Coal Corporation, C. M. Cross Coal Sales Company, Davis Wilson Coal Company, Milnes Coal Company, Delaware Fuel Corporation, Scotch Anthracite Coal Company, and the Millar Coal Company, sales agents,[2] in excess of the maximum discounts allowed to registered distributors;

The Director having determined, pursuant to the provisions of Rule 13, Section II of the Marketing Rules and Regulations, that the granting of the permission requested in the application of the Wheeling Valley Coal Corporation to pay sales agency commissions should be deferred until further order of the undersigned and that the applicant should not be permitted to pay such sales agency commissions pending further proceedings and orders of this matter;

The said applicant, a code member in District No. 6, having requested by letter

[1] Not filed with the original document.

[2] These companies are, in fact, sub-sales agents of the Wheeling Valley Coal Corporation. The Costanzo Coal Mining Company is the general sales agent for the applicant.

dated September 22, 1941, that it be afforded hearing on said applications; a hearing in this matter having been called for December 1, 1941, at a hearing room of the Bituminous Coal Division at Washington, D. C., at which time the applicant withdrew its request for a hearing.

*Therefore, it is ordered,* That request of the applicant, Wheeling Valley Coal Corporation, for the dismissal of the hearing be and is hereby granted; and

*It is further ordered,* That the application of the Wheeling Valley Coal Corporation, producer, for permission to pay sales agency commissions to the above-named sub-sales agents of the Wheeling Valley Coal Corporation in excess of the maximum discounts allowed registered distributors be and the same hereby is denied.

Dated: February 21, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1608; Filed, February 24, 1942; 10:22 a. m.]

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[Docket No. 504-FD]

THE APPLICATION OF KENTUCKY COAL AGENCY, INCORPORATED, FOR PROVISIONAL APPROVAL AS A MARKETING AGENCY: IN RE AMENDMENT OF THE CONTRACTS BETWEEN THE APPLICANT AND ITS PRODUCER MEMBERS RELATIVE TO THE RIGHT TO TERMINATE SAID CONTRACTS

ORDER PROVIDING FOR CONDITIONALLY FINAL RELIEF

Kentucky Coal Agency, Incorporated, a marketing agency, is operating under provisional approval granted by Order of the National Bituminous Coal Commission (predecessor of the Division) dated November 29, 1938, in the above-entitled matter pursuant to Section 12 of the Bituminous Coal Act of 1937. By the said Order, the Commission provisionally approved the form of contract existing between Kentucky Coal Agency, Incorporated, and its producer members. This contract included, among others, the following provision:

This agreement shall continue in force until the 1st day of September, 1939, and after said date shall continue for periods of one year, from year to year, unless and until either party shall elect to terminate this agreement, at the end of any one year period, by giving to the other fifteen (15) days' written notice of such intention. Upon receipt of such notice the Selling Agent shall promptly notify all producers with whom it has entered into identical or similar Agency Agreements, and within five (5) days from the receipt by the producers of any such notices, the producers may serve notice of termination, to take effect on the same date.

On February 10, 1942, Kentucky Coal Agency, Incorporated, filed an application in the above-entitled matter, requesting that the provisional approval heretofore granted by the Commission be amended to permit the applicant to revise the afore-mentioned provision of its contracts between it and its producer members to read as follows:

This Agreement shall continue in force until the first day of September, 1942, and after said date shall continue for periods of one year, from year to year, unless sooner terminated, as herein provided. Either party may terminate this agreement by giving the other party thirty days written notice. The termination will take effect thirty days after the receipt of such written notice, and upon the date when same shall become effective, the selling agent shall promptly notify all producers with whom it has entered into identical or similar agency agreements, and within five days from the receipt by a producer of any such notice, the producer may serve notice of termination of his contract, to take effect at the end of the five day period. The termination of this contract, as herein provided, shall not affect the performance of contracts then in force and binding on the selling agent, for the delivery of coal.

It appears that a reasonable showing of necessity has been made for the granting of relief in the manner hereinafter set forth, that no petitions of intervention have been filed with the Division in this matter, and that this action will effecuate the purposes of the Act.

*Now, therefore, it is ordered,* That effective twenty-five (25) days from the date hereof, the Order of November 29, 1938, granting provisional approval to Kentucky Coal Agency, Incorporated, be, and it hereby is, amended to permit Kentucky Coal Agency, Incorporated, to revise the contracts between it and its producer members as prayed for in the said application of February 10, 1942.

*It is further ordered,* That pleadings in opposition to the original application in this matter and applications to stay or modify the relief herein granted may be filed with the Division within twenty (20) days from the date of this Order, pursuant to the Rules of Practice and Procedure before the Bituminous Coal Division.

*It is further ordered,* That this order is subject to further orders herein.

Dated: February 21, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1609; Filed, February 24, 1942; 10:22 a. m.]

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[Docket No. B-23]

IN THE MATTER OF NICK LUCIANI & SONS, A PARTNERSHIP, CODE MEMBER, DEFENDANT

CEASE AND DESIST ORDER

District Board No. 18 having filed a complaint with the Bituminous Coal Division on August 25, 1941, pursuant to the provisions of sections 4 II (j) and 5 (b) of the Bituminous Coal Act of 1937, alleging wilful violation by Nick Luciani & Sons, a code member in District No. 18, of the Bituminous Coal Code or rules and regulations thereunder, by selling during October, November and December 1940, approximately 239 tons of 1½" lump bar screen coal (Size Group 2) produced at its mine to various purchasers for shipment by truck at a price of $3.00 per net ton f. o. b. the mine, whereas the effective minimum price established for such coal was $3.65 per net ton f. o. b. the mine, as set forth in the Schedule of Effective Minimum Prices for District No. 18 For All Shipments;

Pursuant to an Order of the Director and after due notice to all interested persons, a hearing having been held in this matter on December 1, 1941, before Scott A. Dahlquist, a duly designated Examiner of the Division, at a hearing room thereof in Albuquerque, New Mexico, at which all interested persons were afforded an opportunity to be present, adduce evidence, cross-examine witnesses, and otherwise be heard;

The complainant and the defendant having appeared, and all interested parties having joined in waiving the preparation and filing of a report by the Examiner; the record of the proceeding thereupon having been submitted to the undersigned for consideration; the undersigned having made Findings of Fact and Conclusions of Law and having rendered an Opinion, which are filed herewith; [1]

*Now, therefore, it is ordered,* That the defendant, Nick Luciani & Sons, a partnership composed of Nick Luciani, A. A. Luciani, U. D. Luciani, A. M. Luciani and N. R. Luciani, and each partner thereof, their representatives, servants, agents, employees, attorneys, successors or assigns, and all persons acting or claiming to act in their behalf or interest, cease and desist, and they are hereby permanently enjoined and restrained from selling or offering for sale coal at prices below the effective minimum prices, from violating the provisions of the Bituminous Coal Act, the Bituminous Coal Code, the Schedule of Effective Minimum Prices for District No. 18 For All Shipments, and the Marketing Rules and Regulations.

*It is further ordered,* That if the defendant, or any of the partners thereof, fails or neglects to comply with this Order, the Division may forthwith apply to the Circuit Court of Appeals of the United States within any circuit where such defendant carries on business for the enforcement hereof, or take any other appropriate action.

Dated: February 21, 1942.

[SEAL] DAN H. WHEELER,
*Acting Director.*

[F. R. Doc. 42-1610; Filed, February 24, 1942; 10:23 a. m.]

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## Bureau of Reclamation.

FIRST FORM RECLAMATION WITHDRAWAL, ANDERSON RANCH RESERVOIR SITE, BOISE PROJECT, IDAHO

*Correction*

The land description for section 15 of Township 1 South, Range 8 East, on

[1] Not filed with the original document.

page 1094 of the issue for Thursday, February 19, 1942, should read as follows:

Section 15, Lots 1, 2, 3, 4, 5, 9, NW½NE¼, NW¼, S½SE¼;

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RECOMMENDATION OF THE BOULDER CANYON PROJECT WAGE BOARD TO THE SECRETARY OF THE INTERIOR

Pursuant to the Order of the Secretary of the Interior, dated December 6, 1941, and entitled *Wage Fixing Procedures, Boulder Canyon Project,* the Boulder Canyon Project Wage Board has determined prevailing wage rates for certain classes of laborers and mechanics for work of a similar nature prevailing in the vicinity of the project. Public hearings were held in Boulder City, Nevada, on December 8 and 9. Witnesses at the hearings included representatives of labor organizations, of contractors' associations, of employees' associations, and of unorganized workers on the project, officials of the Bureau of Reclamation, and other operating agencies, and the Commissioner of Labor of the State of Nevada. Representatives of the United States Department of Labor also participated in the hearings.

In addition to the testimony offered by witnesses at the hearings, the Wage Board has considered wage rate data included in collective bargaining agreements; decisions of the Secretary of Labor made pursuant to the Davis-Bacon Act, as amended; statements of wages paid to and benefits earned by employees of the Bureau of Power and Light, City of Los Angeles, and the Southern California Edison Company; and tabular analyses of wages and other compensation paid by the Bureau of Reclamation.

The Wage Board finds that the hourly wage rates listed below are prevailing for similar work in the vicinity of the project and recommends them for your adoption.

| Labor classification | Prevailing hourly rate on private work | Recommended basic hourly rate for B/R employees |
|---|---|---|
| Air tool operator | $1.00 | $1.00 |
| Blacksmith | 1.37½ | 1.37 |
| Blacksmith helper | 1.00 | 1.00 |
| Cableway operator | 1.60 | 1.60 |
| Carpenter | 1.25 | 1.25 |
| Carpenter helper | .80 | .80 |
| Concrete finisher | 1.50 | 1.50 |
| Concrete laborer | .90 | .90 |
| Concrete mixer operator | 1.25 | 1.25 |
| Concrete mixing plant engineer | 1.50 | 1.50 |
| Core drill operator | 1.25 | 1.25 |
| Core drill operator helper | .80 | .80 |
| Crane operator | 1.60 | 1.60 |
| Diamond driller | 1.25 | 1.25 |
| Dragline operator (under 1 yd.) | 1.60 | 1.60 |
| Dragline operator (1 yd. and over) | 1.75 | 1.75 |
| Electrician | 1.50 | 1.50 |
| Electrician helper | .90 | .90 |
| Floor polisher (maintenance) | 1.00 | 1.00 |
| Gageman | 1.12½ | 1.12½ |
| Gardener's helper | .90 | .90 |
| Grinder operator | 1.00 | 1.00 |
| Grout calker | .90 | .90 |
| Grout mix operator | 1.00 | 1.00 |
| Grout pump operator | 1.25 | 1.25 |
| Hooktender | $1.60 | $1.60 |
| Laborer | .80 | .80 |
| Lineman | 1.60 | 1.60 |
| Machinist | 1.60 | 1.60 |
| Machinist helper | 1.00 | 1.00 |
| Mason helper | .80 | .80 |
| Mechanic | 1.60 | 1.60 |
| Mechanic helper | 1.00 | 1.00 |
| Motor boat operator | 1.15 | 1.15 |
| Motortruck driver (on construction): | | |
| Under 7½ tons | .87½ | .87½ |
| 7½ to 10 tons | 1.00 | 1.00 |
| 10 to 15 tons | 1.12½ | 1.12½ |
| 15 to 20 tons | 1.25 | 1.25 |
| 20 tons or more | 1.37½ | 1.37½ |
| Oiler and greaser | 1.00 | 1.00 |
| Painter (brush) | 1.25 | 1.25 |
| Painter (spray) | 1.87½ | 1.87½ |
| Painter (swing stage & st. steel) | 1.60 | 1.60 |
| Painter helper | .80 | .80 |
| Plumber | 1.60 | 1.60 |
| Plumber helper | 1.00 | 1.00 |
| Pipefitter | 1.60 | 1.60 |
| Pipefitter helper | 1.00 | 1.00 |
| Pump operator | 1.12½ | 1.12½ |
| Rigger | 1.60 | 1.60 |
| Structural steel worker | 1.60 | 1.60 |
| Terrazzo polisher (maintenance) | 1.00 | 1.00 |
| Track repairman | 1.00 | 1.00 |
| Tractor operator | 1.60 | 1.60 |
| Valve operator | 1.12½ | 1.12½ |
| Welder | 1.60 | 1.60 |
| Welder helper | 1.00 | 1.00 |

It is the understanding of the Wage Board that Bureau of Reclamation employees paid in accordance with this schedule will receive overtime pay on a basis of one and one-half times the basic hourly rate for all time worked in excess of forty hours in any one week. Refer to 40-hour week act (Sec. 23, Act of March 28, 1934; 48 Stat., 522).

*Effective date.* The Wage Board recommends that these recommendations be made effective as of the close of business December 15, 1941.

The foregoing recommendations approved and adopted by the Boulder Canyon Project Wage Board this twenty-ninth day of January, 1942.

DUNCAN CAMPBELL,
*Chairman.*
CHARLES A. BISSELL,
*Member.*

Approved: February 12, 1942.

HAROLD L. ICKES,
*Secretary of the Interior.*

I concur: February 17, 1942.

FRANCES PERKINS,
*Secretary of Labor.*

[F. R. Doc. 42-1600; Filed, February 23, 1942; 4:08 p. m.]

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WAGE FIXING PROCEDURES, BOULDER CANYON PROJECT

DECEMBER 6, 1941.

In aid fo the administration of Section 15 of the Boulder Canyon Project Adjustment Act (54 Stat. 774) and for the purpose of determining the prevailing rate of wages to be paid certain classes of Government employees on the Boulder Canyon Project, the following procedure is established:

*I. Wage Board*

Wage Board, composed of two representatives of the Department, one selected from the office of the Secretary of the Interior and one selected from the Bureau of Reclamation, is hereby established to determine prevailing wages for similar work in the locality of the Project for all laborers and mechanics employed by the Government in the construction or operation and maintenance of the Project, excluding employees whose wages are fixed on an annual basis pursuant to the Classification Act of 1923, as amended, and to make recommendations with respect to such wages to the Secretary of the Interior. The representative selected from the office of the Secretary of the Interior shall act as Chairman of the Board.

II. *Procedure to be followed by Board*

In determining the prevailing wages of various classes of laborers and mechanics being considered by the Board in the locality of the Project, the Board shall procure evidence of the wages and compensation being paid to and perquisites received by such laborers and mechanics from local contractors, Federal agencies (including wage scales currently being paid pursuant to minima established pursuant to the Bacon-Davis Act), private industrial employers, and others employing labor in the locality, whether pursuant to union agreements or otherwise. Hearings for the purpose of adducing evidence of wages paid in the locality may be held when, in the judgment of the Board, this is required in order to determine the prevailing rates of wages.

Based on the evidence procured as to prevailing wages and the perquisites of employment in the locality in the classifications under consideration by the Wage Board, the Board shall make its recommendation as to the rates of wages to be paid to the Government employees of the classes above specified on the Boulder Canyon Project to the Secretary of the Interior. The wages recommended shall become effective upon such date as shall be recommended by the Wage Board, unless otherwise directed by the Secretary of the Interior: *Provided,* That the Secretary of the Interior may direct the Board to reconsider any recommendation in whole or in part when, in his judgment, the recommended wage does not accord with the evidence procured as to the prevailing wage in the locality or there is insufficient evidence to support the wage recommended.

III. *Effective period of approved wage determinations*

Any wage rate fixed in the manner above provided shall remain in effect until that rate has been supplanted by a different rate determined by the Wage Board with the concurrence of the Secretary of the Interior, and of the Secretary of Labor in cases governed by said Section 15. Unless directed by the Secretary of the Interior to do so at other intervals, the Wage Board shall review

wage rates at six-month intervals beginning with the effective date of the first schedule of wages made in accordance with the procedure herein provided: *Provided,* That the Secretary of the Interior may direct a review at any other time when, in his judgment, this is desirable.

IV

For the purpose of the first hearing and determination under this procedure, the Board shall be composed of these departmental representatives: Mr. Duncan Campbell, selected from the office of the Secretary of the Interior, and Mr. Charles A. Bissell, selected from the Bureau of Reclamation.

HAROLD L. ICKES,
*Secretary of the Interior.*

[F. R. Doc. 42-1601; Filed, February 23, 1942; 4:08 p. m.]

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## DEPARTMENT OF AGRICULTURE.

### Surplus Marketing Administration.

NOTICE OF REPORT AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO A PROPOSED AMENDED ORDER NO. 27 AND A PROPOSED AMENDED MARKETING AGREEMENT REGULATING THE HANDLING OF MILK IN THE NEW YORK METROPOLITAN MARKETING AREA, PREPARED BY THE ADMINISTRATOR OF THE SURPLUS MARKETING ADMINISTRATION

Pursuant to § 900.12 (a), General Regulations, Surplus Marketing Administration, Department of Agriculture, notice is hereby given of the filing with the Hearing Clerk, in the Solicitor's Office of the Department, of this report of the Administrator of the Surplus Marketing Administration of the Department with respect to a proposed amended marketing order and a proposed amended marketing agreement regulating the marketing of milk in the New York metropolitan marketing area. Interested parties may file exceptions to this report with the Hearing Clerk, Room 0312, South Building, Department of Agriculture, Washington, D. C., not later than the close of business on the 10th day after the publication of this notice in the FEDERAL REGISTER.

HISTORY, ISSUES, AND CONCLUSIONS

In connection with the issuance of Amendment No. 3 [1] to Federal Order No. 27, as amended, issued August 29, 1941, which became effective October 1, 1941,[2] the Secretary of Agriculture indicated that an early hearing on matters not covered in the above amendment would be held at the request of interested parties. It was also indicated that, if conditions so changed as to make it necessary, the question of fluid milk prices would be considered at an early hearing. Producer representatives submitted a petition for a hearing on revision of the Class I price on November 6, 1941. This petition was denied because it did not include consideration of other provisions of the order. On December 9, 1941, producer representatives submitted a new request for a hearing on several proposals to amend the order. A press release, dated December 17, 1941, was issued and sent to all interested parties requesting them to file with the Hearing Clerk, not later than December 22, other proposals for amending the order.

Twenty-two interested parties filed proposals for amending the order. More than 75 changes in the order were contained in the proposals. However, many of the proposed changes were interrelated.

A notice was issued over the signature of the Assistant to the Secretary of Agriculture, dated December 29, 1941, of hearing to begin in the Saint George Hotel, Brooklyn, New York, January 7, 1942, at 9:30 a. m.

A similar notice of hearing was issued by Mr. Kenneth F. Fee, Director of Division of Milk Control for the Commissioner of Agriculture and Markets for the State of New York. The joint hearing formally convened January 7 pursuant to the notices.

The hearing proceeded January 7, 8, and 9 at Brooklyn and was recessed to Utica, New York, January 12. The hearing proceeded during the period January 12–14 in Utica; January 15–17 in Binghampton; January 19–20 in Utica; and January 21–23 and 26–28 in Brooklyn, New York.

Time for filing briefs was set at the closing of the hearing, to expire at the close of business February 16, 1942.

The issues developed in this proceeding were as follows:

1. What shall be the level of Class I or fluid milk price for the marketing area?
2. What shall be the level of Class I or fluid milk price for milk sold outside the marketing area?
3. Shall provision be made for automatic adjustment of prices following a drought?
4. Shall the classification and pricing of "surplus" cream be separated from the present Class III provisions?
5. Shall skim milk be classified and priced according to its use?
6. Shall the pricing provision for milk used in American cheese be changed?
7. Shall the basis for payments to cooperative associations be changed, the payments increased, or all payments to cooperatives be discontinued?
8. Shall diversion payments be discontinued, limited to fewer classes, or made subject to the direction of a diversion committee?
9. Shall cooperative associations be permitted to account for milk at less than the stated class prices, if after posting milk for sale in certain classes with the market administrator, no buyer is found for the milk?
10. Shall the marketing area be expanded to include additional territory in New York and parts of New Jersey and Pennsylvania? In connection with the expansion of the marketing area, shall producer-dealers be required to equalize, shall city differentials be allowed, and shall the special cream area be changed?
11. Shall there be included in the order a definition of a "new producer"?
12. Shall nearby location differentials be changed or discontinued?
13. Shall a plan for encouraging level production of milk be included in the order?
14. Shall transportation differentials be changed?
15. Shall butterfat differentials be changed?
16. Shall the definition of producer and handler be changed?
17. Shall a provision be included in the order requiring twice-a-month payments to producers?

On these issues, it is concluded from the record as follows:

1. That the present level of Class I price, with adjustment for seasonal change, should be maintained. This can best be done by including in the present formula based on the price of butter, some factor to reflect the unusual value of milk solids-not-fat;
2. That the present provision for pricing Class I milk sold outside the marketing area be continued;
3. That although it might be desirable to include an automatic adjustment for prices following a drought, additional data on weather stations to be included, effect of the proposal, etc., are needed;
4. That "surplus cream" shall be removed from Class III classification and set up under subdivisions of Class II; that three classifications be set up, II-D (mainly Philadelphia and Pennsylvania cream); II-E (mainly Boston and New England cream); and II-F (mainly ice cream in the special cream area and cream cheese); that the price for each of these new classifications be based on the competitive price of cream in the market where sold;
5. That skim milk shall be classified into two classes: V-A (mainly skim milk for fluid consumption in the marketing area) and V-B (mainly skim milk for manufacture). That Class V-A be priced at the Class I price less the price set for butterfat in Class II-A and Class V-B be priced at the value of skim milk for making skim milk powder;
6. That milk for American cheese shall be priced on the basis of the Wisconsin Cheese Exchange quoted price for "Twins" rather than "Single Daisies";
7. That the present provisions for payments to cooperative associations be continued;
8. That diversion payments on all cream classes be discontinued to permit the pricing of cream on a competitive basis. That diversion payments be continued on Class III and Class IV-B;
9. That the provision to permit cooperative associations to account for milk at less than the stated class price, if after posting milk for sale in certain classes with the market administrator, no buyer is found for the milk, should not be included in the order;
10. That, because it was so ruled by the hearing master, after consultation with counsel in attendance at the hear-

[1] 6 F.R. 4507.
[2] 6 F.R. 4964.

ing, the proposal for extending the marketing area and related matters be held over for further consideration at a new hearing;

11. That no action be taken at this time on the issues raised at the hearing and noted under paragraphs 11, 12, 13, 14, 15, and 16 above and that these issues be considered further at a new hearing; and

12. That because most producers are now being paid twice a month on a voluntary basis, such a provision should not be included in the order.

The proposed amended marketing order and proposed amended marketing agreement are recommended as the detailed means by which these conclusions may be carried out.

This report filed at Washington, D. C., the 24th day of February 1942.

[SEAL] E. W. GAUMNITZ,
*Administrator.*

Approved by:

ROY F. HENDRICKSON,
*Agricultural Marketing Administrator.*

PROPOSED AMENDED MARKETING ORDER REGULATING THE HANDLING OF MILK IN THE NEW YORK METROPOLITAN MARKETING AREA, PREPARED BY THE ADMINISTRATOR OF THE SURPLUS MARKETING ADMINISTRATION, UNITED STATES DEPARTMENT OF AGRICULTURE[1]

FINDINGS

It is found upon the evidence introduced at the public hearing held in Brooklyn, New York, on January 7 through 9; Utica, New York, January 12 through 14; Binghamton, New York January 15 through 17; Utica, New York, January 20 and 21; and Brooklyn, New York, January 22 through 28; said findings being in addition to the findings made upon the evidence introduced at all prior hearings on said order and amendments thereto (which findings are hereby ratified and affirmed, save only as such findings are in conflict with findings hereinafter set forth):

1. That prices calculated to give milk produced for sale in the marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to section 2 and section 8c of the act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply of and demand for such milk, and that the minimum prices set forth in this order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

2. That the order, as amended, as herewith amended, regulates the handling of milk in the same manner as a marketing agreement upon which a hearing has been held; and

3. That the issuance of this amended order will tend to effectuate the declared policy of the act.

PROVISIONS

§ 927.1 *Definitions.* The following terms shall have the following meanings:

(a) "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

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

(c) "New York metropolitan milk marketing area" means the city of New York, the counties of Nassau, Suffolk (except Fisher's Island), and Westchester, all in the State of New York, and is hereinafter called the "marketing area."

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

(e) "Producer" means any person who produces milk which is delivered to a handler at a plant which is approved by any health authority for the receiving of milk to be sold in the marketing area.

(f) "Handler" means any person who engages in the handling of milk or cream; or milk products therefrom, which milk was received at a plant approved by any health authority for the receiving of milk to be sold in the marketing area, which handling is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce. This definition shall be deemed to include a cooperative association of producers with respect to any milk received from producers at any plant approval for which is held by such association, or with respect to any milk which it causes to be delivered from producers to any other handler for the account of such association and for which such association receives payment.

(g) "Market administrator" means the agency, which is described in § 927.2, for the administration of this order.

(h) "Special cream area" means the territory, with the exception of the marketing area, which lies within the boundaries of the State of New York and of the following counties in the State of New Jersey:

| | |
|---|---|
| Bergen. | Morris. |
| Essex. | Passaic. |
| Hudson. | Somerset. |
| Hunterdon. | Sussex. |
| Middlesex. | Union. |
| Monmouth. | Warren. |

(i) "New England" means the territory which lies within the boundaries of the States of Connecticut, Maine, New Hampshire, Rhode Island, and Vermont, and the Commonwealth of Massachusetts.

§ 927.2 *Market administrator*—(a) *Selection, removal, and bond.* The agency for the administration of this order shall be a market administrator who shall be a person selected and subject to removal by the Secretary. The market administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) *Compensation.* The market administrator shall be entitled to such reasonable compensation as shall be determined by the Secretary.

(c) *Powers.* The market administrator shall have power to administer the terms and provisions hereof, and to receive, investigate, and report to the Secretary complaints of violations of this order.

(d) *Duties.* The market administrator, in addition to the duties hereinafter described, shall:

(1) Keep such books and records as will clearly reflect the transactions provided for herein;

(2) Submit his books and records to examination by the Secretary at any and all times;

(3) Furnish such information and such verified reports as the Secretary may request;

(4) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the market administrator;

(5) Publicly disclose, after reasonable notice, the name of any person who has not made reports pursuant to § 927.5 (a), or made payments required by § 927.7;

(6) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation of this order as do not reveal confidential information;

(7) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof;

(8) Pay out of the funds received pursuant to § 927.8 the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator, his own compensation, and all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties; and

(9) Maintain a main office and such branch offices as may be necessary.

(e) *Announcement of prices.* The market administrator shall compute and publicly announce prices as follows:

(1) Not later than the 25th day of each month, the average for 30 days immediately preceding, of the prices reported daily by the United States Department of Agriculture for 92-score butter at wholesale in the New York market, and the average of all the hot roller process dry skim milk quotations for "other brands, animal feed, carlots, bags, or barrels," and for "other brands, human consumption, carlots, bags, or barrels" (using midpoint of any range as one quotation), published during the preceding 30 days in "The Producers' Price-Current," and the Class I, Class II-A and the Class V-A prices to be in effect for the following month, pursuant to § 927.4 (a).

(2) Not later than the 5th day of each month, the prices for all other classes pursuant to § 927.4 (a) and the differentials pursuant to § 927.4 (b) in effect for the preceding month.

[1] This proposed amended marketing order is prepared by the Administrator pursuant to § 900.12 (a) of the general regulations, Surplus Marketing Administration, and has not received the approval of the Secretary of Agriculture.

(3) Not later than the 14th day of each month, the uniform price computed pursuant to § 927.6 (b).

§ 927.3 *Classification of milk*—(a) *Basis of classification.* All milk received during any month from producers by handlers shall be classified in the classes set forth in paragraph (b) of this section in accordance with the form in which it is held at or moved from, within 8 days after the end of the month, the plant where received from producers, including members of any cooperative association, except that milk which is moved to some other plant outside the marketing area, or milk the butterfat from which is moved to some other plant outside the marketing area, may be classified at the first plant subject to the following conditions:

(1) If the other plant is approved for the sale of milk in the marketing area, and all products moved from or held at such plant would classify milk in classes to which diversion payments are applicable, the allocation of the several classes to the first plant may be at the option of the handler or handlers involved, but shall be pro rata in case of failure to exercise the option, or in case there is milk or product moved from or held at such plant which would classify milk in classes to which diversion payments are not applicable.

(2) If the other plant is not approved for the sale of milk in the marketing area, allocation of classes to the first plant shall, in the absence of proof of use in a specific class, be pro rata in accordance with the form in which all milk, all cream, or all of both, as the case may be, received during the month at the other plant, was held at or moved from such plant except as provided in subparagraph (3) of this paragraph.

(3) If the other plant is a plant the handling of milk at which is subject to another order of the Secretary for another marketing area, the allocation of classes to the first plant shall be as follows: If the milk is moved to such other plant in the form of milk, it shall be Class I milk; or if the milk is moved to such other plant in the form of cream, it shall be Class II-D or Class II-E: *Provided,* That the cream is not subsequently moved or shipped in the form of cream so as to classify it as Class II-A, Class II-B, or Class II-C.

(4) In establishing the classification of any milk received at a plant from producers the burden rests upon the handler who receives the milk from producers to show that it should not be classified as Class I milk; likewise, having established the manufacture of cream, the burden rests upon such handler to show that the milk the butterfat from which was manufactured into cream, should not be classified in Class II-A, and that the skim milk resulting from the manufacture of cream should not be classified as Class V-A: *Provided,* That the only form in which butterfat received as cream at any plant in the marketing area may leave such plant so that it may be classified other than in Classes I or II-A is in the form of frozen desserts or homogenized mixtures.

(b) *Classes of utilization.* Subject to all of the conditions set forth in paragraph (a) of this section, the classes of milk shall be as follows:

(1) Class I milk shall be all milk which leaves a plant as milk, or cultured or flavored milk drinks containing 3.0 percent butterfat or more, and all milk the classification of which is not established in some other class named in this paragraph, except that loss or waste of milk in a plant where milk is received from producers, not to exceed 2 percent of the total quantity of milk received, may be prorated to each class or price subdivision of such class except Class V-A and Class V-B, in the proportion in which the milk in such class or price subdivision of such class is of the total quantity of milk received at such plant: *Provided,* That any loss or waste in excess of 2 percent shall be subject to the price set forth in § 927.4 (a) (1).

(2) Class II-A milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of cultured or flavored milk drinks containing less than 3.0 percent butterfat or in the form of cream, sweet or sour, unless such cream is established to have been subsequently so handled or marketed as to classify such milk in some other class.

(3) Class II-B milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of plain condensed milk or, except as set forth in subparagraphs (5), (6), and (7), of this paragraph, frozen desserts or homogenized mixtures; or which leaves or is on hand at a plant in the form of cream which is subsequently held in a licensed cold storage warehouse at an average temperature below zero degrees Fahrenheit for 7 consecutive days, and below 15 degrees Fahrenheit for at least 21 days thereafter, as shown by charts of a recording thermometer, and which is subject at all times to being inspected by a representative of the market administrator to determine the physical presence of the cream and the temperature of the room where stored. After the first 7 consecutive days such cream may be moved from one licensed cold storage warehouse to another: *Provided,* That the market administrator receives notice of such removal within 48 hours thereafter. Any handler whose report claimed the original classification of milk in this class shall be liable under the provisions of § 927.7 (j) for the difference between the Class II-B and Class II-A prices for the month in which the II-B classification was claimed on any such milk if the storage of the cream does not comply with all the requirements of this subparagraph.

(4) Class II-C milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of cream which is delivered to a plant or a purchaser in the special cream area, is not moved as cream to a plant in the marketing area or sold in the marketing area, and the classification of which is not established in some other class.

(5) Class II-D milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of cream or in the form of frozen desserts or in the form of homogenized mixtures used in frozen desserts, which is delivered to a plant or a purchaser outside the marketing area, outside the special cream area and outside New England: *Provided,* That the cream is not moved to a plant in the marketing area, in the special cream area, or in New England: or sold in the marketing area, in the special cream area, or in New England; *And provided further,* That the frozen desserts, or the homogenized mixtures used in frozen desserts are not moved to a plant in New York City, or sold in New York City.

(6) Class II-E milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of cream or in the form of frozen desserts or in the form of homogenized mixtures in frozen desserts, which is delivered to a plant or a purchaser in New England: *Provided,* That the cream is not moved to a plant outside New England or sold outside New England: *And provided further,* That the frozen desserts or homogenized mixtures used in frozen desserts are not moved to a plant in New York City or sold in New York City.

(7) Class II-F milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of frozen desserts or in the form of homogenized mixtures used in frozen desserts, except as set forth in subparagraphs (5) and (6) of this paragraph, provided the frozen desserts in both instances were sold and remained outside of New York City; or all the butterfat which leaves or is on hand at a plant in the form of cream cheese.

(8) Class III milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of evaporated milk in hermetically sealed cans, sweetened condensed milk, milk chocolate, and other candy products, milk powder, malted milk powder, or cheeses other than those specified in subparagraphs (7) and (10) of this paragraph.

(9) Class IV-A milk shall be all milk the butterfat from which leaves or is on hand at a plant in the form of butter.

(10) Class IV-B milk shall be all milk which leaves or is on hand at a plant in the form of Cheddar cheese, American Cheddar cheese, Colby cheese, washed curd cheese, or part-skim Cheddar cheese.

(11) Class V-A milk shall be the skim milk in all milk which is classified pursuant to subparagraphs (2), (3), (4), (5), (6), (7), and (9) of this paragraph, which skim milk enters the marketing area in the form of fluid skim milk or cultured or flavored milk drinks, and which is not utilized in some other product: *Provided,* That for the purposes of this subparagraph and of subparagraph (12) of this paragraph there shall be 91.25 pounds of skim milk in each 100 pounds of milk having a butterfat content of 3.5 percent, plus an additional 0.25 pounds of skim milk for each point of butterfat in such milk below 3.5 percent or minus an additional 0.25 pounds of skim milk for each point of butterfat in such milk above 3.5 percent.

(12) Class V-B milk shall be the skim milk in all milk which is classified pursuant to subparagraphs (2), (3), (4), (5), (6), (7), and (9) of this paragraph, which skim milk is not classified pursuant to subparagraph (11) of this paragraph.

§ 927.4 *Minimum prices.* For milk received during each month from producers or cooperative associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section. Any handler who purchases or receives, during any month, milk from a cooperative association of producers which is also a handler shall, on or before the 15th day of the following month, pay such cooperative association in full for such milk at not less than the minimum class prices applicable pursuant to this section.

(a) *Class prices.* (1) For Class I milk the price per hundredweight during each month shall be, except as specified in subparagraphs (2), (3), and (4) of this paragraph, as set forth in the table in this subparagraph:

| 92-score butter, wholesale at New York, average announced pursuant to §927.2 (e), plus an amount calculated as follows: deduct 4 cents from the average dry skim milk quotations announced pursuant to 927.2 (e) and multiply by 1.8 | Class I price | |
|---|---|---|
| | April through June | July through March |
| *Cents* | *Dollars per cwt.* | *Dollars per cwt.* |
| Under 25 | 1.85 | 2.10 |
| 25 or over, but under 30 | 2.05 | 2.30 |
| 30 or over, but under 35 | 2.25 | 2.50 |
| 35 or over, but under 40 | 2.45 | 2.70 |
| 40 or over, but under 45 | 2.65 | 2.90 |
| 45 or over, but under 50 | 2.85 | 3.10 |
| 50 or over, but under 55 | 3.05 | 3.30 |
| 55 or over, but under 60 | 3.25 | 3.50 |
| 60 or over, but under 65 | 3.45 | 3.70 |
| 65 or over, but under 70 | 3.65 | 3.90 |
| 70 or over, but under 75 | 3.85 | 4.10 |
| 75 or over | 4.05 | 4.30 |

(2) For Class I milk sold by a handler in the marketing area under a program approved by the Secretary and upon which payment is made out of Federal funds, the price shall be 57 cents per hundredweight less than the price in effect pursuant to subparagraph (1) of this paragraph.

(3) For Class I milk which has not passed through the marketing area, but which is ultimately distributed in an area regulated by another order of the Secretary, the price shall be the Class I price set forth in such other order for milk sold in such marketing area subject to the butterfat and location differentials set forth in such other order.

(4) For Class I milk which has not passed through the marketing area, but including Class I milk which was received direct from producers at a plant in the marketing area, and which is ultimately distributed in an area not regulated by an order of the Secretary, the price shall be the uniform price computed by the market administrator pursuant to § 927.6 (b) plus 20 cents per hundredweight included in the net pool obligation for such milk pursuant to § 927.6 (a).

(5) For Class II-A milk, the price during each month shall be as set forth in the following table:

| 92-score butter, wholesale, at New York, average announced pursuant to § 927.2 (e) | Class II-A price | |
|---|---|---|
| | March through July | August through February |
| *Cents per pound* | *Dollars per cwt.* | *Dollars per cwt.* |
| Under 21.5 | 1.35 | 1.50 |
| 21.5 or over, but under 25.0 | 1.50 | 1.65 |
| 25.0 or over, but under 28.5 | 1.65 | 1.80 |
| 28.5 or over, but under 32.0 | 1.80 | 1.95 |
| 32.0 or over, but under 35.5 | 1.95 | 2.10 |
| 35.5 or over, but under 39.0 | 2.10 | 2.25 |
| 39.0 or over, but under 42.5 | 2.25 | 2.40 |
| 42.5 or over, but under 46.0 | 2.40 | 2.55 |
| 46 or over | 2.55 | 2.70 |

(6) For Class II-B milk, the price during each month shall be 12 cents less than the Class II-A price.

(7) For Class II-C milk, the price during each month shall be 10 cents higher than the Class II-E price applicable at a plant located within the 0-250 mile zone from Boston.

(8) For Class II-D milk the price during each month shall be a price calculated by the market administrator as follows: add all weekly market quotations (using midpoint of any weekly range as one quotation) of prices reported by the United States Department of Agriculture for the month during which such milk was received from producers for a 40-quart can of 40 percent sweet cream approved for Pennsylvania only, and for Pennsylvania, Newark, and Lower Merion Township, divide by the number of quotations, subtract 28 cents, divide by 33.48, multiply by 3.5, subtract 21.5 cents. Such price shall be subject to the minus differentials set forth in the following table applicable to the location of the plant at which the cream, frozen desserts, or homogenized mixtures are made with reference to its mileage distance from the City Hall in Philadelphia; and any such mileage distance shall be that recognized for rate-making purposes by the Interstate Commerce Commission:

| *Miles:* | *Cents* |
|---|---|
| 0-30 | 0 |
| 31-70 | −3.5 |
| 71-150 | −4.5 |
| 151-230 | −5.5 |
| 231-310 | −6.5 |
| 311-390 | −7.5 |
| 391-470 | −8.5 |

*Provided,* That in no event shall the Class II-D price at any plant be lower than the Class IV-A price plus 10 cents.

(9) For Class II-E milk the price during each month shall be a price calculated by the market administrator as follows: divide by 33.48 the weighted average price per 40-quart can of 40 percent bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the month during which such milk was received from producers, or the last such price reported for a month if no such price is reported for the month during which such milk was received, multiply by 3.5, subtract 21.5 cents. Such price shall be subject to the minus differentials set forth in the following table applicable to the location of the plant at which the cream, frozen desserts, or homogenized mixtures are made with reference to its mileage distance from the State House in Boston and any such mileage distance shall be that recognized for rate-making purposes by the Interstate Commerce Commission:

| Miles: | *Cents* |
|---|---|
| 0-250 | −5.2 |
| 251-300 | −6.2 |
| 301-350 | −7.2 |
| 351-400 | −8.2 |
| 401-450 | −9.2 |

*Provided,* That in no event shall the Class II-E price at any plant be lower than the Class IV-A price plus 10 cents.

(10) For Class II-F milk the price during each month shall be the price for Class II-E milk.

(11) For Class III milk the price during each month shall be 10 cents higher than the average, computed by the market administrator, of prices, as reported to the United States Department of Agriculture, paid during such month to farmers by each of the evaporated milk plants which purchase milk at places listed in this subparagraph and for which prices are reported: *Provided,* That in no event shall the Class III price be less than a price computed by the market administrator as follows: To the average price of 92-score butter at wholesale in the Chicago market for such month, as reported by the United States Department of Agriculture, add 30 percent, multiply by 3.5, and add 7 cents.

*Locations of evaporated milk plants*

| | |
|---|---|
| Mt. Pleasant, Mich. | Berlin, Wis. |
| Sparta, Mich. | Richland Center, Wis. |
| Hudson, Mich. | Oconomowoc, Wis. |
| Wayland, Mich. | Jefferson, Wis. |
| Coopersville, Mich. | New Glarus, Wis. |
| Greenville, Wis. | Belleville, Wis. |
| Manitowoc, Wis. | New London, Wis. |
| Black Creek, Wis. | Coldwater, Ohio. |
| Orfordville, Wis. | Delta, Ohio. |
| Chilton, Wis. | West Bend, Wis. |

(12) For Class IV-A milk the price during each month shall be a price computed by the market administrator as follows: From the average of the highest prices reported daily during each month by the United States Department of Agriculture for 92-score butter at wholesale in the New York market, deduct 4 cents, add 20 percent, and multiply by 3.5.

(13) For Class IV-B milk the price during each month shall be a price computed by the market administrator as follows: From the average of weekly quotations at Wisconsin Cheese Exchange, Plymouth, Wisconsin, for Cheddars, or in the absence of such quotations for Cheddars, the weekly quotations at Wisconsin Cheese Exchange for Twins, subtract ¾ cent and multiply the result by 9.45.

(14) For Class V-A milk the price during each month shall be the difference

between the price for Class I milk set forth in subparagraph (1) of this paragraph and the price for Class II-A milk set forth in subparagraph (5) of this paragraph, and the result divided by 0.9125.

(15) For Class V-B milk the price during each month shall be a price computed by the market administrator as follows: From the average of all the hot roller process dry skim milk quotations for "other brands, animal feed, carlots, bags, or barrels" and for "other brands, human consumption, carlot, bags, or barrels" (using midpoint of any range as one quotation), published for the delivery period in "The Producers' Price-Current," subtract 4 cents, and multiply by 8.3.

(b) *Butterfat differentials.* The minimum prices for Class I milk specified in paragraph (a) of this section shall be plus or minus 4 cents for each one-tenth of 1 percent of butterfat therein above or below 3.5 percent. The minimum price for Class IV-B milk containing more or less than 3.5 percent butterfat shall be plus or minus, for each one-tenth of 1 percent butterfat above or below. 3.5 percent, an amount equal to the price set forth in subparagraph (13) of paragraph (a) of this section, divided by 9.45 and multiplied by 0.23. The minimum prices for each of the other classes except Classes V-A and V-B containing more or less than 3.5 percent butterfat shall be plus or minus, for each one-tenth of 1 percent butterfat above or below 3.5 percent, an amount equal to the repective prices set forth in paragraph (a) of this section, divided by 35.

(c) *Transportation differentials.* The market administrator shall from time to time publicly announce for each plant outside the marketing area, operated by each handler, the freight zone set forth in the schedule below in this section according to the railway mileage distance from New York City terminals of its nearest railway shipping point, or its highway mileage distance from New York City, if the latter is less than the former by more than five miles. Any such mileage distance shall be that recognized for rate-making purposes by the Interstate Commerce Commission. For the purposes of this paragraph each plant within the marketing area shall be assigned by the market administrator to the 1-10 mile freight zone. The minimum prices set forth in paragraph (a) of this section shall be plus or minus the amounts as set forth in the following schedule:

| A | B | C |
|---|---|---|
| Freight zone (miles) | Classes I and V-A | Classes II-A, II-B, and II-C |
| | *Cents per cwt.* | *Cents per cwt.* |
| 1-10 | +15 | +8 |
| 11-20 | +14 | +8 |
| 21-25 | +13 | +8 |
| 26-30 | +13 | +7 |
| 31-40 | +13 | +7 |
| 41-50 | +10.5 | +7 |
| 51-60 | +10.5 | +6 |
| 61-70 | +9.5 | +6 |
| 71-75 | +8 | +6 |
| 76-80 | +8 | +5 |
| 81-90 | +8 | +5 |
| 91-100 | +7 | +5 |
| 101-110 | +7 | +4 |
| 111-120 | +6 | +4 |
| 121-125 | +5 | +4 |
| 126-130 | +5 | +3 |
| 131-140 | +5 | +3 |
| 141-150 | +3.5 | +3 |
| 151-160 | +2.5 | +2 |
| 161-170 | +2.5 | +2 |
| 171-175 | +1.5 | +2 |
| 176-180 | +1.5 | +1 |
| 181-190 | +1.5 | +1 |
| 191-200 | 0 | +1 |
| 201-210 | 0 | 0 |
| 211-220 | −1 | 0 |
| 221-225 | −1 | 0 |
| 226-230 | −1 | −1 |
| 231-240 | −2 | −1 |
| 241-250 | −2 | −1 |
| 251-260 | −3.5 | −2 |
| 261-270 | −3.5 | −2 |
| 271-275 | −3.5 | −2 |
| 276-280 | −3.5 | −3 |
| 281-290 | −4.5 | −3 |
| 291-300 | −5.5 | −3 |
| 301-310 | −5.5 | −4 |
| 311-320 | −5.5 | −4 |
| 321-325 | −7 | −4 |
| 326-330 | −7 | −5 |
| 331-340 | −7 | −5 |
| 341-350 | −8 | −5 |
| 351-360 | −8 | −6 |
| 361-370 | −8 | −6 |
| 371-375 | −9 | −6 |
| 376-380 | −9 | −7 |
| 381-390 | −9 | −7 |
| 391-400 | −9 | −7 |
| 401-410 | −10.5 | −8 |
| 411-420 | −10.5 | −8 |
| 421-425 | −10.5 | −8 |
| 426-430 | −10.5 | −9 |
| 431-440 | −11.5 | −9 |
| 441-450 | −11.5 | −9 |
| 451-460 | −11.5 | −10 |
| 461-470 | −12.5 | −10 |
| 471-475 | −12.5 | −10 |
| 476-480 | −12.5 | −11 |
| 481-490 | −14 | −11 |
| 491-500 | −14 | −11 |

§ 927.5 *Reports of handlers*—(a) *Monthly reports.* On or before the 10th day of each month each handler shall report to the market administrator, in the manner and on forms prescribed by the market administrator, with respect to milk received at each plant during the preceding month:

(1) The total quantity of milk, with the average butterfat content thereof, received from producers, from other plants, from such handler's own farm, and from other handlers;

(2) The total quantity of such milk and of each product of such milk moved out of, or on hand at, such plant within 8 days after the end of such month, the butterfat content of each product, and the destination of any milk which moved out of such plant;

(3) If the classification of any milk is claimed by such handler on the basis of disposition in some other plant, the disposition of such milk at such other plant covered by statement signed by the operator of the other plant if not a handler; and

(4) The computation, pursuant to § 927.6 (a), of such handler's net pool obligation.

(b) *Producer pay roll reports.* Each handler shall report with respect to producers as follows:

(1) On or before the 10th day after the end of each month, the information required by the market administrator with respect to producer additions, producer withdrawals, and changes in names of farm operators;

(2) On or before the last day of each month, such handler's producer pay roll for the preceding month, which shall show for each producer;

(i) The total delivery of milk with the average butterfat test thereof;

(ii) The amount of payment due such producers;

(iii) Any deductions and charges made by the handlers;

(iv) The net amount of payment to such producer made pursuant to § 927.7; and

(v) Such other information with respect thereto as the market administrator may require.

(c) *Verification of reports and payments.* The market administrator shall promptly verify all reports and payments of each handler by audit of such handler's records, and of the records of any other handler or person upon whose disposition of milk such handler claims classification, and each such handler shall, during the usual hours of business, make available to the market administrator or his representative such records and facilities, of his own or of other persons, as will enable the market administrator to:

(1) Verify the receipts and disposition of all milk required to be reported pursuant to this section, and, in case of errors or omissions, ascertain the correct figures;

(2) Weigh, sample, and test for butterfat content the milk received from producers and any product of milk upon which classification depends;

(3) Verify the payments to producers prescribed in § 927.7; and

(4) Verify all claims for payments pursuant to § 927.7 (d), (e), and (f).

§ 927.6 *Determination of uniform prices*—(a) *Net pool obligation of handlers.* The net pool obligation of each handler for milk received from producers during each month shall be a sum of money computed for such month as follows:

(1) Determine the total quantity of milk in each class at each plant;

(2) Subtract pro rata out of each class the quantity of milk received from the handler's own farm or from a farm in Nassau or Suffolk Counties, not approved for sale of milk in New York City;

(3) Prorate in the case of each plant where milk is received from producers, to each class or price subdivision of each class, the loss or waste of milk at such plant not to exceed 2 percent of the total quantity of milk in all classes except Class V-A and Class V-B and calculate any remainder as Class I milk subject to the price set forth in § 927.4 (a) (1);

(4) Subtract from the remaining quantity of milk, or skim milk as the case may be, in each class, the quantity of such milk, or skim milk, as the case may be, received from any other plant, or received from any other handler which result shall be known as the "net pooled milk" in each class at each plant;

(5) Subject to adjustment for appropriate differentials applicable pursuant

to § 927.4 (b) and (c), multiply the Class I milk priced pursuant to § 927.4 (a) (4) by 20 cents per hundredweight, multiply the remaining net pooled milk, or skim milk, as the case may be, in each class, by the class price, and add together the resulting values;

(6) Deduct, in the case of each plant where the average butterfat content of all milk received from producers is in excess of 3.5 percent and add, in the case of each plant where the butterfat content of all milk received from producers is less than 3.5 percent, the total value of the butterfat differential applicable pursuant to § 927.7 (c);

(7) Deduct, in the case of each plant nearer New York City than the 201–210 mile zone, and add, in the case of each plant farther from New York City than the 201–210 mile zone, the sum obtained by multiplying the net pooled milk by the zone differential set forth in column B of the schedule in § 927.4 (c) applicable to the plant;

(8) With respect to net pooled milk in classes other than Classes V–A and V–B, deduct 30 cents per hundredweight at plants in the marketing area; and 20 cents per hundredweight at plants located at Accord, Ellenville, Gardiner, Kyserike, New Paltz, Phinney's Crossing, Wallkill, and West Coxsackie, New York, and in the following counties:

*New Jersey counties.* Burlington, Essex, Hunterdon, Morris, Passaic, Somerset, Sussex, Union, and Warren.

*New York counties.* Columbia, Dutchess, Orange, Putnam, and Rockland.

*Connecticut county.* Litchfield.

*Massachusetts county.* Berkshire.

(9) Add together the handler's net pool obligation for all plants at which milk was received from producers.

(b) *Computation of the uniform price.* The market administrator shall, on or before the 14th day of each month, audit for mathematical correctness and obvious errors the report submitted for the preceding month by each handler. If the unreserved cash balance in the producer-settlement fund to be included in the computation is less than 2 cents per hundredweight of net pooled milk on all reports, the report of any handler who has not made payment of the last monthly pool debit account rendered pursuant to § 927.7 (g) shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly pool debits. Subject to the aforementioned conditions the market administrator shall compute the uniform price in the following manner:

(1) Combine into one total the net pool obligations of all handlers;

(2) Subtract the total of payments required to be made for such month by § 927.7 (d) and the total of payments claimed pursuant to § 927.7 (e);

(3) Add the amount of unreserved cash in the producer-settlement fund;

(4) Subtract an amount equal to not less than 4 cents nor more than 5 cents per hundredweight of net pooled milk in classes other than Class V–A and Class V–B to provide against the contingency of errors in reports and payments or of delinquencies in payments by handlers;

(5) Subtract, from the total net pooled milk of all handlers whose reports are included in this computation, the Class I milk priced pursuant to § 927.4 (a) (6) and subtract the skim milk classified pursuant to subparagraphs (11) and (12) of § 927.3 (b); and

(6) Divide the result obtained in (4) by the result obtained in (5). The result shall be known as the uniform price for milk containing 3.5 percent butterfat received from producers at plants in 201–210 mile zone.

§ 927.7 *Payment to producers*—(a) *Time of payment.* On or before the 25th day of each month each handler shall make payment to each producer for all milk delivered by such producer during the preceding month at not less than the uniform price subject to differentials set forth in paragraphs (b) and (c) of this section: *Provided,* That each handler which is also a cooperative marketing association determined by the Secretary to be qualified under the Capper-Volstead Act, may, with respect to producers who are members of and under contract with such association make distribution, in accordance with the contract between the association and such members, of the net proceeds of all its sales in all markets in all use classifications.

(b) *Transportation and location differentials.* The uniform price at any plant shall be—

(1) Plus or minus the differential shown in column B of the schedule contained in § 927.4 (c) for the zone of the plant in effect pursuant to § 927.4 (c); and

(2) Plus the differentials, if any, applicable pursuant to § 927.6 (a) (8) plus 5 cents.

(c) *Butterfat differential.* The uniform price shall be plus or minus, as the case may be, 4 cents per hundredweight for each one-tenth of 1 percent above or below 3.5 percent of average butterfat content of milk delivered by any producer during any month.

(d) *Cooperative payments.* Any cooperative association of producers may apply to the Secretary for a determination of its qualifications to receive payments pursuant to this paragraph by reason of its having and exercising full authority in the sale of the milk of its members; arranging for and supplying, in a manner commensurate with the marketing capacity of the several types of cooperative associations designated in this paragraph, in times of short supply, Class I milk to the marketing area; securing utilization of milk, in times of long supply, in a manner to assure the greatest possible returns to all producers; having its entire activities under the control of its members; and complying with all provisions of this order applicable to it.

After the Secretary has determined any cooperative to be qualified to receive payments pursuant to this paragraph, such cooperative shall from time to time, as requested by the market administrator, make reports to the market administrator with respect to services rendered to the market and the use of the sums received under this paragraph. Whenever the market administrator has reason to believe that any cooperative qualified by the Secretary is failing to perform the obligations covered by the payments under this paragraph, he shall suspend and hold in reserve such payments, notifying the Secretary and the cooperative of his action and the reasons therefor. Such suspended payments shall be held in reserve until the Secretary has, after hearing, disqualified such cooperative or ruled upon the performance of the cooperative and either ordered the suspended payments to be paid to the cooperative in whole or in part or disqualified the cooperative, in which event the balance of payments held in reserve shall be returned to the producer-settlement fund.

The market administrator shall make the payments authorized by this paragraph, or issue credit therefor, out of the producer-settlement fund on or before the 25th day of each month, subject to verification of the reports upon which such payment is based. Such payments shall be made to each cooperative association of producers under the following conditions and at the following rates:

(1) Three-quarters of one cent per hundredweight of net pooled milk at any handler's plant which was caused to be delivered from its members by such associations and on which such handler has made the reports and payments required by this order;

(2) Except as set forth in subparagraph (3) of this paragraph, two cents per hundredweight of net pooled milk at plants of other complying handlers which was reported and collected for by such association; and

(3) Four cents per hundredweight of net pooled milk at plants operated by such association and, if, in addition to the other qualifications, such association has been determined by the Secretary to have sufficient plant capacity to receive all the milk of producers who are members and to be willing and able to receive milk from producers not members, four cents per hundredweight of any net pooled milk which was caused by it to be delivered to any other complying handler and which is reported and collected for by such association.

(e) *Diversion payments.* Any handler may make claims, on forms supplied by the market administrator, for payments out of the producer-settlement fund under the conditions set forth in this paragraph with respect to milk which was received from producers at a plant not having any equipment other than that needed for the receiving and shipping of milk which was moved to a second plant outside of the marketing area and there manufactured. The market administrator shall make payment to such handler, subject to audit, out of the producer-settlement fund, or issue credit against balances due by such handler to the producer-settlement fund, at the fol-

lowing rates and under the following conditions:

(1) Payments may be made only on milk which has been, pursuant to § 927.3, properly classified, for any month of the year in Classes III and IV-B.

(2) No claim shall be allowed if the milk on which the claim is made is manufactured at a second plant which is one-half mile or less from the first plant.

(3) Claims shall be paid at a rate for handling through the receiving plant of 17 cents per hundredweight, plus a hauling allowance at the rate of ¼ cent per hundredweight per mile for 20 miles and 1/10 cent per hundredweight per additional mile for the shortest highway distance between the two plants: *Provided, however,* That no claim for a hauling allowance shall be paid for a haul greater than 65 miles.

(4) The market administrator shall from time to time cause inspections to be made of the buildings, facilities, and surroundings of plants and notify handlers of his determination as to what constitutes the plant and its equipment for the purpose of this § 927.7 (e). Such determination shall be ruling for all other purposes under this order.

(5) Diversion payments shall not be paid to any handler making claim therefore if, during the month for which such claim is made, such handler has a less proportion of net pooled milk in Class I than the proportion of total net pooled milk in Class I of all other handlers, and such handler has refused to sell milk to other handlers who do not operate or control country receiving plants or has refused to sell to such handlers milk of a butterfat test nearest to that desired by the purchaser if available in the seller's country plants which are eligible for diversion payments, provided the offer of purchase met the following conditions:

(i) Cash on delivery for a quantity of not less than 200 cans per shipment; method of delivery at the option of the buyer.

(ii) Purchase price equal to the price applicable pursuant to § 927.4 (a) (1), subject to the applicable differentials pursuant to (a) § 927.4 (c); (b) the butterfat differentials set forth in § 927.4 (b); (c) plus not more than 23 cents per hundredweight for handling through the country plants; and (d) plus the payments provided by § 927.8.

(f) *Storage cream payments.* With respect to butterfat in frozen cream held in one or more licensed cold-storage warehouses for more than 28 days under the conditions set forth in § 927.3 (b) (3), the handler whose net pool obligations included such butterfat as Class II-B milk may make claim, on forms supplied by the market administrator, for payments out of the producer-settlement fund, if such butterfat was stored during the months of April to September, inclusive, and was used in Classes II-D, II-E, or II-F during the months of October to March, inclusive, or in Class IV-A during the months of January to March, inclusive. The market administrator shall, after investigation and audit of such claim, make payment to such handler out of the producer-settlement fund, or issue credit against balances due from such handler to the producer-settlement fund in an amount equal to the difference between the Class II-B price and the class price for such utilization in effect for the month during which the milk was received from producers.

(g) *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as "the producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to paragraphs (h) and (j) of this section and out of which he shall make all payments to handlers pursuant to paragraphs (e), (f), and (j) of this section, and to cooperative associations of producers pursuant to paragraph (d) of this section: *Provided,* That the market administrator shall offset any such payment due to any handler against payments due from such handler. Immediately after computing the uniform price for each month the market administrator shall compute the amount by which each handler's net pool obligation is greater or less than the amount obtained by multiplying the uniform price by the quantity of such handler's net pooled milk remaining after subtracting therefrom the Class I milk priced pursuant to § 927.4 (a) (4), and shall enter such amount on each handler's account as such handler's pool debit or credit as the case may be, and render such handler a transcript of his account.

(h) *Payments to the producer-settlement fund.* On or before the 18th day of each month, each handler shall make full payment of any pool debit balance shown on the account rendered, pursuant to paragraph (g) of this section, for the preceding month.

(i) *Payments out of producer-settlement fund.* On or before the 20th day of each month the market administrator shall remit to each handler the pool credit of such handler, if any, for the preceding month less any unpaid obligations. If, at such time, the balance in the producer-settlement fund is insufficient to make full payment due to each handler, the market administrator shall reduce uniformly the payments made to each handler and shall complete such payments as soon as the necessary funds are available. No handler who, on the 25th day of the month, has not received the balance of such reduced payment from the market administrator shall be deemed to be in violation of paragraph (a) of this section if he reduces his total payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

(j) *Adjustments of errors in payments.* Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to or from the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount, and such handler shall, within 5 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 5 days, make such payment to such handler. Whenever verification by the market administrator of the payment to any producer for milk delivered to any handler discloses payment to such producer of less than is required by this section, the handler shall make up such payment to the producer not later than the time of making payment next following such disclosure.

§ 927.8 *Expense of administration*—(a) *Payment by handlers.* As his prorata share of the expense of administration hereof, each handler shall, on or before the 20th day of each month, pay to the market administrator a sum not exceeding 2 cents per hundredweight on the total quantity of milk which was received from producers at plants operated by such handler, directly or at the instance of a cooperative association of producers, and which was properly classified in Classes I, II-A, and II-B, the exact amount to be determined by the market administrator subject to review by the Secretary. This section shall not be deemed to duplicate any similar payment by any handler under an order issued by the Commissioner of Agriculture and Markets of the State of New York, with respect to the marketing area.

§ 927.9 *Suspension, termination, and liquidation*—(a) *Continuing obligations of handlers.* Unless otherwise provided by the Secretary in any notice of amendment, termination, or suspension of any or all of the provisions hereof, such amendment, termination, or suspension shall not affect, waive, or terminate any right, duty, obligation, or liability which shall have risen or may thereafter arise in connection with any provision of this order; release or waive any violation of this order occurring prior to the effective date of such amendment, termination, or suspension; or affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

(b) *Continuing power and duty of market administrator.* The market administrator shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the market administrator, to such person as the Secretary shall direct; and (3) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator pursuant hereto.

(c) *Liquidation.* Upon the termination or suspension hereof, the market administrator shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possessions or under his control, together with claims for any funds which are unpaid and owing at the time of such termination or suspension. Any funds collected for expenses, pursuant to the provisions hereof, over and above the amounts nec-

essary to meet outstanding obligations and the expenses necessarily incurred by the market administrator in liquidating the business of the market administrator's office shall be distributed by the market administrator to handlers in an equitable manner.

PROPOSED MARKETING AGREEMENT, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE NEW YORK METROPOLITAN MILK MARKETING AREA PREPARED BY THE ADMINISTRATOR OF THE SURPLUS MARKETING ADMINISTRATION, UNITED STATES DEPARTMENT OF AGRICULTURE [1]

Whereas the parties hereto, in order to effectuate the declared policy of the said act, desired to enter into this marketing agreement.

Now, therefore, the parties hereto agree as follows:

1. The terms and provisions of § 927.1 through § 927.9 of Order No. 27, as Amended, Regulating the Handling of Milk in the New York Metropolitan Marketing Area, issued _____ 1942, shall be the terms and provisions of § 927.1 through § 927.9 of the marketing agreement with the exception that wherever the word "order" is used the words "marketing agreement" shall be substituted therefor; and

2. The following sections shall also be a part of the marketing agreement in addition to § 927.1 through § 927.9 of said order:

§ 927.10 *Termination.* The Secretary may terminate this agreement whenever he finds that this agreement obstructs or does not tend to effectuate the declared policy of the act.

Any handler signatory to this agreement may withdraw as a party to it upon 30 days' written notice to the Secretary effective at midnight on the last day of the month first succeeding the expiration of such 30 days. Such notice of withdrawal may be given to the Secretary by sending it by postpaid, registered mail addressed to the Secretary of Agriculture, Washington, D. C. Such termination shall not release such handler from any obligations under this agreement in respect of transactions occurring prior to the effective date of withdrawal.

Such handler has signed this agreement on the express condition, and the Secretary agrees and confirms, that the execution of this agreement and compliance therewith and with the order of the Secretary for the period that the agreement remains in effect shall be without prejudice to any and all rights of the handler, and shall not constitute an admission by the handler of the validity of the Agricultural Marketing Agreement Act of 1937 or of the order of the Secretary or any of its terms, or any obligation imposed in connection therewith, or any waiver by such handler or estoppel of his rights to question the validity of the Agricultural Marketing Agreement Act of 1937 or the order of the Secretary or any provision thereof, on any and all grounds; all of which rights are hereby expressly reserved to any such handler upon and after withdrawal from the agreement with the same force and effect as if the handler had never become party hereto.

This agreement shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 927.11 *Liability*—(a) *Handlers.* The liability of the handlers hereunder is several and not joint and no handler shall be liable for the default of any other handler.

§ 927.12 *Antitrust laws.* Any exemption from the antitrust laws and any validation of any acts or things, which otherwise would have been unlawful, resulting from the execution of this agreement by the Secretary, shall not extend or be construed to extend further than is absolutely necessary for the purpose of carrying out the provisions of this agreement.

§ 927.13 *Duration of immunities.* The benefits, privileges, and immunities conferred by virtue of this agreement shall cease upon its termination, except with respect to acts done under and during the existence of this agreement, and the benefits, privileges, and immunities conferred by this agreement upon any parties signatory hereto shall cease upon its termination as to such party, except with respect to acts done under and during the existence of this agreement.

§ 927.14 *Counterparts and additional parties*—(a) *Counterparts.* This agreement may be executed in multiple counterparts, and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument, as if all such signatures were obtained in one original.

(b) *Additional parties.* After this agreement first takes effect, any handler may become a party to this agreement if a counterpart thereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 927.15 *Authorization to correct typographical errors and record of milk handled during the month of April 1941*—(a) *Authorization to correct typographical errors.* The undersigned hereby authorizes O. M. Reed, Chief, Dairy Division, Surplus Marketing Administration, to correct any typographical errors which may have been made in this marketing agreement, as amended.

(b) *Record of milk handled during the month of* _____. The undersigned certifies that he handled during the month of _____, _____ hundredweight of milk covered by this agreement, as amended, and disposed of within the marketing area.

§ 927.16 *Signature of parties.* In witness whereof, the contracting handlers, acting under the provisions of the act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

_____
Signature

By_____
Name

_____
Title

_____
Address

Attest_____

_____
Date

[F. R. Doc. 42-1633; Filed, February 24, 1942; 11:53 p. m.]

[1] This proposed marketing agreement is prepared by the administrator pursuant to § 900.12 (a) of the general regulations, Surplus Marketing Administration, and has not received the approval of the Secretary of Agriculture.

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## DEPARTMENT OF LABOR.

### Wage and Hour Division.

NOTICE OF ISSUANCE OF SPECIAL CERTIFICATES FOR THE EMPLOYMENT OF LEARNERS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

Notice is hereby given that Special Certificates authorizing the employment of learners at hourly wages lower than the minimum wage rate applicable under Section 6 of the Act are issued under section 14 thereof, Part 522 of the Regulations issued thereunder (August 16, 1940, 5 F.R. 2862) and the Determination and Order or Regulation listed below and published in the FEDERAL REGISTER as here stated.

Apparel Learner Regulations, September 7, 1940 (5 F.R. 591).

Men's Single Pants, Shirts and Allied Garments and Women's Apparel Industries, September 23, 1941 (6 F.R. 4839).

Artificial Flowers and Feathers Learner Regulations, October 24, 1940 (5 F.R. 4203).

Glove Findings and Determination of February 20, 1940, as amended by Administrative Order of September 20, 1940 (5 F.R. 3748).

Hosiery Learner Regulations, September 4, 1940 (5 F.R. 3530).

Independent Telephone Learner Regulations, September 27, 1940 (5 F.R. 3829).

Knitted Wear Learner Regulations, October 10, 1940 (5 F.R. 3982).

Millinery Learner Regulations, Custom Made and Popular Priced, August 29, 1940 (5 F.R. 3392, 3393).

Textile Learner Regulations, May 16, 1941 (6 F.R. 2446).

Woolen Learner Regulations, October 30, 1940 (5 F.R. 4302).

Notice of Amended Order for the Employment of Learners in the Cigar Manufacturing Industry, July 29, 1941 (6 F.R. 3753).

The employment of learners under these Certificates is limited to the terms and conditions as to the occupations, learning periods, minimum wage rates, et cetera, specified in the Determination

and Order or Regulation for the industry designated above and indicated opposite the employer's name. These Certificates become effective February 23, 1942. The Certificates may be cancelled in the manner provided in the Regulations and as indicated in the Certificates. Any person aggrieved by the issuance of any of these Certificates may seek a review or reconsideration thereof.

NAME AND ADDRESS OF FIRM, INDUSTRY, PRODUCT, NUMBER OF LEARNERS AND EXPIRATION DATE

*Apparel*

Quakertown Clothing Manufacturing Company, 10th and Juniper Streets, Quakertown, Pennsylvania; Pants; 5 percent (T); February 23, 1943.

Stratbury Manufacturing Company, East Church Street, Galion, Ohio; Overcoats, Topcoats; 5 percent (T); February 23, 1943.

M. Wile and Company, Inc., 77 Goodell Street, Buffalo, New York; Men's Clothing; 30 learners (T); February 23, 1943.

*Single Pants, Shirts, and Allied Garments and Women's Apparel*

Cotton City Wash Frocks, Inc., 52 12th Street, Fall River, Massachusetts; Cotton Dresses, Housecoats and Playsuits; 10 percent (T); February 23, 1943.

W. R. Darling, 127 East 9th Street, Los Angeles, California; Slacks, Playsuits, Shorts; 5 learners (T); February 23, 1943.

N. Farah and Sons, Inc., 188 Huntington Street, Brooklyn, New York; Housecoats; 10 learners (T); August 23, 1942.

Maderite Shirt Company, 1027 Metropolitan Avenue, Brooklyn, New York; Men's Shirts; 10 percent (T); August 23, 1942.

Manheim Manufacturing Company, 35 South Spring Street, Elizabeth, New Jersey; Dresses and Blouses; 10 learners (T); February 23, 1943.

Merit Shirt Corporation, Herbert and Smith Streets, Perth Amboy, New Jersey; Shirts; 10 percent (T); February 23, 1943.

Nickols Manufacturing Company, Inc., 1521 Tenth Avenue, Seattle, Washington; Ladies' Cotton and Rayon Garments; 5 learners (T); February 23, 1943.

Outdoor Frocks, Inc., Philmont, New York; Dresses; 10 percent (T); February 23, 1943.

Portland Overall Company, 127 Middle Street, Portland, Maine; Work Pants; 10 learners (T); February 23, 1943.

Prime Shirt and Sportwear Company, 82 White Street, Brooklyn, New York; Sport Shirts; 10 percent (T); June 8, 1942.

Seaford Garment Company, Phillips Street, Seaford, Delaware; Shirts; 10 percent (T); February 23, 1943.

Strouse Baer Company, 110 South Paca Street, Baltimore, Maryland; Infants' & Children's Boys' Wear; 10 percent (T); February 23, 1943.

*Gloves*

The Frank Russell Glove Company, 203 Park Avenue, Berlin, Wisconsin; Leather Dress and Knit Fabric Gloves; 5 learners (T); February 23, 1943.

*Hosiery*

Bloomsburg Hosiery Mills, Inc., Bloomsburg, Pennsylvania; Seamless Hosiery; 5 percent (T); February 23, 1943.

Cooksville Hosiery Mills, No. 3, Vale, North Carolina; Seamless Hosiery; 5 learners (T); February 23, 1943.

*Knitted Wear*

New Knit Manufacturing Company, 95 Bridge Street, Lowell, Massachusetts; Knitted Outerwear; 5 learners (T); February 23, 1943.

*Millinery*

Kaufman and Company, 2022 West Broad Street, Richmond, Virginia; Popular-Priced Millinery; 15 learners (E); August 16, 1942. (This certificate effective February 16, 1942 and omitted from FEDERAL REGISTER of that date.)

Signed at New York, N. Y., this 21st day of February 1942.

MERLE D. VINCENT,
*Authorized Representative of the Administrator.*

[F. R. Doc. 42-1568; Filed, February 23, 1942; 9:10 a. m.]

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## CIVIL AERONAUTICS BOARD.

[Docket Nos. 405, 406, 443, 457, 559, 568]

IN THE MATTER OF THE APPLICATIONS OF ALASKA AIR LINES, INC., PACIFIC ALASKA AIRWAYS, INC., AND WOODLEY AIRWAYS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDMENT OF EXISTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING AIR TRANSPORTATION TO AND FROM ANCHORAGE, ALASKA; ALASKA AIR LINES, INC., FOR APPROVAL OF CERTAIN INTERLOCKING RELATIONSHIPS, AND APPROVAL OF THE PURCHASE OF CERTAIN PROPERTIES OF LAVERY AIRWAYS BY PACIFIC ALASKA AIRWAYS, INC., AND A CONSOLIDATION OF ALASKA AIR LINES, INC., WITH WOODLEY AIRWAYS

NOTICE OF ORAL ARGUMENT

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly Sections 406 and 1001 of said Act, in the above-entitled proceeding, that oral argument is hereby assigned to be held on February 24, 1942, at 10 a. m. (Eastern Standard Time) in Room 5042 Commerce Building, Washington, D. C., 14th Street and Constitution Avenue NW., before the Board.

Dated Washington, D. C., February 20, 1942.

By the Civil Aeronautics Board.

[SEAL] DARWIN CHARLES BROWN,
*Secretary.*

[F. R. Doc. 42-1562; Filed, February 21, 1942; 12:32 p. m.]

[Docket Nos. 405, 406, 443, 457, 559, 568]

IN THE MATTER OF THE APPLICATIONS OF ALASKA AIR LINES, INC., PACIFIC ALASKA AIRWAYS, INC., AND WOODLEY AIRWAYS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND AMENDMENT OF EXISTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING AIR TRANSPORTATION TO AND FROM ANCHORAGE, ALASKA; ALASKA AIR LINES, INC., FOR APPROVAL OF CERTAIN INTERLOCKING RELATIONSHIPS, AND APPROVAL OF THE PURCHASE OF CERTAIN PROPERTIES OF LAVERY AIRWAYS BY PACIFIC ALASKA AIRWAYS, INC., AND A CONSOLIDATION OF ALASKA AIR LINES, INC., WITH WOODLEY AIRWAYS

NOTICE OF POSTPONEMENT OF ORAL ARGUMENT

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly Sections 406 and 1001 of said Act, in the above-entitled proceeding, that oral argument now assigned to be held on February 24, 1942, is hereby postponed to March 3, 1942, at 10 a. m. (Eastern Standard Time) in Room 5042 Commerce Building, 14th Street and Constitution Avenue NW., Washington, D. C., before the Board.

Dated Washington, D. C., February 23, 1942.

By the Civil Aeronautics Board.

[SEAL] DARWIN CHARLES BROWN,
*Secretary.*

[F. R. Doc. 42-1590; Filed, February 23, 1942; 12:00 m.]

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## FEDERAL POWER COMMISSION.

[Docket Nos. G-200, G-207]

CITY OF DETROIT, MICHIGAN, AND COUNTY OF WAYNE, MICHIGAN V. PANHANDLE EASTERN PIPE LINE COMPANY AND MICHIGAN GAS TRANSMISSION CORPORATION; AND IN THE MATTER OF PANHANDLE EASTERN PIPE LINE COMPANY AND MICHIGAN GAS TRANSMISSION CORPORATION

ORDER DENYING PETITION FOR CONTINUANCE AND CHANGING PLACE OF HEARING

FEBRUARY 17, 1942.

Upon application filed February 4, 1942, by Panhandle Eastern Pipe Line Company, Defendant, for a continuance of the hearing in this proceeding for a period of at least 60 days; and

It appearing that: (a) The City of Detroit, Michigan, and County of Wayne, Michigan, Complainants, on February 11, 1942, filed objections to the said petition for continuance;

(b) Subsequent to the filing of said petition for continuance, the hearing was recessed by the Commission's Examiner to reconvene on February 23, 1942;

(c) No good cause exists for a 60-day postponement of the hearing;

The Commission *orders* that: (A) The said petition for a continuance of 60 days be and it is hereby denied;

(B) The hearing in this proceeding be resumed on February 24, 1942, at 9:45

a. m., C. W. T., in Room 406, County Building, at Detroit, Michigan.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 42-1566; Filed, February 23, 1942; 8:59 a. m.]

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[Docket No. IT-5772]

IN THE MATTER OF CENTRAL ILLINOIS PUBLIC SERVICE COMPANY

ORDER TO SHOW CAUSE AND FIXING DATE OF HEARING

FEBRUARY 20, 1942.

It appearing to the Commission that:

(a) Central Illinois Public Service Company (hereinafter referred to as Company) is engaged in the transmission and sale at wholesale of electric energy in interstate commerce and may be, therefore, a public utility within the meaning of the Federal Power Act subject to the jurisdiction of the Commission;

(b) The Company has filed purported reclassification of accounts and original cost studies pursuant to Electric Plant Accounts Instruction 2-D of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees and the Commission's order of May 11, 1937, pertaining thereto;

(c) The staff of the Federal Power Commission has made a field study of the Company's purported reclassification of accounts and original cost studies;

(d) The Company has failed in many respects to comply with the requirements of the Commission's Uniform System of Accounts concerning the reclassification of its plant accounts, and the Commission's order of May 11, 1937, pertaining thereto, and more particularly as follows:

(i) The Company has failed to make proper analyses of records of cost of its electric plant to permit a proper reclassification thereof to the prescribed accounts;

(ii) The Company has not made such analyses as would permit the determination of unrecorded or underpriced retirements;

(iii) The Company has made estimates of costs which appear to be arbitrary, unsupported and unnecessary because of available records;

(iv) The Company has classified as Unsegregated Plant Acquisition Adjustments the difference between the recorded cost of acquired plant, all departments, and its determination of original cost of electric and gas utility plant plus amounts transferred to other utility plant accounts, no classification being made of amounts includible in Account 100.5, Electric Plant Acquisition Adjustments;

(v) The Company has reflected in other accounts amounts properly includible in Account 107, Electric Plant Adjustments, contrary to the provisions of Electric Plant Instruction 1-F;

The Commission *orders* that:

(A) Central Illinois Public Service Company show cause, if any there be, at a public hearing to be held on March 23, 1942, at 10 a. m., Central War Time, in the Offices of the Illinois Commerce Commission, Centennial Building, at Springfield, Illinois, why the Commission should not by order require the Company to prepare and submit reclassification of accounts and original cost studies in accordance with the requirements of the Commission's Uniform System of Accounts and its order of May 11, 1937; all in accordance with the evidence adduced at such public hearing;

(B) The Illinois Commerce Commission may participate in the hearing as provided in Part 39, Section 39.4, of this Commission's Rules of Practice and Regulations prescribed pursuant to the provisions of the Federal Power Act.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 42-1602; Filed, February 24, 1942; 9:30 a. m.]

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## FEDERAL TRADE COMMISSION.

[Docket No. 4661]

IN THE MATTER OF NESTLE'S MILK PRODUCTS, INC., A CORPORATION

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of February, A. D. 1942.

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 USCA, section 41),

*It is ordered,* That John W. Addison, a trial examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

*It is further ordered,* That the taking of testimony in this proceeding begin on Friday, March 6, 1942, at ten o'clock in the forenoon of that day (Eastern Standard Time) in Room 500, 45 Broadway, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the trial examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The trial examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 42-1555; Filed, February 21, 1942; 11:40 a. m.]

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[Docket No. 4598]

IN THE MATTER OF CODRIN CORPORATION, A CORPORATION

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of February, A. D. 1942.

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 USCA, section 41)

*It is ordered,* That John W. Addison, a trial examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

*It is further ordered,* That the taking of testimony in this proceeding begin on Wednesday, March 4, 1942, at ten o'clock in the forenoon of that day, (Eastern Standard Time), Room 500, 45 Broadway, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the trial examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The trial examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 42-1554; Filed, February 21, 1942; 11:41 a. m.]

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## SECURITIES AND EXCHANGE COMMISSION.

[File Nos. 7-486; 7-523 to 7-550 inc.]

IN THE MATTER OF APPLICATIONS BY THE DETROIT STOCK EXCHANGE FOR PERMISSION TO EXTEND UNLISTED TRADING PRIVILEGES TO TWENTY-NINE (29) STOCKS

ORDER DISPOSING OF APPLICATIONS FOR PERMISSION TO EXTEND UNLISTED TRADING PRIVILEGES

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 18th day of February 1942.

The Detroit Stock Exchange having made application to the Commission, pursuant to section 12 (f) of the Securities Exchange Act of 1934 and Rule X-12F-1, for permission to extend unlisted trading privileges to twenty-nine (29) stocks; and

After appropriate notice, a hearing having been held in this matter in Cleveland, Ohio; and

The Commission having this day made and filed its findings and opinion herein;

*It is ordered,* Pursuant to section 12 (f) of the Securities Exchange Act of 1934, that the applications of the Detroit Stock Exchange for permission to extend unlisted trading privileges to Allegheny-Ludlum Steel Corporation Common Stock, No Par Value; American Rolling Mill Company $25 Par Value Common Stock; The Aviation Corporation $3 Par Value Capital Stock; Bendix Aviation Corporation $5 Par Value Common Stock; Bethlehem Steel Corporation Common Stock, No Par Value; Edward G. Budd Manufacturing Company Common Stock, No Par Value; Commercial Solvents Corporation Common Stock, No Par Value; Curtiss-Wright Corporation $1 Par Value Common Stock; Dome Mines, Limited, Common Stock, No Par

Value; General Electric Company Common Stock, No Par Value; The Goodyear Tire and Rubber Company Common Stock, No Par Value; Hayes Manufacturing Corporation $2 Par Value Common Stock; Illinois Central Railroad Company $100 Par Value Common Stock; Kelsey-Hayes Wheel Company $1 Par Value Class A Stock; Kelsey-Hayes Wheel Company $1 Par Value Class B Stock; Mueller Brass Company $1 Par Value Common Stock; National Automotive Fibres, Inc. $1 Par Value Common Stock; National Steel Corporation $25 Par Value Common Stock; Paramount Pictures, Inc. $1 Par Value Common Stock; Radio Corporation of America Common Stock, No Par Value; Republic Steel Corporation Common Stock, No Par Value; Reynolds Spring Company $1 Par Value Common Stock; Southern Railway Company Common Stock, No Par Value; Standard Oil Company (Indiana) $25 Par Value Capital Stock; Studebaker Corporation $1 Par Value Common Stock; Western Union Telegraph Company $100 Par Value Common Stock; Willys-Overland Motors, Inc. $1 Par Value Common Stock; and F. W. Woolworth Company $10 Par Value Capital Stock, be and the same are hereby approved.

*It is further ordered,* That the application of the Detroit Stock Exchange for permission to extend unlisted trading privileges to P. Lorillard Company $10 Par Value Common Stock be and the same is hereby denied.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 42-1559; Filed, February 21, 1942; 11:59 a. m.]

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[File Nos. 7-558 to 7-574, incl.]

IN THE MATTER OF APPLICATIONS BY THE PHILADELPHIA STOCK EXCHANGE FOR PERMISSION TO EXTEND UNLISTED TRADING PRIVILEGES TO SEVENTEEN (17) STOCKS

ORDER DISPOSING OF APPLICATIONS FOR PERMISSION TO EXTEND UNLISTED TRADING PRIVILEGES

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 18th day of February 1942.

The Philadelphia Stock Exchange having made application to the Commission, pursuant to Section 12 (f) of the Securities Exchange Act of 1934 and Rule X-12F-1, for permission to extend unlisted trading privileges to seventeen (17) stocks; and

After appropriate notice, a hearing having been held in this matter in Washington, D. C.; and

The Commission having this day made and filed its findings and opinion herein;

*It is ordered,* Pursuant to section 12 (f) of the Securities Exchange Act of 1934, that the applications of the Philadelphia Stock Exchange for permission to extend unlisted trading privileges to American Viscose Corporation $14 Par Value Common Stock; Blaw Knox Company Common Stock, No Par Value; Commonwealth Edison Company $25 Par Value Shares; Consolidated Aircraft Corporation $1 Par Value Common Stock; Consolidated Cigar Corporation Common Stock, No Par Value; Consolidated Coppermines Corporation $5 Par Value Capital Stock; Eastern Air Lines, Inc. $1 Par Value Common Stock; International Mercantile Marine Company Common Stock, No Par Value; Pan American Airways Corporation $5 Par Value Capital Stock; Pressed Steel Car Company, Inc. $1 Par Value Common Stock; Standard Oil Company (Indiana) $25 Par Value Capital Stock; United Aircraft Products, Inc. $1 Par Value Common Stock; White Motor Company $1 Par Value Common Stock; and Willys-Overland Motors, Inc. $1 Par Value Common Stock, be and the same are hereby approved.

*It is further ordered,* That the applications of the Philadelphia Stock Exchange for permission to extend unlisted trading privileges to American Airlines, Inc. $10 Par Value Common Stock; Crown Zellerbach Corporation $5 Par Value Common Stock; and National Aviation Corporation $5 Par Value Common Stock, be and the same are hereby denied.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 42-1560; Filed, February 21, 1942; 11:59 a. m.]

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[File Nos. 54-40, 59-40]

IN THE MATTERS OF CONSOLIDATED ELECTRIC AND GAS COMPANY, APPLICANT; AND CENTRAL PUBLIC UTILITY CORPORATION, AND CONSOLIDATED ELECTRIC AND GAS COMPANY, RESPONDENTS

MEMORANDUM OPINION AND ORDER DENYING APPLICATION OF HARRISON E. FRYBERGER FOR LEAVE TO INTERVENE

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 20th day of February, A. D. 1942.

*Practice and Procedure—Intervention*

Application by claimant for leave to intervene denied where it appeared that claim had not been reduced to judgment and that claimant was neither a stockholder nor a creditor of either of respondent companies, the Commission finding that the requirements of Rule XVII of its Rules of Practice had not been satisfied.

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The Commission, on December 27, 1941, issued its Notice of and Order for Hearing on a plan filed under section 11 (e) of the Public Utility Holding Company Act of 1935, by Consolidated Electric and Gas Company; Notice of and Order instituting proceedings against the Respondents and setting date for hearing under sections 11(b) (1) and 11(b) (2) of said Act; and Order consolidating such proceedings for purposes of hearing.

Harrison E. Fryberger has filed an application for leave to intervene in the above-entitled matters in his own behalf as a so-called claimant and on behalf of a class of persons also styled as claimants. Since it does not appear that the applicant has been authorized to represent any other persons, this will be treated solely as an application by Fryberger in his own behalf.

Fryberger presently owns no securities of either Central Public Utility Corporation or Consolidated Electric and Gas Company. He does not assert that he is a consumer of any of the public utility companies in the holding-company system here involved.

Applicant alleges that he has a claim against Consolidated Electric and Gas Company arising from a purchase of stock in Central Public Service Corporation, a predecessor holding company, substantially all of whose assets were transferred to Consolidated Electric and Gas Company in 1932, pursuant to a so-called Voluntary Plan of Reorganization, which plan was consummated in its ultimate form in 1935 in the course of proceedings under Section 77B of the Bankruptcy Act in the United States District Court for the District of Maryland.

A suit in the Supreme Court of the State of New York, seeking to establish this claim as a cause of action against Consolidated Electric and Gas Company and others, resulted in a decision in favor of the defendants, which decision was affirmed by both the Appellate Division and the Court of Appeals of the State of New York. A bill in equity in the Court of Chancery of Delaware was dismissed on the grounds that the matter was *res judicata.* A third suit in New York has resulted in an adverse decision, although the right of appeal in this action is still available. We express no opinion with regard to the merits of Fryberger's claim; it is sufficient to state that this claim has not been established in a court of competent jurisdiction and that Fryberger has not established his status as a creditor of either of the respondent companies.

Furthermore, it does not appear that these proceedings will in any way prejudice any rights of action that Fryberger may have against either of the Respondents herein. The Commission finds that he has not established that he possesses or represents an interest which is or may be inadequately represented in the proceedings as required by Rule XVII of the Commission's Rules of Practice and that his participation in the proceedings would not be in the public interest or for the protection of investors or consumers.

*Accordingly, it is ordered,* That the application of Harrison E. Fryberger for leave to intervene in the above-entitled proceedings be, and the same hereby is, in all respects *denied,* without prejudice however to the renewal of such application at such time as the said Harrison E. Fryberger shall have established himself as a judgment creditor of either Central Public Utility Corporation or Consolidated Electric and Gas Company.

By the Commission (Chairman Purcell and Commissioners Healy and Pike), Commissioners Burke and O'Brien being absent and not participating.

FRANCIS P. BRASSOR,
*Secretary.*

[F. R. Doc. 42-1561; Filed, February 21, 1942; 12:00 m.]

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[File No. 70-485]

IN THE MATTER OF PUBLIC SERVICE COMPANY OF INDIANA, INC., WEST INDIANA UTILITIES COMPANY, AND BRAZIL ELECTRIC COMPANY

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 20th day of February, A. D. 1940.

The above named parties having filed a joint declaration pursuant to the Public Utility Holding Company Act of 1935, particularly sections 12 (c) and 12 (f) thereof, and Rules U-42 and U-43 promulgated thereunder regarding:

(1) The surrender by West Indiana Utilities Company ("West Indiana") of all the outstanding securities of Brazil Electric Company ("Brazil"), the dissolution of Brazil and the transfer of Brazil's assets to West Indiana; and

(2) The surrender by Public Service Company of Indiana, Inc. ("Public Service") of all the outstanding securities of West Indiana, the dissolution of West Indiana and the transfer of West Indiana assets, including those received from Brazil, to Public Service.

Said declaration having been filed on January 16, 1942 and notice of said filing having been duly given in the form and manner prescribed by Rule U-23 pursuant to said Act and the Commission not having received a request for a hearing with respect to said declaration within the period specified in said notice or otherwise and not having ordered a hearing thereon; and the above named persons having requested that said declaration be permitted to become effective as soon as possible; and

The Commission deeming it appropriate in the public interest and in the interest of investors and consumers to permit said declaration to become effective pursuant to section 12 (c) and 12 (f) of the Act and Rules U-42 and U-43 promulgated thereunder and being satisfied that the effective date of said declaration should be advanced;

*It is hereby ordered,* Pursuant to Rule U-23 and the applicable provisions of said Act and subject to the terms and conditions prescribed in Rule U-24 that the above declaration be and it hereby is permitted to become effective forthwith.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
*Secretary.*

[F. R. Doc. 42-1585; Filed, February 23, 1942; 12:01 p. m.]



[File No. 70-465]

IN THE MATTER OF FORD R. JENNINGS AND GEORGE N. FLEMING, PROPOSED ORGANIZERS OF A PROTECTIVE COMMITTEE FOR THE CLARION RIVER POWER COMPANY 6% NON-CUMULATIVE PARTICIPATING CAPITAL STOCK; SUCH PROTECTIVE COMMITTEE TO REPRESENT ITS DEPOSITORS IN PROCEEDINGS BEFORE THIS COMMISSION CAPTIONED: AND IN THE MATTER OF PENNSYLVANIA ELECTRIC COMPANY, THE CLARION RIVER POWER COMPANY, ERIE LIGHTING COMPANY, YOUGHIOGHENY HYDRO-ELECTRIC CORPORATION, ASSOCIATED MARYLAND ELECTRIC POWER CORPORATION, ASSOCIATED ELECTRIC COMPANY

NOTICE OF AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 20th day of February, A. D. 1942.

Notice is hereby given that a declaration on Form U-R-I has been filed by Ford R. Jennings and George N. Fleming pursuant to Rule U-62 promulgated under the Public Utility Holding Company Act of 1935. All interested persons are referred to said document, which is on file in the office of this Commission, for a statement of the undertakings therein proposed, which are summarized as follows:

Declarants propose to solicit deposits from the public holders of the 6% Non-Cumulative Participating Capital Stock $100 par value of The Clarion River Power Company. Of a total of 44,530 shares of such stock outstanding 4,267.6 shares are in the hands of the public.

The purpose of such solicitation, as set forth in the declaration, is to obtain the right to represent depositors in a proceeding before this Commission which proceeding is involved, among other things, with the sale to Pennsylvania Electric Company, parent of The Clarion River Power Company, of all of the assets of The Clarion River Power Company, it being represented that a consummation of the sale as proposed by Pennsylvania Electric Company and The Clarion River Power Company would leave no equity for the Participating Capital Stock of The Clarion River Power Company. (On February 17, 1942 this Commission allowed the declarations to become effective and approved the applications embracing, among other things, the sale above mentioned. Our order, however, expressly reserved jurisdiction "to determine whether and the extent to which the indebtedness of The Clarion River Power Company to Pennsylvania Electric Company should be subordinated to the publicly held Participating Capital Stock * * *" Holding Company Act Release No. 3332.)

The declaration discloses that declarants, Ford R. Jennings and George N. Fleming, are each engaged in the securities business and each own Participating Capital Stock of The Clarion River Power Company, the holdings of Jennings being 30 shares and Fleming's being 75 shares.

It appearing to the Commission that it is appropriate in the public interest and the interest of investors and consumers that a hearing be held with respect to said matters, that said declaration shall not become effective except pursuant to further order of this Commission;

*It is ordered,* That a hearing on such matters under the applicable provisions of said Act and rules of the Commission thereunder be held on March 17, 1942 at 10:00 o'clock A. M., at the offices of the United States Securities and Exchange Commission located in the former Penn-Athletic Club Building siuated at 18th and Locust Streets, Philadelphia, Pennsylvania. At such hearing, cause shall be shown why such declaration shall become effective. Notice is hereby given of said hearing to the above-named declarants and to all interested persons, said notice to be given to said declarants by registered mail and to all other persons by publication in the FEDERAL REGISTER.

*It is further ordered,* That James G. Ewell or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice.

*It is further ordered,* That without limiting the scope of issues presented by said declaration otherwise to be considered in this proceeding, particular attention will be directed at the hearing to the following matters and questions:

1. Whether the proposed method of charging and the amounts of expenses and compensation by such committee is consisent with the applicable standards of the Act and the Rules thereunder, and whether such solicitation material should provide that no fees and expenses will be paid except pursuant to approval by this Commission;

2. Whether and to what extent additional facts should be stated in the solicitation material with respect to the interests of said committee members in the securities of The Clarion River Power Company and concerning the interests therein of any partnership, firm, or corporation of which any of such committee members are interested;

3. Generally, whether the proposed solicitation is consistent with the applicable standards of the Act and the Rules thereunder, and whether, if such solicitation be permitted, the interests of the public or of investors or consumers require the imposition of terms and conditions with respect thereto.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
*Secretary.*

[F. R. Doc. 42-1583; Filed, February 23, 1942; 12:01 p. m.]

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[File No. 70-475]

IN THE MATTER OF ELECTRIC BOND AND SHARE COMPANY

ORDER PERMITTING DECLARATION TO BECOME EFFECTIVE IN PART

At a regular session of the Securities and Exchange Commission held at its

office in the city of Washington, D. C., on the 20th day of February, A. D. 1942.

Electric Bond and Share Company, a registered holding company, having filed a declaration under section 12 (c) of the Public Utility Holding Company Act of 1935 and Rule U-42 promulgated thereunder regarding the acquisition of shares of its $5 and $6 Preferred Stocks through the expenditure of not more than $5,000,000 of its cash, to be effected by purchases from time to time on the New York Curb Exchange; a public hearing on said declaration having been held after appropriate notice; the Commission having examined the record and having made and filed its findings herein;

*It is ordered,* That said declaration be, and the same hereby is, permitted to become effective to the extent of $2,000,000, subject to the following conditions:

1. That all purchases shall be effected on the New York Curb Exchange and the company shall not solicit or cause to be solicited the sale of any shares to the company;

2. That the company shall furnish to the Commission, promptly after the 15th day and the last day of each month, a schedule showing for each day covered by such report the number of shares of each class purchased, the prices at which purchased and the name of the broker through whom purchased.

3. That the company shall include in its quarterly reports to stockholders information as to the total number of shares of each class purchased and the aggregate purchase price for each class;

4. That no purchases shall be made after the expiration of six months from the date of this Order, subject, however, to the right of the company to apply for an extension or extensions of such period;

5. That the Commission reserves jurisdiction in its discretion, to rescind or modify this Order upon notice to the company at any time prior to the expiration of such six months' period or any extension or extensions thereof; any such rescission or modification to be applicable only to such portion of the $2,000,000 as shall not have been previously expended;

6. That the Commission reserves jurisdiction with respect to the remaining $3,000,000 covered by the declaration filed in the present proceeding, pending formulation by the company of an exchange plan or other plan or plans for distribution of assets to the preferred stockholders; and

7. That the Commission reserves jurisdiction to require that all shares of preferred stock acquired by the company pursuant to the present declaration and Order be retired and canceled.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 42-1584; Filed, February 23, 1942; 12:01 p. m.]