FEDERAL REGISTER

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TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10676

DESIGNATING THE WORLD METEOROLOGICAL ORGANIZATION AS A PUBLIC INTERNATIONAL ORGANIZATION ENTITLED TO ENJOY CERTAIN PRIVILEGES, EXEMPTIONS, AND IMMUNITIES

By virtue of the authority vested in me by section 1 of the International Organizations Immunities Act, approved December 29, 1945 (59 Stat. 669), and having found that the United States participates in the World Meteorological Organization under the authority of the Convention of the World Meteorological Organization ratified by the President on May 4, 1949, with the advice and consent of the Senate given on April 20, 1949, I hereby designate the World Meteorological Organization as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the said International Organizations Immunities Act.

The designation of the World Meteorological Organization as a public international organization within the meaning of the said International Organizations Immunities Act is not intended to abridge in any respect privileges, exemptions, and immunities which such organization may have acquired or may acquire by treaty or congressional action.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
September 1, 1956.

[F. R. Doc. 56-7162; Filed, Sept. 4, 1956; 10:26 a. m.]

EXECUTIVE ORDER 10677

AMENDMENT OF EXECUTIVE ORDER NO. 10629,[1] AS AMENDED, TO AUTHORIZE ENLISTMENTS IN THE READY RESERVE OF THE AIR FORCE RESERVE

By virtue of the authority vested in me by subsection (a) of section 262 of the Armed Forces Reserve Act of 1952, as added by section 2 (i) of the Reserve Forces Act of 1955 (69 Stat. 600), it is ordered that Executive Order No. 10629 of August 13, 1955, authorizing enlistments in the Ready Reserve of the Army Reserve and the Marine Corps Reserve, as amended by Executive Order No. 10667 of May 9, 1956, to include the Naval Reserve and the Coast Guard Reserve, be, and it is hereby amended to read as follows:

"WHEREAS I have determined that the enlisted strength of the Ready Reserve of the Army Reserve, Marine Corps Reserve, Naval Reserve, Coast Guard Reserve, and Air Force Reserve cannot be maintained at the level necessary for the national defense:

"NOW, THEREFORE, by virtue of the authority vested in me by subsection (a) of section 262 of the Armed Forces Reserve Act of 1952 as added by section 2 (i) of the Reserve Forces Act of 1955 (69 Stat. 600), I hereby authorize the acceptance of enlistments in units of the Ready Reserve of the Army Reserve, Marine Corps Reserve, Naval Reserve, Coast Guard Reserve, and Air Force Reserve pursuant to the provisions of the said section 262 of the Armed Forces Reserve Act of 1952, as added as heretofore indicated, under such regulations as the Secretary of Defense shall prescribe."

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
September 1, 1956.

[F. R. Doc. 56-7163; Filed, Sept. 4, 1956; 10:26 a. m.]

[1] 20 F. R. 5911; 3 CFR, 1955 Supp., p. 81.

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM COMPETITIVE SERVICE

DEPARTMENT OF AGRICULTURE

Effective upon publication in the FEDERAL REGISTER, paragraph (h) (3) is added to § 6.111 as set out below.

§ 6.111 *Department of Agriculture.* * * *

(h) *Agricultural Marketing Service.* * * *

(3) Positions of Cotton Classers, GS-9 and below, and Clerks, GS-2, employed on a seasonal basis in cotton-classing offices outside the Washington, D. C., Metropolitan Area. Employment under this authority shall not exceed 160 working days a year in the case of Cotton Classers or 130 working days a year in the case of Clerks.

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FEDERAL REGISTER

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

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 56-7071; Filed, Sept. 4, 1956; 8:48 a. m.]

PART 24—FORMAL EDUCATION REQUIREMENTS FOR APPOINTMENT TO CERTAIN SCIENTIFIC, TECHNICAL, AND PROFESSIONAL POSITIONS

STUDENT TRAINEE

Section 24.121 is amended to read as follows:

§ 24.121 *Student Trainee, GS-2-4, in the following codes: GS-402, 408, 455, 458, 462, 483, 802, 1311, 1341, 1371, 1521 or other code covering positions of student trainee for any professional field as follows: any biological science (Group GS-400), any branch of engineering (Group GS-800) any physical science (Group GS-1300), any profession of the Mathematics and Statistics Group (GS-1500), architecture, landscape architecture, patent examining, food and drug inspection, economics, and accounting*—(a) *Educational requirements.* (1) For Student Trainee, GS-2 applicants must have been graduated from an accredited high school upon the successful completion of all the high school courses required for admission to an accredited college or university in a curriculum leading to a bachelor's degree in one of the specialized fields shown in the headnote of this section, and they must have been enrolled or accepted for enrollment in such institution and curriculum, or they must have the intention of enrolling within 4 months of the date of entrance on duty in the Student Trainee positions.

(2) Applicants for grades 3 and 4 must have completed the number of academic years of study specified below, a full academic year of study being defined as a period or combination of periods of study at college (in either cooperative or noncooperative curricula) equal in length to two semesters or three quarters:

For Student Trainee, GS-3: One full academic year of study.

For Student Trainee, GS-4: Two and one-half full academic years of study.

(3) The college study specified must have been at an accredited college or university in a full 4-year or longer curriculum leading to a bachelor's degree with specialization in one of the fields listed in the headnote of this section. For Student Trainee (Engineering) the study must have been in a curriculum accredited by the Engineers' Council for Professional Development or in one equivalent thereto in type, scope, content and quality. The specialized field for which applicants apply and in which they will receive training on the job if appointed, must be consistent with the curriculum they are pursuing in college and the degree of specialization in this field must have been such that at time of graduation the specific course requirements which are specified for eligibility in the U. S. Civil Service Commission's examination for the corresponding GS-5 professional positions can be met. College study at an accredited junior college will be accepted if the credits are acceptable in full by a 4-year accredited college toward completion of its own curriculum in the field concerned.

(b) *Duties.* The duties of a Student Trainee consist of a combination of (1) on-the-job training in a Federal agency, and (2) scholastic training in a college or university. While on the job in a Federal agency, appointees participate in research or other scientific or engineering work such as development, design, surveys, investigations, computations, laboratory or full experimentation or studies, construction, testing, standardization; or appointees participate in analyzing, summarizing and interpreting of statistical, economic or accounting data.

(c) *Knowledge and training requisite for performance of duties.* Student Trainees are employed for the purpose of training them for advancement to professional positions in the employing agency upon completion of the training program. Since the duties of the position involve, in addition to actual scientific, engineering, or technical work while in training, the pursuance of academic studies of the first, second, third, or fourth year of specified undergraduate college curriculum in order to perform successfully duties at the professional level, applicants must have the specified education in order to enroll in the required year of a standard college curriculum in an accredited college or university.

(Sec. 11, 58 Stat. 390; 5 U. S. C. 860)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 56-7072; Filed, Sept. 4, 1956; 8:49 a. m.]

TITLE 6—AGRICULTURAL CREDIT

Chapter I—Farm Credit Administration

Subchapter B—Federal Farm Loan System

PART 10—FEDERAL LAND BANKS GENERALLY

INTEREST RATES ON LOANS MADE THROUGH ASSOCIATIONS

In order to reflect that the interest rate on new loans made by the Federal Land Bank of St. Louis on applications accepted by a national farm loan association on and after September 1, 1956, will be 4½ percent per annum, § 10.54 of Title 6 of the Code of Federal Regulations (21 F. R. 3737, 4709) is hereby amended, effective September 1, 1956, by inserting the line "St. Louis ____ 4½" immediately below "Columbia" therein.

A rate of interest of 4½ percent per annum for loans made through national farm loan associations has also been adopted by the Federal Land Bank of New Orleans, where the application for the loan is signed and dated after September 15, 1956, and by the Federal Land Bank of St. Paul on applications dated on or after September 15, 1956. In order to reflect such interest rates, said § 10.54 of Title 6 of the Code of Federal Regulations is hereby further amended, effective September 15, 1956, to read as follows:

§ 10.54 *Interest rates on loans made through associations.* Notwithstanding such loan interest rates may exceed by more than 1 percent per annum the interest rate on the Federal farm loan bonds of the last series issued prior to the making of any such loans, approval is given to an interest rate of 4 percent per annum on loans made by banks through associations generally, except that higher interest rates are approved for the following banks as indicated:

Federal land bank:	*Interest rate (percent)*
Springfield	5
Baltimore	5
Columbia	5
New Orleans	4½
St. Louis	4½
St. Paul	4½
Berkeley	4½
Spokane	4½

(Sec. 6, 47 Stat. 14, sec. 33. 48 Stat. 49, as amended; 12 U. S. C. 665, 1017. Interprets or applies secs. 12 "Second", 17, 39 Stat. 370, as amended, 375, as amended; 12 U. S. C. 771 "Second", 831)

[SEAL] R. B. TOOTELL,
Governor.

[F. R. Doc. 56-7087; Filed, Sept. 4, 1956; 8:52 a. m.]

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AUTHORITY: §§ 483.101 to 483.194 issued under sec. 5, 62 Stat. 1072; 15 U. S. C. 714c. Interpret or apply sec. 2, 63 Stat. 945, sec. 104, 64 Stat. 198, 67 Stat. 358, 70 Stat. 966; sec. 407, 63 Stat. 1051, 68 Stat. 583, 70 Stat. 6; 7 U. S. C. 1641, 1642; 7 U. S. C. 1427.

GENERAL

§ 483.101 *General statement.* Commodity Credit Corporation (referred to in this subpart as "CCC") pursuant to this subpart will conduct a Wheat Export Program (referred to in this subpart as the "program") under which a person or firm who has exported wheat produced in the United States may apply for payment in the form of a certificate that is redeemable in wheat held in the inventory of CCC. The offer is made to encourage the movement of wheat by the commercial grain trade from points of production into export channels and also to exercise the rights, obtain the benefits and fulfill the obligations of the United States under the International Wheat Agreement. The program will be administered by Commodity Stabilization Service, United States Department of Agriculture and information pertaining to the program may be obtained from any of the CSS offices listed in § 483.180.

ELIGIBILITY FOR PAYMENT BY CCC

§ 483.105 *General conditions of eligibility.* (a) Payment under this program will be made to an exporter in connection with the net quantity of wheat exported from the United States to a designated country and the net quantity of wheat in customs bond in Canada exported in like manner from Canadian ports, excluding West Coast Canadian ports, pursuant to a sale to a foreign buyer for which the exporter receives a Notice of Registration from the Director, Grain Division, Commodity Stabilization Service (referred to in this subpart as the Director), in accordance with § 483.136, subject to the terms and conditions set forth in this subpart. Payment also will be made to an exporter for wheat exported prior to sale and for which the exporter has received a Notice of Registration from the Director, subject to the terms and conditions of this subpart, particularly § 483.109.

(b) Sales to foreign buyers under the International Wheat Agreement, and outside the Wheat Agreement, may be made pursuant to this program. Countries designated as IWA and non-IWA are defined in § 483.106. A sale under the IWA differs from a non-IWA sale only in that the former is recorded under the Wheat Agreement against quotas of the buying country and of the United States, normally pursuant to request of the buyers; and that a sale under the Wheat Agreement is subject to open quota balances and other requirements as set forth in this subpart. Final determination of recordability under the Wheat Agreement is under the jurisdiction of the Wheat Council (see § 483.121), but an exporter's rights under this subpart are not altered by any action of the Wheat Council.

(c) Payment under this subpart will be made only with respect to foreign sales of wheat made on and after September 4, 1956, except that such sales made prior to September 4, 1956, which are registered as provided herein not later than September 7, 1956, and which are in accordance with all other provisions of this subpart, will be eligible to receive payment in kind based on the export payment rate in effect from 12:01 a. m., e. d. t. to 3:30 p. m., e. d. t., September 4, 1956.

(d) A sale which involves wheat produced outside the United States, or a mixture of wheat which is partly derived from wheat produced outside the United States is not eligible for registration under the program. However, in the event the Director determines that such a mixture is exported unintentionally, payment may be made but only on that portion which it is established to his satisfaction was produced in the United States.

(e) Wheat exported pursuant to any program wherein the CCC sales price reflects an export allowance or on which an export allowance has been obtained under an IWA program, or wheat which is sold by CCC under conditions specifically excluding such wheat from exportation under this program, shall not be eligible for payment under this subpart.

§ 483.106 *Designated countries.* (a) With respect to sales made for recording under the Wheat Agreement, a designated country shall be any country or territory which has been designated in a rate announcement (See § 483.130) as having a quota open for IWA Sales.

(b) With respect to sales not specifically made for recording under the Wheat Agreement, a designated country shall be a destination outside the continental limits of the United States, excluding Alaska, Hawaii or Puerto Rico, and also excluding (1) any country or area listed as Sub-Group A of Group R of the Comprehensive Export Schedule issued by the Bureau of Foreign Commerce, U. S. Department of Commerce unless a license for shipment or transshipment thereto has been obtained from such Bureau; (2) Macao unless specific license for shipment or transshipment thereto has been obtained from the Bureau of Foreign Commerce, U. S. Department of Commerce; or (3) Hong Kong in the case of any commodity for which a specific license is required by regulations of the U. S. Department of Commerce under the Export Control Act of 1949, unless such specific license for shipment or transshipment thereto has been obtained from the Bureau of Foreign Commerce, U. S. Department of Commerce.

(c) Exports of wheat under this program shall be made only to the country and buyer named in the Declaration of Sale and the exporter shall not ship, transship or cause to be transshipped to any other country unless the exporter obtains, prior to export, written authority from the Director to export to a designated country or a buyer other than named in the Declaration of Sale.

§ 483.107 *Date of exportation.* (a) Wheat sold for export in a specified export rate period announced by CCC, must be exported before the end of that period in order for the exporter to obtain the export payment rate applicable to that sale, unless an extension is obtained in writing from CCC changing the export date to a later period. In the event that export takes place after the specified rate period and the exporter has not obtained an extension to change the export date to a later period, the export payment rate will be that which was in effect at time of sale, or time of giving Notice of Sale, whichever is lower, for the period in which actual export takes place. It will be the policy to grant an extension if it can be shown that exportation under the contract has been delayed by circumstances beyond the exporter's or importer's control and is not due to intentional violation of the contract.

(b) With respect to sales under the Wheat Agreement, notwithstanding any other provision of this subpart except

paragraph (a) of this section, wheat sold for recording against quotas of any IWA crop year must be exported not later than July 31 of such crop year unless later exportation is authorized (1) by announcement issued in connection with a rate announcement (see § 483.130), or (2) in specific cases by prior written approval of the Director.

§ 483.108 *Excess quantities loaded.* Payment will not be made on quantities loaded on vessels, cars or truck which exceed the quantity shown on the Declaration of Sale plus any loading tolerance specified in the contract, which loading tolerance shall not exceed 10 percent. A new Declaration of Sale and a new Notice of Registration are required for any additional quantity loaded.

§ 483.109 *Wheat exported prior to sale.* (a) In connection with any quantity of wheat exported prior to sale, payments will be made only on that portion thereof which has been reported in accordance with paragraph (b) of this section and only on sales made by the actual exporter of such wheat, and not to any other party who buys such wheat and re-sells it to a designated country.

(b) In order to receive export payment on wheat exported prior to sale the exporter must have reported the exportation of such wheat to the Director within seven days after the date of such exportation as defined in § 483.188 unless additional time for reporting is granted in writing by the Director. This report must include the following information:

(1) Date of exportation.

(2) Port of exportation.

(3) Country and port of original destination of wheat.

(4) Name of ocean vessel upon which loaded.

(5) Quantity in bushels.

(6) Class and grade.

(7) The report shall also contain a statement that the vessel contains other wheat sold by the exporter filing the report, as provided in paragraph (c) of this section.

(c) Only wheat which is loaded on a vessel which also carries wheat sold by the same exporter shall be reported under paragraph (b) of this section, and shall be eligible for export payment when sold. In the case of full cargo shipments the unsold portion shall not exceed one-third of the total cargo. In the case of part cargo lots the unsold portion shall not exceed 2,000 metric tons. The exporter should obtain separate bill or bills of lading for both the unsold and sold quantities of wheat exported.

(d) At such time as the wheat is sold, the exporter shall report the sale to the Director as provided in § 483.135, and shall submit all other reports and documents as required by this subpart. In reporting the sale the exporter must state that the wheat sold was reported to the Director, as provided in paragraph (b) of this section. This may be done by the use of code word "Abroad."

(e) The export rate applicable to such sale shall be that rate in effect at time of sale, or time of giving Notice of Sale, whichever is the lower, for the export rate period current at that time which applies (1) to the port from which the wheat was exported, and (2) to the country shown in the Declaration of Sale.

(f) All other conditions of this subpart, except as modified by this section are applicable to sales described in this section.

§ 483.110 *Evidence of export.* Evidence of export and specified supporting documents, must be submitted in accordance with § 483.147.

§ 483.111 *Reentry or diversion.* If any quantity of wheat shipped under this subpart is unloaded in the United States or Canada prior to being imported into some country other than the United States or Canada, or because of the exporter's action or with his consent is at any time unloaded in the United States or Canada or diverted to another country while enroute, payment may be withheld, or if payment already has been made, the exporter may be required to make refund as deemed appropriate by the Vice President, CCC: *Provided,* That if the wheat with respect to which payment may be withheld or refund required under this section is lost, destroyed or damaged, the amount of the payment withheld or refund required shall not exceed the amount realized or which might reasonably be realized by the exporter over the price at which it was sold to the designated country. The exporter shall notify the Director immediately upon becoming cognizant of any unloading or diversion of wheat with respect to which payment may be withheld or refund required under this section and furnish information as to the condition of such wheat and any claim he may have in connection with any damage or loss thereto or destruction thereof.

PROVISIONS APPLICABLE EXCLUSIVELY TO IWA SALES

§ 483.120 *Program period—IWA.* With respect to sales under the Wheat Agreement, notwithstanding any other provisions of this subpart, sales transactions for recording against quotas of any IWA crop year must be entered into not later than July 31, of such crop year.

§ 483.121 *Recording in the Wheat Council's records.* (a) The Wheat Agreement provides that a transaction or part of a transaction in wheat-grain between participating exporting and importing countries is eligible for entry in the Wheat Council's records against guaranteed quantities of those countries for a crop year:

(1) Provided (i) it is at a price not higher than the maximum nor lower than the minimum (i. e., the equivalents of the basic maximum and minimum prices) in effect during the crop year in which the loading periods specified in the transaction falls and (ii) the exporting and importing countries have not agreed that it shall not be entered against their guaranteed quantities, and

(2) To the extent that (i) both the importing and exporting countries concerned have unfilled quantities for the crop year, and (ii) the loading period specified in the transaction falls within that crop year.

§ 483.122 *IWA maximum and minimum prices.* Maximum and/or minimum price equivalents under the Wheat Agreement will be announced from time to time by CCC. The Wheat Agreement provides that to such maximum prices may be added such marketing costs and carrying charges as may be agreed between buyer and seller, and that such carrying charges may accrue for the buyer's account only after an agreed date specified in the contract under which the wheat is sold. (See § 483.135 (b) (5).)

§ 483.123 *Status of IWA quotas.* There will be issued not less often than weekly, a statement as to the status of quotas of importing and exporting countries. Any exporter upon request, addressed to the office indicated in § 483.178 will be furnished with all information that is available as to the status of the fulfillment of quotas under the Wheat Agreement.

EXPORT PAYMENT RATES AND ANNOUNCEMENTS

§ 483.130 *Announcement of rates.* Export payment rates will be announced from Washington, D. C., daily or at intervals of up to 7 days. Rates will be released at approximately 3:31 p. m., e. s. t. (see § 483.194), and will remain in effect through 3:30 p. m., e. s. t., on the expiration date stated in the announcement at which time a new announcement will be made. No rates will be announced on Saturday, and rates effective at 3:31 p. m., e. s. t., on Friday will be in effect through 3:30 p. m., e. s. t., of the market day succeeding Saturday unless the announcement specifically provides otherwise. Announcements will be available through a press release, ticker service, and through Commodity Stabilization Service Offices at Portland (Oregon), Minneapolis, Kansas City (Missouri), Dallas, Chicago, and New Orleans. Different rates of payment for separate coasts or ports, various classes of wheat, destinations, periods of exportation, etc., may be announced simultaneously.

§ 483.131 *Determination of rates.* The rate in effect at the time of sale to the foreign buyer, or the time of giving Notice of Sale as required by § 483.135 (a), whichever rate is the lower, shall be the rate applicable to the sale. The supporting evidence of sale submitted by the exporter in form prescribed in § 483.137 (d), will be the basis for determining the time of sale. The factors which may be determinative of the time of sale, are:

(a) Time of the exporter's filing a cablegram or mailing a written acceptance of a definite offer to purchase received from the foreign buyer.

(b) Time of receipt by the exporter of a cablegram or other written acceptance from the foreign buyer of a definite offer by the exporter to sell or the time of receipt by the exporter of a cablegram or other written notification from his agent that the foreign buyer has accepted a definite offer by the exporter to sell.

(c) Time of filing by the exporter of a cablegram or time of mailing of a written confirmation of the booking of a shipment or shipments to be made pursuant to an open offer of the exporter to

sell or a standing order of the buyer to purchase. It must be clear from the evidence, however, that the exporter is empowered by the terms of the open offer or standing order to firm the contract by issuing a confirmation. For example, if he is authorized to confirm the sale at a price which may be established at his option, the evidence must show that such is the understanding between buyer and seller, otherwise it will be necessary for the buyer also to confirm the price, and receipt of the buyer's confirmation will establish the time of sale.

(d) Sales may be made through a third principal party, but in such cases, in determining the time of sale, no substantially greater lapse of time for receipt of buyer's confirmation will be recognized than would have elapsed had the exporter been dealing directly with the ultimate foreign buyer. In such a transaction, the evidence of sale required by § 483.137 (d) shall include documents exchanged between the exporter, the ultimate foreign buyer and the intermediate third party.

(e) A sale shall not be considered as entered into until the purchase price has been established, and time of sale shall be the earliest date on which a firm contract exists between buyer and seller and on which a firm price has been established as provided in paragraph (a), (b), or (c) of this section. In order to receive payment at the announced rate in effect at the time of sale, it is important that the exporter give timely Notice of Sale as required by § 483.135 (a), and present documentary evidence that the sale was consummated at such time.

(f) If export is wholly by truck or rail and the time of sale cannot be determined on the basis of the factors set forth in paragraph (a), (b) or (c) of this section, or by any other means, the sale will be deemed to have been made at the time of issuance of inland bill of lading, or if none is issued, at the time of clearance through United States Customs. If export is by ocean carrier and time of sale cannot be determined as outlined above, the sale will be deemed to have been made at the time of issuance of ocean carrier bill of lading, or if none is issued, at the time the wheat is loaded on board ocean carrier.

(g) If the time of day at which the sale was consummated is not established and two payment rates are in effect on the day the sale was consummated, the time of consummation of sale will be deemed to be at the time the lower of the two rates was in effect.

REGISTRATION OF SALES

§ 483.135 *Notice of Sale*—(a) *Time.* (1) The exporter shall file a Notice of Sale as soon as possible after consummation of the sale, (see § 483.178). (In the case of IWA Sales, in order to comply with the terms of the Wheat Agreement, the report of transactions must reach the Wheat Council in London not later than 10 days after date of consummation of the sale).

(2) Notices of Sale should normally be filed by telegraph, although telephone may be used. Telephoned notices should be confirmed immediately by telegraph.

(3) In order for the exporter to be assured of the current rate of payment, the telegram reporting sale must be filed by 3:30 p. m., e. s. t. (or the telephone call must be made by that time), on the expiration date for such rate as shown in the rate announcement.

(b) *Information required.* In giving Notice of Sale the exporter must report the following information:

(1) Date of Sale.

(2) Whether the sale is IWA or Non-IWA.

(3) If PL-480, the Authorization Number.

(4) Contract quantity in bushels and the contract loading tolerance, if any, in percentage, but not in excess of ten percent.

(5) The sale price must be shown on a f. o. b. vessel bulk basis, except that on exports from West Coast ports the price may be given on an instore basis. In the case of IWA transactions, if, because of marketing costs and carrying charges as provided for in § 483.122, the sales price exceeds the maximum price, the Notice of Sale must show the total price and the amount thereof included for marketing costs and carrying charges, each shown separately. The f. o. b. or the instore price shown should include all charges and commissions necessary to the sale and moving of the wheat to the f. o. b. or the instore position. For example, a selling agent's commission would be included, whereas guaranteed out-turn insurance would not be included.

(6) The Coast of Export.

(7) Country of destination.

(8) Name of purchaser. (Where the sale involves more than one purchaser, the Notice of Sale should contain the name of one purchaser and the word "others".)

(9) The number of the import license, buying permit, or similar authorization applicable to the sale, for those countries where such is required for IWA transactions, unless otherwise authorized by the Director. (Where the sale involves more than one purchaser, the Notice of Sale should contain one license number and the word "others".)

(10) Delivery period specified in contract.

(11) Class and grade of wheat, and protein content when protein is specified in contract.

(12) If under subparagraph (6) of this paragraph, more than one coast of export is shown, indicate the CSS Commodity Office (Chicago, Dallas or Portland), to which the exporter will submit Application for Wheat Export Payment.

(13) The word "Abroad" for wheat exported prior to sale. (See § 483.109 (d).)

(14) Such additional information in individual cases as may be requested by the Director.

§ 483.136 *Notice of Registration.* (a) Upon receipt of the Notice of Sale, the Director will issue a Notice of Registration by telegram unless he determines that to do so would not be in the best interests of the program. A notice of registration is a condition precedent to the exporter receiving payment under this subpart. Accordingly, before concluding a transaction it may be to the exporter's advantage in instances involving sales of an unusual nature to ascertain from the office indicated in § 483.178, whether the sale may be registered, or to condition his sales upon his receiving a notice of registration under this subpart.

(b) In the telegram of registration, the Director may utilize the code letters "PIK" to indicate "Registered for Payment in Kind."

(c) Each Notice of Registration will include a registration number which shall be shown on the Declaration of Sale (see § 483.137), and on the Application for Wheat Export Payment, CCC Form 357, and in all correspondence with reference to the transaction.

§ 483.137 *Declaration of Sale and evidence of sale*—(a) *Time of submission and required copies.* (1) The exporter shall prepare a Declaration of Sale (CCC Form No. 359), and mail or deliver it normally within two days after receipt of CCC's Notice of Registration. (See § 483.178.)

(2) The Declaration of Sale must be submitted in an original and three copies all of which shall be signed in an original signature by the exporter or his authorized representative. One copy of the Declaration of Sale will be acknowledged and returned to the exporter.

(3) Only one Declaration of Sale normally should be submitted by the exporter for each sale identified by a Registration Number assigned in the Notice of Registration (see § 483.136 (c)), although this is not mandatory. If more than one Declaration of Sale is submitted, the letters A, B, C, etc., shall be added to Registration Numbers on the respective declarations.

(b) *Information required.* The information to be entered on the Declaration of Sale, is as follows:

(1) The Registration Number.

(2) Whether sale is IWA or Non-IWA.

(3) If PL-480, the Authorization Number.

(4) Date and time of sale and of filing Notice of Sale.

(5) Name of purchaser, or purchasers.

(6) The number of each import license, buying permit, or similar authorization applicable to the sale for those countries where such are required. All applicable numbers shall be so entered even though such numbers were reported in the Notice of Sale.

(7) Contract quantity in bushels, and if the contract provides for a loading tolerance, the amount of such tolerance but not to exceed ten percent.

(8) Country of destination.

(9) Delivery period specified in the contract.

(10) Class and grade of wheat, and protein content when specified in the contract.

(11) The sales price in the case of bulk wheat must be given on an f. o. b. vessel, bulk basis, on exports from Gulf and East Coast ports and on an instore or f. o. b. vessel, bulk basis, on exports from the West Coast ports. In the case of IWA transactions, if, because of marketing costs and carrying charges as

provided for in § 483.122, the sale price of wheat exceeds the IWA maximum price, the declaration shall show the total price and amount thereof included for marketing costs and carrying charges, each shown separately. The f. o. b. or the instore price shown should include all charges and commissions necessary to the sale and the moving of the wheat to the f. o. b. or the instore position. For example, a selling agent's commission would be included, whereas guaranteed outturn insurance would not be included.

(12) Export rate per bushel of wheat in effect as determined by § 483.131.

(13) Coastal area from which it is anticipated exportation will be made.

(14) CSS Commodity Office to which Application for Wheat Export Payment will be submitted.

(15) Such additional information in individual cases as may be requested by the Director.

(c) *Name in which filed.* The Declaration of Sale must be filed in the name of the exporter who sold the wheat to the foreign buyer. If a sale is made under a trade name, the Declaration of Sale may be filed under such name provided the name of the actual exporter and the relationship between the two is clearly established by an appropriate signature on the Declaration and all related documents, such as:

American Grain Company
(Trade Name)
U. S. Grain Company
(s) John Smith, Secretary

(d) *Evidence of sale.* Supporting evidence of sale, in one copy only, must be filed with each Declaration of Sale. Such evidence may be in the form of certified true copies of offer and acceptance or other documentary evidence of sale including contracts between exporter and buyer. In transactions involving a third principal party (see § 483.131 (d)), the evidence shall include documents exchanged between the exporter, the ultimate foreign buyer, and the intermediate third party.

OBLIGATION AND DEFAULT

§ 483.140 *Exporter's agreement with CCC.* The Notice of Sale by the exporter and the Notice of Registration by the Director shall constitute an agreement by the exporter to export the quantity of wheat within the prescribed period stated in the Notice of Sale, in consideration of the undertaking of CCC to make an export payment, subject to the terms and conditions of this subpart.

§ 483.141 *Cancellation of sale or failure to export.* (a) The exporter shall notify the Director promptly in every case where, after giving Notice of Sale as required in § 483.135, a sale is cancelled by the exporter or by the importer, and he must state the reason for such cancellation. The exporter also shall notify the Director promptly when, for any reason, it becomes apparent to him that he will not be able to fulfill his obligation under § 483.140 by making shipment within the prescribed period.

(b) If the Vice President, after affording an exporter the opportunity to present evidence, determines that such exporter has cancelled a sale or failed to export or for other reasons within his control or not attributable to the fault or negligence of the foreign buyer has failed to discharge fully any obligation assumed by him under this subpart, such exporter may be denied the right to continue participating in this program for such period as the Vice President may determine or until the exporter has complied with such terms as the Vice President may prescribe.

WHEAT EXPORT PAYMENT CERTIFICATE

§ 483.145 *Application for Wheat Export Payment.* An original and two (2) copies of Application for Wheat Export Payment, Form CCC357, must be prepared and submitted together with the evidence of exportation, as provided in § 483.147, to the CSS Commodity Office shown on the acknowledged copy of the Declaration of Sale which is returned to the exporter. Exporter should submit application as soon as possible after exportation as the face value of the certificate which will be issued is subject to discount beginning the 61st day after exportation if not applied to purchase of wheat from CCC prior to such 61st day. (See § 483.146 (b).) Supplies of CCC Form 357 and detailed instructions regarding the preparation and submission of the form may be obtained from the CSS Commodity Offices in Chicago, Dallas, and Portland (Oregon).

§ 483.146 *Description of certificate.* Upon receipt of an Application for Wheat Export Payment (CCC Form 357) the CSS Commodity Office will determine the amount of payment due and issue to the exporter a Wheat Export Payment Certificate (CCC Form 358) for the amount due. Such certificate is described in this section and will be subject to the provisions embodied in the certificate and the applicable provisions in this subpart.

(a) *Payee.* Except as provided in § 483.176, the certificate will be issued only to the exporter who has filed a Declaration of Sale and has obtained the Registration Number which shall be shown in the space provided in the certificate.

(b) *Face value.* The amount shown in the space provided for the face value of the certificate will be the amount obtained by multiplying the number of net bushels of wheat exported by the applicable export payment rate. Certificates will be accepted at face value if applied to the purchase of wheat under contracts with CCC which specify a date of sale not more than 60 days after the date of export shown on the certificate. If a certificate is applied to the purchase of wheat under a contract with CCC which specifies a date of sale more than 60 days after the date of export shown on the certificate, the value at which the certificate will be accepted will be the face value reduced by 1/50 of one percent for each day beginning on the 61st day after such date of export and ending on the date of sale specified in the CCC contract to which it is applied.

(c) *Date of export.* The date of export shown on the certificate will be the date of export as defined in § 483.188, which shall be deemed to be the date on which the export payment was earned.

(d) *General provisions.* The Wheat Export Payment Certificate will be redeemable in wheat which Commodity Credit Corporation makes available from its stocks. The certificate may be presented to the Chicago, Dallas or Portland offices of Commodity Stabilization Service, as provided in §483.155, for wheat handled by the office to which submitted. The certificate may be transferred by endorsement subject to all terms, conditions and restrictions applicable to the person or firm to whom it was originally issued.

§ 483.147 *Documents required as evidence of exportation.* (a) Each Application for Wheat Export Payment (CCC Form 357), must be supported by one copy of the applicable on-board ocean carrier bill of lading signed by an agent of the ocean carrier which shows that the wheat is destined for the buyer identified with the Declaration of Sale and supporting evidence, unless otherwise approved by the Director. Where loss, destruction or damage occurs subsequent to loading aboard ocean carrier but prior to issuance of on-board bill of lading, one copy of a Loading Tally Sheet or similar document may be submitted in lieu of such bill of lading; or if exported wholly by rail or truck, one copy of the Shipper's Export Declaration authenticated by the appropriate United States Customs official which identifies the shipment(s) and shows date of clearance into the foreign country. If the final destination of the shipment is a country not shown on the ocean bill of lading, the exporter also shall furnish an authenticated copy of Shipper's Export Declaration showing country of final destination. The application for payment must also be supported by one copy of an Export Grain Inspection Certificate issued by an inspector licensed under the United States Grain Standards Act and a copy of the official loading weight certificate. Where shipment is exported from a Canadian port, application for payment also must be supported by one copy each of the following documents:

(1) A signed or certified true copy of the bill of lading or other document covering the movement of the wheat from the United States to Canada, and

(2) A signed or certified true copy of document evidencing the holding of the wheat in customs bond in Canada.

(b) If the shipper or consignor named in the on-board bill(s) of lading or the Shipper's Export Declaration(s), covering wheat exported is other than the exporter named in the Declaration of Sale, waiver by such shipper or consignor of any interest in the application for payment in favor of such exporter is required. Such waiver must clearly identify the on-board ocean bill(s) of lading or Shipper's Export Declaration(s) submitted to evidence exportation. If the shipper or consignor is neither the exporter named in the Declaration of Sale, nor the consignee identified with the Declaration of Sale, the exporter must submit, in addition to the waiver a certification by such shipper or consignor that he acted only as a freight forwarder,

agent of exporter, or agent of consignee, and not as buyer and seller of the wheat shown on the documents submitted to evidence exportation.

REDEMPTION OF WHEAT EXPORT PAYMENT CERTIFICATE

§ 483.155 *Submission of offers.* Offers to purchase CCC wheat with certificates may be submitted by letter, telegram, or orally to the CSS Commodity Office serving the coastal area in which the offerer desires delivery. The offerer must specify the class, grade, quality and quantity desired, and the desired point of delivery. CCC reserves the right to determine the classes, grades, qualities and quantities and point of delivery for which offers will be considered, and to reject any offer.

§ 483.156 *Creation of contracts.* Preliminary negotiations under this subpart shall be confirmed by written Confirmation of Sale which shall be issued by the CSS Commodity Office in duplicate. One copy shall be signed and returned by the offerer, hereinafter called the purchaser. Such Confirmation of Sale, together with the terms and conditions of this subpart, and any amendments in effect on the date of sale, shall constitute the sales contract. Any provision of prior negotiations not contained in the Confirmation of Sale shall be of no effect. The term "date of sale," as used herein, shall mean the date that the parties concluded their preliminary negotiations, which in the case of a transaction covered by § 483.158 (b) (3) shall be the date of export, and such date will be specified in the Confirmation of Sale.

§ 483.157 *Price.* The price shall be the domestic export price f. o. b. vessel, or instore or track seaboard (without allowance for subsidy) as determined by CCC and shall be specified in the Confirmation of Sale. The price shall be that in effect on the date of purchase, except in cases covered by § 483.158 (b) (3) the price will be the domestic export price as determined by CCC on the date of export.

§ 483.158 *Payment terms and financial arrangements.* (a) The amount due CCC for wheat purchased hereunder shall be paid by the purchaser by surrender to CCC of properly endorsed Certificate(s) earned prior to the time of purchase or in the case of simultaneous loading, as provided in paragraph (b) (3) of this section, with certificates earned on such simultaneous loading. If the purchaser does not make payment in such manner, such purchaser may be denied the right to continue participating in the program. If the certificates having a value in excess of the purchase price are surrendered by the purchaser to CCC, the certificates having the earliest dates of export shall be applied first to the purchase and any certificates not applied shall be returned to the purchaser. If the value of certificates applied to the purchase exceeds the purchase price, such excess will be adjusted by issuance and delivery to the purchaser of a balance certificate which may be used on a subsequent purchase from CCC. The date of export shown on the balance certificate will be the date shown on the original certificate, or if more than one certificate is applied to the purchase, the date of export shown on the balance certificate will be the latest date of export shown on a certificate applied to the purchase. The face value of the balance certificate will be determined by deducting from the face value of certificates surrendered to CCC in connection with the purchase of wheat the amount of the purchase price of the wheat and any discount applicable to the portion of the certificates being applied to the purchase under § 483.146.

(b) Financial arrangements covering the purchase price of any wheat purchased from CCC hereunder shall be made prior to delivery of the wheat by CCC in one of the following ways:

(1) Surrender to the appropriate Commodity Office of certificate(s) sufficient to pay for the wheat.

(2) If a purchaser who has previously earned but who has not received certificate(s), in an amount sufficient to cover the purchase price of wheat, desires delivery prior to receipt of such certificates the purchaser shall make payment in cash, certified check, or cashier's check, or shall establish an irrevocable commercial letter of credit acceptable to CCC, upon which CCC will not draw or realize to the extent that certificates earned prior to date of purchase of the wheat are received by CCC within 30 days after delivery of the wheat to the purchaser. Promptly after CCC receives acceptable certificates, CCC shall notify the bank which issued or confirmed the letter of credit that CCC consents to a reduction of such letter of credit or shall make refund to the purchaser of any cash received. Any such reduction or refund shall be in an amount equivalent to the value of certificates determined acceptable by CCC.

(3) If the purchaser desires delivery of CCC wheat simultaneously with the loading of wheat which will serve as the basis for earning certificates to be used as payment for the CCC wheat, the purchaser shall make payment equivalent to the estimated value of certificates(s) to be earned, in cash, certified check, or cashier's check or shall establish an irrevocable commercial letter of credit acceptable to CCC, upon which CCC will not draw or realize to the extent that Certificates earned on such shipment are received by CCC within 30 days after delivery of the wheat to the purchaser. Promptly after CCC receives acceptable certificates, CCC shall notify the bank which issued or confirm the letter of credit that CCC consents to a reduction of such letter of credit or shall make refund to the purchaser of any cash received. Any such reduction or refund shall be in an amount equivalent to the value of certificates determined acceptable by CCC.

(c) The financial arrangements provided in paragraph (b) of this section shall be made:

(1) Prior to delivery of the wheat by CCC on purchases which provide for delivery within 5 days following the date of the sale, and

(2) On all other purchases, not less than 5 days prior to delivery of the wheat by CCC, unless CCC consents in writing to a waiver of such period.

(d) If the purchaser fails to make financial arrangements acceptable to CCC in accordance with paragraph (c) of this section CCC shall have the right to deem the purchaser in default and may avail itself of any remedy available to an unpaid seller. The purchaser shall be liable to CCC for any loss or damages resulting from such default.

§ 483.159 *Delivery.* (a) The method, time, and place of delivery will be as specified in the Confirmation of Sale.

(b) If the commodity is to be delivered instore, delivery shall be accomplished by delivery to the purchaser of endorsed warehouse receipts, or other evidence of title. In the case of instore delivery, loading out charges shall be for the account of the purchaser.

(c) If the wheat is to be delivered other than instore, the details thereof shall be specified in the Confirmation of Sale.

(d) Title and risk of loss and damage shall pass to the purchaser upon delivery and all warehouse and other charges thereafter accruing shall be for the account of the purchaser; *Provided,* That if delivery is not made within 30 days after the date of sale, the purchaser shall make cash settlement with CCC for warehouse charges on the wheat not delivered, at the rate specified in the Confirmation of Sale for the period beginning on the 31st day to and including the date of delivery, or, if the purchaser fails to take delivery, to and including the final date for delivery specified in the Confirmation of Sale or any written extension thereof; *Provided further,* that the purchaser shall not be responsible for such charges accruing after such 30 day period as a result of delay on the part of CCC in making delivery.

(e) If the purchaser fails to take delivery of the commodity within the delivery period specified in the Confirmation of Sale, or any written extension thereof, CCC shall have the right to deem the purchaser in default and the purchaser shall be liable to CCC for any loss or damages resulting from such default.

§ 483.160 *Specifications.* (a) If the wheat is to be delivered instore, CCC shall deliver warehouse receipts, or other evidence of title, representing the quantity, class, grade and/or quality of the wheat stated in the Confirmation of Sale, and CCC shall have no responsibility in the event of failure of the warehouseman to deliver in accordance with the warehouse receipts or other evidence of title.

(b) If the wheat is to be delivered other than instore, the quantity, class, grade and/or quality of the wheat delivered shall be that stated in the Confirmation of Sale. Determinations as to the class, grade, and/or quality of the wheat delivered shall be made on the basis of official inspection at point of delivery, unless otherwise specified in the Confirmation of Sale. The method of determining the quantity delivered shall be as stated in the Confirmation of Sale. If the wheat delivered is within the quality tolerance, if any, specified in the Confirmation of Sale, such delivery shall be accepted by the purchaser.

If the wheat delivered is not within the quality tolerance, if any, specified in the Confirmation of Sale, the wheat may be rejected by the purchaser at the time of delivery, or accepted subject to an adjustment in price for grade and quality difference in accordance with current market premiums and discounts, as determined by CCC. In case of rejection, CCC shall, upon request of the purchaser, replace such rejected quantity. Over and under deliveries in quantity shall be settled for at a price mutually agreed to between CCC and the purchaser. In case of under deliveries a balance certificate shall be issued by CCC or if other financial arrangements were furnished under § 483.158 (b) the value of certificates the purchaser is required to surrender will be reduced. In the case of over deliveries the purchaser shall tender cash or certificates to CCC. If the value of wheat delivered exceeds the value of certificates surrendered by $3.00 or less, no adjustment will be necessary. If the value of certificates surrendered exceeds the value of wheat delivered by $3.00 or less, a balance certificate will not be issued unless requested.

§ 483.161 *Export requirements.* (a) The purchaser shall, within 60 days after delivery of the wheat to him, or within such extension of that period as may for good cause be authorized by CCC in writing before or after expiration of such 60 day period, cause exportation to a designated country as defined in § 483.106 of wheat equal in quantity and of the same class and grade or better, and from the same location, as the wheat delivered by CCC.

(b) The purchaser shall, within 30 days after exportation, furnish to the CSS Commodity Office proof of such exportation, as required in § 483.162. Failure of the purchaser to furnish CCC proof of exportation within 90 days after delivery of the wheat to him, or, in the case of extension of the time for export, within 30 days from the last date specified for exportation under such extension, shall constitute prima facie evidence of failure to export. Documents supporting an Application for Wheat Export Payment on the wheat exported will be accepted as proof of export of wheat purchased from CCC if they satisfy the requirements specified in § 483.162, and the Application for Wheat Export Payment is accompanied by a letter in duplicate specifying the documents which are submitted as proof of export and the CCC sales contract number to which they relate.

(c) If the purchaser does not cause exportation to be made in conformity with the requirements of paragraph (a) of this section, or if exportation is made and any of the wheat exported is reentered into the continental United States, Alaska, Hawaii or Puerto Rico, whether or not such reentry is caused by the purchaser, or if any wheat exported is caused to be transhipped by the purchaser to any country excluded by § 483.106, the sales price with respect to the quantity which is not exported, or which is reentered, or transhipped shall be adjusted upward by the amount that such sales price is exceeded by the highest of the following prices in effect during the period between date of purchase and date of default:

(1) CCC's statutory minimum sales price for unrestricted use for the same class, grade and quality of the wheat, as determined by CCC, or (2) the sales price, announced by CCC for sale for unrestricted used of the same class, grade and quality of the wheat, or (3) if no such sales price has been announced, the highest domestic market price as determined by CCC. The total amount of any upward adjustment in sales price arising under this section shall be paid in cash by the purchaser to CCC promptly upon demand. Any such upward adjustment in sales price will be waived to the extent that the Vice President of CCC, or his designated representative, finds that the wheat has not been exported or has been reentered or transhipped for causes beyond the control, and without the fault or negligence, of the purchaser, and that the quantity of wheat involved in default (other than wheat transhipped to a country excluded by § 483.106) is, pursuant to written approval of CCC, subsequently exported to a designated country within the period specified by CCC, or if as the result of its loss, damage, destruction or deterioration, the physical condition thereof is such that its entry into domestic market channels will not impair CCC's price support operations.

§ 483.162 *Proof of exportation.* (a) Proof of exportation shall be furnished within the period specified in § 483.161 and shall consist of:

(1) In the case of wheat exported by water, a non-negotiable copy, certified by the exporter as true and correct, of an on-board ocean carrier bill of lading showing the weight of the wheat or the net weight of the wheat if bagged, the date and place of loading, the name of the vessel, the name and address of the purchaser and the consignee, the destination, and the CCC Sales Contract Number.

(2) In the case of wheat exported by rail or truck, a copy of the bill of lading (railroad or truck) under which the wheat was shipped together with (i) an authenticated landing certificate issued by an official of the Government of the country to which the wheat was exported or (ii) a copy of Shipper's Export Declaration authenticated by the appropriate U. S. Customs official. The bill of lading and supporting export form (landing certificate or Shipper's Export Declaration) must indicate applicability to the same shipment of wheat and such forms or properly authenticated attachments must show the CCC sales contract number, the weight of the wheat or the net weight of the wheat if bagged, exported, the date and place of entry into the country of destination, and the name and address of both the person who exported the wheat and the person to whom it was shipped.

(3) An inspection certificate showing the class and grade of wheat exported.

(4) Such additional proof of exportation as may be required by CCC.

§ 483.163 *Performance guarantee.* CCC reserves the right to require the purchaser to furnish, prior to delivery of the wheat by CCC, a cash deposit, performance bond or performance type letter of credit, acceptable to CCC, to guarantee performance under §§ 483.155 through 483.165, inclusive. If such guarantee is required, the amount thereof and related requirements will be stated in the preliminary negotiations and included in the Confirmation of Sale.

§ 483.164 *Inability to perform.* CCC shall not be responsible for damages for any failure to deliver, or delay in delivery of, the wheat due to any cause beyond the control of and without the fault or negligence of CCC, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government, fires, floods, strikes, and failure of warehousemen to meet delivery instructions. In case of delay in delivery due to any such causes CCC shall make delivery to the contractor as soon as practicable.

§ 483.165 *Covenant against contingent fees.* The purchaser warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies. For breach or violation of this warranty CCC shall have the right to annul the contract without liability or in its discretion to require the purchaser to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

MISCELLANEOUS PROVISIONS

§ 483.175 *Good faith.* If the Vice President after affording the exporter an opportunity to present evidence determines that such exporter has not acted in good faith in connection with any transaction under this subpart such exporter may be denied the right to continue participating in this program or the right to receive payment under this subpart in connection with any sales previously made under this program, or both. Any such action shall not affect any other right of the Department of Agriculture or the government by way of the premises.

§ 483.176 *Assignments.* No exporter shall, without the written consent of the director, assign any right to an export payment under this subpart, except that certificates received by him may be transferred by endorsement as provided in § 483.146 (d).

§ 483.177 *Records and accounts.* Each exporter shall maintain accurate records showing sales and deliveries of wheat exported or to be exported in connection with this program. Such records, accounts, and other documents relating to any transaction in connection with this program shall be available during regular business hours for inspection and audit by authorized employees of the United States Department of Agriculture, and shall be preserved for two years after date of export.

§ 483.178 *Submission of reports.* The Notice of Sale, Declaration of Sale, and related reports required under this sub-

part to be submitted to the Director should be addressed as follows:

Chief, Commercial Export Branch, Grain Division, Commodity Stabilization Service, U. S. Department of Agriculture, Washington, D. C.

Delivery to the above office of telegraphic Notices of Sale will be expedited if addressed as follows:

Com Ex Branch, USDA (MK), Washington, D. C.

The telephone number of this office is Republic 7-4142, Extensions 3261, 3262, 3927, and 3928.

§ 483.179 *Additional reports.* The exporter shall file such additional reports as may be required from time to time by the Director, subject to the approval of the Bureau of the Budget.

§ 483.180 *CSS Commodity Offices.* Information concerning this program may be obtained from CSS Commodity Offices listed below:

Director, Commodity Stabilization Service Office, U. S. Department of Agriculture, 623 South Wabash Avenue, Chicago 5, Ill.

Director, Commodity Stabilization Service Office, U. S. Department of Agriculture, 500 South Ervay Street, Dallas 1, Tex.

Director, Commodity Stabilization Service Office, U. S. Department of Agriculture, Fidelity Building, 911 Walnut Street, Kansas City 6, Mo.

Director, Commodity Stabilization Service Office, U. S. Department of Agriculture, 1006 West Lake Street, Minneapolis 8, Minn.

Director, Commodity Stabilization Service Office, U. S. Department of Agriculture, 1218 Southwest Washington Street, Portland 5, Oreg.

§ 483.181 *Officials not to benefit.* No member or delegate to Congress, or resident commissioner, shall be admitted to any benefit that may arise from any provision of this program, but this provision shall not be construed to extend to a payment made to a corporation for its general benefit.

§ 483.182 *Amendment and termination.* This offer may be amended or terminated by public announcement of such amendment or termination. Any such amendment or termination shall not be applicable to sales for export (which otherwise comply with the terms of this offer) made before the effective time and date of such amendment or termination.

§ 483.183 *Right to waive any requirement.* The Executive Vice President of CCC, if he deems such action desirable in order to prevent undue hardship, may with respect to any transaction or transactions hereunder waive any requirement of this subpart, if such action is in the best interest of the program. Any such waiver shall be in writing and shall contain a full statement of the reasons therefor.

DEFINITIONS

§ 483.185 *Vice President.* "Vice President" means the Executive Vice President of the Commodity Credit Corporation.

§ 483.186 *Director.* "Director" means the Director of the Grain Division, Commodity Stabilization Service, Washington, D. C.

§ 483.187 *Wheat.* "Wheat" means wheat grown in the United States and as defined in the Official Grain Standards of the United States. The quantity of wheat exported which is eligible for export payment shall be determined by deducting from the total weight of the shipment, the weight of any dockage indicated on the inspection certificate issued at the time of loading for export.

§ 483.188 *Export.* "Export" means a shipment from the continental United States to a designated country as specified in § 483.106. Wheat shall be deemed to have been exported on the date which appears on the applicable on-board ocean carrier bill of lading, or, if shipment to the designated country is by truck or rail, the date the shipment clears United States Customs, or the latest date appearing on the Loading Tally sheet or similar documents where loss, destruction or damage occurs subsequent to loading aboard ocean carrier but prior to issuance of on board bill of lading.

§ 483.189 *Exporter.* "Exporter" means any individual, corporation, partnership, association or other business entity, which is located and maintains a business organization within the continental United States, and which is a contracting party in the foreign sale reported under § 483.135.

§ 483.190 *Ocean carrier.* "Ocean carrier" means the vessel on which shipment from the United States or Canada, other than shipments between such countries, is exported pursuant to a sale registered under this program.

§ 483.191 *United States.* "United States" means the continental United States except as used in § 483.111, "Reentry or Diversion", the term "United States", includes the Territories of Alaska, Hawaii and Puerto Rico.

§ 483.192 *Wheat Agreement.* "Wheat Agreement", or IWA, means the 1956 International Wheat Agreement, ratified by the United States on July 16, 1956.

§ 483.193 *Wheat Council.* "Wheat Council" means the International Wheat Council established by Article XIII of the Wheat Agreement.

§ 483.194 *3:31 e. s. t.* "3:31 e. s. t.", as used in this subpart means 3:31 eastern standard time, except that when Washington, D. C., is on daylight saving time 3:31 e. s. t., means 3:31 eastern daylight saving time (2:31 eastern standard time.)

§ 483.195 *Day.* "Day" means calendar day.

Effective time and date. This offer is effective on September 4, 1956, at 12:01 a. m., e. d. t.

NOTE: The record keeping and reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 30th day of August 1956.

[SEAL] WALTER C. BERGER,
Acting Executive Vice President,
Commodity Credit Corporation.

APPENDIX

The Department of Commerce, Bureau of Foreign Commerce (BFC), pursuant to regulations under the Export Control Act of 1949, prohibits the exportation or re-exportation of any commodities under this program to the Soviet Bloc except under license issued by BFC. Those regulations further require that persons exporting under General License to friendly countries commodities which are or are to be subsidized, either by cash payments, payments in kind, or purchases of commodities at reduced prices under any Government export program for surplus commodities (whether or not the exported commodities or products thereof are obtained or manufactured from Government (CCC) stocks), file with the Collector of Customs (in addition to any copies required for other purposes) one copy of the Shipper's Export Declaration and send to BFC, Washington 25, D. C., one copy of the On-Board Ocean Bill of Lading (for exportations by rail, one copy of the Railroad Bill of Lading), for each shipment, regardless of value, involving sales of $100,000 or more.

In the case of commodities purchased from CCC, or commodities being exported as "substitute" for such commodities, the $100,000 figure applies to the sales contract between the CCC and the U. S. purchaser. For commodities being exported under CCC disposal programs for export which involve no actual purchase of commodities from CCC, the $100,000 figure applies to the sales contract between the U. S. seller and the foreign purchaser. Each of the documents must bear on its face the identifying number assigned by CCC to the contract or transaction. In addition, the notation "FC-2610" must be inserted in the upper right-hand corner of each document. Where the commodities purchased from CCC are to be exported by a party other than the original purchaser from CCC, the original purchaser shall inform the exporter of the requirement for submitting the extra copy of the Shipper's Export Declaration and the bill of lading.

Exporters having reason to believe that shipments of these commodities may be re-exported to foreign countries not named in their Shipper's Export Declaration and bills of lading are required to place the following statements on the originals and copies of the covering declaration and bills of lading:

"For redistribution to other countries."

"None of this merchandise will be shipped to Macao, A Soviet Bloc destination, or a Communist-controlled area in the Far East, and none of these commodities except commodities listed in § 371.23 of the Comprehensive Export Schedule will be shipped to Hong Kong."

[F. R. Doc. 56-7078; Filed, Sept. 4, 1956; 8:50 a. m.]

TITLE 7—AGRICULTURE

Chapter III—Agricultural Research Service, Department of Agriculture

[P. P. C. 612, 3d Rev.]

PART 301—DOMESTIC QUARANTINE NOTICES

SUBPART—KHAPRA BEETLE

REVISED ADMINISTRATIVE INSTRUCTIONS DESIGNATING PREMISES AS REGULATED AREAS

Pursuant to § 301.76-2 of the regulations supplemental to the Khapra Beetle Quarantine (7 CFR 301.76-2, 20 F. R. 1012) under sections 8 and 9 of the Plant Quarantine Act of 1912, as amended (7 U. S. C. 161, 162), revised administrative instructions are hereby issued as follows, listing warehouses, mills, and other

premises in which infestations of the khapra beetle have been determined to exist and designating such premises as regulated areas within the meaning of said quarantine and regulations.

§ 301.76-2a *Administrative instructions designating certain premises as regulated areas under the khapra beetle quarantine and regulations.* Infestations of the khapra beetle have been determined to exist in the warehouses, mills, and other premises listed below. Accordingly, such warehouses, mills, and other premises are hereby designated as regulated areas within the meaning of the provisions in this subpart:

ARIZONA

Acme Bag & Burlap Co., 3200 South Seventh Street, Phoenix.

Advance Seed & Grain Company, 310 South 24th Avenue, Phoenix.

Allen Ranch, Route 5, Box 528, Tucson.

Amado's Consumers Appliance & Fritz's Meats, 4734 East Speedway, Tucson.

Arizona Grain Storage Co., 100 South Nevada, Chandler.

Arizona Stock Farms, Inc., Arlington.

Arlington Cattle Co. (warehouse and mill), Highway 80, Arlington.

Attaway Ranch Market, Box 59, Coolidge.

Annie Black Chicken Yard, 225 West Pastime Road, Tucson.

Box O Ranch, P. O. Box 424, Coolidge.

Claude Brown Farm, Box 1783, Parker (12 miles southeast of Parker on east side of Parker-Poston Road).

Ronald Bruce town residence, P. O. Box 43, Parker.

C-Bar-B Ranch, Bouse (31 miles northeast of Bouse).

Clark Ranch, Box 1327, Coolidge.

Colorado River Trading Company, Parker (six and three-fourth miles southwest of Parker).

Delinting & Seed Treating Co., 3100 South Seventh Street, Phoenix.

Eilloc Farm, Route 4, Box 182, Phoenix.

C. H. Espy (town property), 1089 B Avenue, Yuma.

O. B. Francis Farm, P. O. Box 1551, Parker (seven and one-half miles southwest of Parker).

A. R. Hunter Poultry Farm, Route 2, Box 405, Tempe.

International Market (Jimmy Ng), 106 Main Street, Somerton.

Fran Kornegay Farm (storage bins), 10th Street and Avenue D, Yuma.

Long Brothers Hog Feed Yard, Buckeye.

Ray Luster Farm, Box 246, Pima.

McElhaney Cattle Company, cattle feed lot, 44 North Central Avenue, located 1 mile south and 1½ miles east of Tempe, on East Broadway, Phoenix.

Mile Hi Hatchery, P. O. Box 1711, Prescott.

J. H. Munsey town residence, P. O. Box 192, Parker.

W. J. Muse Ranch, Box 1836, Parker.

Myers Feed & Seed, 367 West Coolidge Avenue, Coolidge.

Tom Neilsen Dairy, Route 1, Box 98, Tolleson.

Norton's Used Furniture, 25 East Southern Avenue, Phoenix.

Pablo Franco Ranch, 1764 Avenue B, Yuma.

Lou Park's Ranch, Casa Grande.

Peterson's Feed & Supply, 940 North Stone Avenue, Tucson.

Quick Seed & Feed, 2101 Grand Avenue, Phoenix.

Ranchers Feed & Supply, 264 South Scottsdale Road, Scottsdale.

Shamrock Hill Farm, P. O. Box 5524, Tucson.

Milton P. Smith Ranch, Route 1, Maricopa.

Stribling Egg Ranch, 936 Mountainview Road, Sunnyslope.

J. A. Tabor town residence, P. O. Box 1965, Parker.

R. H. Thompson residence property, P. O. Box 1836, Parker.

Tiemann Feed & Supply Co., 2001 North Stone Avenue, Tucson.

TK Bar Ranch, Kirkland.

Tovrea Land & Cattle Co., 5001 East Washington, Phoenix.

Wilmer Trussel Farm, General Delivery, Wellton.

Valley Feed & Seed, 1918 West Van Buren, Phoenix.

Valley Hay Market, 334 West Prince Road, Tucson.

Joe Wiehl Farm, Route 1, Box 127, Gilbert.

CALIFORNIA

Anderson Cattle Co., located at north side of Highway 98, three-quarter mile west of Highway 99. Mail address P. O. Box 1105, Calexico.

Frank Augusta Ranch, Route 2, Box 25, Brawley.

I. V. Bag Company (Nick Robolino, owner), located East A and Road 46, 304 North Ninth Street, Brawley. Mail address P. O. Box 1313, Brawley.

John Binnell (chicken ranch), 1607 South Cucamonga Avenue, Ontario.

Hershel Brady Ranch, 1531 East A Street, Brawley.

Brandt Bros. Feed Yard, 563 Main Street, located at County Roads 70 and West C, Brawley.

Fred Brown property, located southwest corner of intersection of Highway 111 and County Road 79. Mail address P. O. Box 11, Calipatria.

C. H. Burns Ranch, located two miles northeast of Shafter at southwest corner of Mettler and Merced Avenue. Mail address Route 1, Box 12, Shafter.

Alice G. Byrne, Route 1, Box 133, Oroville.

Louis Carano Ranch, east of Southern Pacific Railroad tracks at intersection of County Roads East B and No. 8, 1 mile south of Heber.

Coachella Valley Feed Yard, east side of Highway 111, south of Avenue 54. Mail address Box 226, Thermal.

J. E. Conrad Ranch, 18782 Livermore Street, Reedley.

Hogan Dillinger Ranch, Route 2, Box 217, Brawley.

T. L. Figueroa Ranch, Route 2, Box 159, Heber.

Harry Finney Ranch, Somerset Road, SW¼ of sec. 24, T. 10 N., R. 3 W., near Hinkley.

Bud Frye Ranch, 72155 Frankwood (2 miles north of Reedley), Reedley.

Ernest Furrer Ranch, northeast corner of intersection of county roads West J and 18, El Centro.

F. J. Hauseur & Sons Feed Lot, located 2 miles south of Orita, 1½ miles east on Oxallo Canal, Brawley.

K. H. Henderson property, Route 1, Box 65, Brawley.

Ray J. Hovely Ranch, Old Calipatria Highway, 2½ miles north of Brawley, Brawley.

C. C. Huff Farm, Route 2, Box 46, Imperial.

Jay Farms (John Ohanneson, owner), located at Wasco and Wildwood Avenue, T. 26 S., R. 23 E., sec. 36. Mail address 422 James Street, Shafter.

Johnson & Drysdale Cattle Co., Route 1, Box 143, Calexico.

A. H. Karp Greenfield Ranch, Box 187, Station A, Bakersfield.

Eugene B. Kinnaird Ranch, on Magnolia Avenue, one mile east of Highway 115. Mail address, P. O. Box 681, Holtville.

Henry Kirchener Dairy, on west side of County Road East B, one-fourth mile north of County Road 28, El Centro.

C. E. Kline Ranch, Route 2, Box 282, El Centro.

Joseph Labandera property, located one-fourth mile south of Elkhorn on Westlawn, east side of street. Mail address Box 1B6, Burrel.

Marshall Seed & Feed Co., 126 South Sixth, El Centro.

Milham Farms, Blue Moon Ranch, Lerdo Road, Buttonwillow.

Vernon G. Monte Feed Lot, Route 1, Box 120, Brawley.

Henry Munger Feed Lot, 299 Main Street, El Centro.

Niland Food Market (store), west side of 200 block, east side of Highway 111, Niland.

K. Omlin Ranch, Route 1, Box 60, Calexico.

George L. Pulliam (owner) Ranch, Route 1, Box 116A, Calexico.

Philip E. Ramirez (tenant dealer) property (Florena D. Baca, owner), 1151 N. C. Perry Avenue, mail address Route 1, Box 96A, Calexico.

Raleigh Roberts Farm, Route 5, Box 2405, Oroville.

Oscar Rudnick property (Soldier Wells Camp), located near junction of Highways 178 and 6, vicinity of Freeman. Mail address P. O. Box 548, Bakersfield.

San Pasqual Land & Cattle Co. property, northwest corner County Roads No. 53 and West E, Westmoreland. Mail address 316 Main Street, Brawley.

Marie L. Scheniman property (Scheniman Stables), located at 362 Ross Avenue. Mail address P. O. Box 520, El Centro.

Snyder's Termite Control, 4423 Magnolia Avenue, Riverside.

Starkey Bros. Dairy, Imperial.

Mrs. Nola Strickland Ranch, Route 1, Box 90, Holtville.

Clayton Taylor Farm, Route 1, Box 24½, El Centro.

Topper Feed Mills, 803 G Street, Fresno.

D & A Wittenberg Ranch, located south side of Tulare Avenue, one-half mile west of Scaroni Avenue, 3 miles west of Shafter, Route 1, Box 238, Shafter.

Wright Feed Yards, Seeley.

William Youtsler Ranch, intersection of West J and Road 58, Route 1, Brawley.

NEW MEXICO

Elgin E. Fowler Farm, Route 1, Floyd.

This revision combines into a single list the warehouses, mills, and other premises that were designated as khapra beetle regulated areas in revised administrative instructions issued as 7 CFR 301.76-2a (20 F. R. 9899), effective December 23, 1955, as amended effective January 26, 1956, March 14, 1956, April 17, 1956, May 9, 1956, June 7, 1956, July 5, 1956, and August 11, 1956 (21 F. R. 573, 1575, 2463, 3073, 3897, 4943, 5997).

By omitting from the list 4 establishments in Arizona and 19 establishments in California, the revision revokes the designation of these establishments as regulated areas and deletes them from the list. The revision also adds to the list 6 establishments in Arizona and 1 establishment in California, thereby designating them as regulated areas.

This revision shall be effective September 4, 1956, and on that date shall supersede revised administrative instructions effective December 23, 1955, and amendments thereof effective January 26, 1956, March 14, 1956, April 17, 1956, May 9, 1956, June 7, 1956, July 5, 1956, and August 11, 1956 (20 F. R. 9899; 21 F. R. 573, 1575, 2463, 3073, 3897, 4943, 5997).

These instructions supplement khapra beetle quarantine regulations already effective. They also relieve restrictions insofar as they revoke the designation of certain regulated areas. They must be made effective promptly in order to carry

out the purposes of the regulations and to permit unrestricted movement of regulated products from the premises being removed from designation as regulated areas. Accordingly, under section 4 of the Administrative Procedure Act (5 U. S. C. 1003), it is found upon good cause that notice and other public procedure with respect to the foregoing administrative instructions are impracticable and contrary to the public interest, and good cause is found for making the effective date thereof less than 30 days after publication in the FEDERAL REGISTER.

(Sec. 9, 37 Stat. 318; 7 U. S. C. 162. Interprets or applies sec. 8, 37 Stat. 318, as amended; 7 U. S. C. 161)

Done at Washington, D. C., this 30th day of August 1956.

[SEAL] E. D. BURGESS,
Chief,
Plant Pest Control Branch.

[F. R. Doc. 56-7076; Filed, Sept. 4, 1956; 8:50 a. m.]

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

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

MISCELLANEOUS AMENDMENTS

Notice was published in the FEDERAL REGISTER issue of August 10, 1956 (21 F. R. 5989), that the Department was giving consideration to proposed amendments to the rules and regulations (Subpart-Rules and Regulations; 7 CFR 914.100 et seq.) that are currently in effect pursuant to applicable provisions of the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914; 21 F. R. 4707), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7. U. S. C. 601 et seq.; 68 Stat. 906, 1047).

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice which were submitted by the Navel Orange Administrative Committee (established pursuant to said amended marketing agreement and order as the agency to administer the provisions thereof), it is hereby found that the amendment, as hereinafter set forth, of the said rules and regulations is in accordance with the provisions of the said marketing agreement and order and will tend to effectuate the declared purposes of the Agricultural Marketing Agreement Act of 1937, as amended. Such amendment is hereby approved; and the said rules and regulations are hereby amended as follows:

1. Amend § 914.101 *Communications* by deleting therefrom the address shown as the mailing address of the Navel Orange Administrative Committee and inserting in lieu thereof the following: "117 West Ninth Street, Room 105, Los Angeles 15, California."

2. Amend § 914.102 *Nomination procedure* as follows:

a. Delete from the second sentence in paragraph (a) (3) the words "not less than two grower members, two alternate grower members" and insert in lieu thereof "one grower member, one alternate grower member."

b. Delete paragraph (a) (4) and substitute therefor the following:

(4) The name of the person receiving the highest total number of votes, for a particular position, at the meetings held pursuant to subparagraph (3) of this paragraph shall be submitted to the Secretary as the nominee for such position.

3. Amend § 914.110 *Prorate bases and allotments* by redesignating paragraphs (c) and (d) thereof as paragraphs (d) and (e), respectively, and inserting a new paragraph (c) reading as follows:

(c) *Change in control of oranges occasioned by transfer of real property.* In the event a change in control of oranges is occasioned by a bona fide transfer of the ownership of the real property on which such oranges were produced, the person gaining the control shall request the committee to make the adjustment prescribed in § 914.53 (e). Such request shall set forth the names of the parties to the transfer, and be accompanied by a legal description of the real property transferred, the name of the county, the book, page number, and date showing that such transfer has been duly recorded. The request shall also set forth the name of the person losing control of the oranges. Upon determination by the committee that the change in control of the oranges has been occasioned by such transfer, the quantity of oranges available for current shipment of the person gaining the control shall be adjusted by adding thereto a quantity of oranges equal to the quantity deducted from the oranges available for current shipment of the person losing control of such oranges. Such quantity shall be added during the same periods in which the deductions are effected in accordance with the provisions of paragraph (d) of this section.

4. Amend § 914.111 *Allotment loans* by inserting immediately following paragraph (c) thereof a new paragraph (d) reading as follows:

(d) *Confirmation.* All allotment loans made on Saturday shall be confirmed as required by § 914.57 but not later than 5:00 p. m., Monday of the immediately succeeding week.

It is hereby further found that it is impracticable and contrary to the public interest to postpone the effective date of this amendment later than its date of publication in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that: (1) This amendment of the rules and regulations implement provisions of the amended marketing agreement and order and should be made effective as soon as possible in order that the committee may be enabled effectively to perform its duties in accordance with the said amended marketing agreement and order; (2) the amendment among other things prescribes a simplified nomination procedure to be used in the selection of nominees, to fill positions on the committee, to represent growers not affiliated with cooperatives; such simplified procedure should be followed in conducting nomination meetings which are required by the amended marketing agreement and order to be concluded in sufficient time to furnish the Secretary with names of prospective nominees who may be selected to serve on the committee; such meetings are to be conducted, as in the past, during the latter part of September, and no useful purpose would be served by postponing such meeting for 30 days after publication hereof; (3) the amendment does not impose any obligations on persons affected thereby with respect to the handling of Navel oranges prior to 30 days after the date of publication hereof; (4) producers and handlers have been notified of the proposed amendment by the Navel Orange Administration Committee; (5) notice that the Department was considering such amendments was published in the FEDERAL REGISTER and interested parties afforded opportunity to file written data, views, or arguments in connection therewith; and (6) the amendment of the rules and regulations does not require any preparation which cannot be completed by the effective time thereof.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Issued at Washington, D. C., this 30th day of August 1956, to be effective upon publication in the FEDERAL REGISTER.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator.

[F. R. Doc. 56-7073; Filed, Sept. 4, 1956; 8:49 a. m.]

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

APPROVAL OF BUDGET OF EXPENSES OF PRUNE ADMINISTRATIVE COMMITTEE FOR 1956-57 CROP YEAR AND FIXING RATE OF ASSESSMENT FOR SUCH CROP YEAR

Pursuant to Marketing Agreement No. 110, as amended, and Order No. 93, as amended (19 F. R. 1301), regulating the handling of dried prunes produced in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendation of, and information supplied by the Prune Administrative Committee, the administrative agency for program operations, and other available information, it is hereby found and determined, and it is, therefore, ordered, than the budget of expenses of the Prune Administrative Committee, and the rate of assessment, for the crop year which began on August 1, 1956 shall be as follows:

§ 993.307 *Budget of expenses of the Prune Administrative Committee and rate of assessment for the 1956-57 crop year*—(a) *Budget of expenses.* Expenses in the amount of $87,437 are reasonable and likely to be incurred by the Prune Administrative Committee for its maintenance and functioning for the crop

year beginning August 1, 1956, and ending July 31, 1957.

(b) *Rate of assessment.* Each handler shall pay to the Prune Administrative Committee, in accordance with the provisions of § 993.50 (e) of the marketing agreement, as amended, and order, as amended, an assessment of 50 cents for each ton of dried prunes received by him as the first handler thereof during the crop year beginning August 1, 1956 and ending July 31, 1957, which assessment rate is hereby fixed as each handler's pro rata share of the aforesaid expenses.

It is hereby found and determined that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice, engage in public rule making or postpone the effective date of this document for 30 days, or any lesser period, after publication of it in the FEDERAL REGISTER (see section 4 of the Administrative Procedure Act; 5 U. S. C. 1001 et seq.) because: (1) The rate of assessment hereby fixed is applicable to all dried prunes received by each handler as the first handler thereof during the current crop year; (2) handlers usually begin about August 15 to receive deliveries of dried prunes in volume from producers and dehydrators which receipts are, by the terms of the amended marketing agreement and amended order subject to the assessment set forth hereinabove; (3) the Prune Administrative Committee must be enabled to obtain assessment revenue promptly to defray expenses of administering the program; (4) compliance with the foregoing rules will require no advance preparation by dried prune handlers. It is necessary that this action be made effective as soon as practicable and not later than the date on which this order is published in the FEDERAL REGISTER.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated August 30, 1956, to become effective upon publication in the FEDERAL REGISTER.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F. R. Doc. 56-7090; Filed, Sept. 4, 1956; 8:53 a. m.]

PART 1001—LIMES GROWN IN FLORIDA

MISCELLANEOUS AMENDMENTS

Notices were published in the FEDERAL REGISTER issues of July 20 and August 2, 1956 (21 F. R. 5447; 5780), that the Department was giving consideration to the proposed amendment of the supplementing rules and regulations (7 CFR 1001.110 et seq.; Subpart—Rules and Regulations; 21 F. R. 3413) currently in effect pursuant to the marketing agreement and Order No. 101 (7 CFR Part 1001) regulating the handling of limes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

The only written data, views, or arguments received was from Herbert Glass of Herb's Limes, Inc., Coral Gables, Florida, and was concerned with the proposed amendment of paragraph (a) of § 1001.130. Mr. Glass contended that further restricting the quantity of limes that could be handled under exemption to 10 bushels per week would place an undue burden on a lime handler, such as himself, who disposes of limes mainly in 23 pound boxes by railway express to drug stores in small communities. In other words, Mr. Glass has been disposing of limes in a container the use of which would be prohibited if the handling of such limes were not exempted from regulation by the terms of § 1001.130, as now in effect. The said section, as proposed to be amended would prohibit such handling in excess of 10 bushels per week. Experience has shown that the present exemption provisions have been abused by some lime handlers in that they have disposed of considerable quantities of limes free from regulation thereunder by making numerous sales in quantities of a bushel or less, rather than making an occasional sale as was intended, and this has tended to reduce the effectiveness of regulations. Moreover, permitting unlimited quantities of limes to be thus disposed of free from regulation has proved detrimental to the effective administration of the program, and, while it is realized that the imposition of the restriction as proposed may cause some inconvenience to lime handlers such as Mr. Glass, it is believed that the need for such further restrictions is paramount in this instance. It has been reported to us that other lime handlers in order to comply with the lime container regulation (§ 1001.302; 20 F. R. 5627, 8956), have shipped by railway express a unit consisting of two 10-pound containers of limes strapped together at the minimum charge for one package. It would seem that this solution would also be feasible for Mr. Glass, in that he now usually ships in a 23-pound package.

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notices which were submitted by the Florida Lime Administrative Committee (established pursuant to said marketing agreement and order as the agency to administer the provisions thereof), it is hereby found that the amendment, as hereinafter set forth, of the said rules and regulations is in accordance with the provisions of the said marketing agreement and order and will tend to effectuate the declared purposes of the Agricultural Marketing Agreement Act of 1937, as amended. Such amendment is hereby approved; and the said rules and regulations are amended as follows:

1. By revising paragraph (a) § 1001.130 *Limes not subject to regulation* to read as follows:

(a) Any handler may handle limes totaling not more than one bushel to any one person during any one day exempt from the provisions of §§ 1001.41, 1001.52, and 1001.55: *Provided,* That the total quantity of limes so handled by a handler shall not exceed 10 bushels during any week.

2. By adding therein two new sections reading as follows:

§ 1001.131 *Limes for processing.* (a) No person shall handle any limes for commercial processing into products unless (1) such limes meet the applicable grade, size, and quality requirements in effect pursuant to § 1001.52; or (2) prior to such handling such person notifies the Florida Lime Administrative Committee of the proposed handling and furnishes such committee with a statement executed by the intended processor that the limes will be used for the stated purpose only; or (3) the processor is an approved manufacturer of lime products, as prescribed in paragraph (b) of this section.

(b) Any person who desires to buy, as an approved manufacturer of lime products, limes for commercial processing shall, prior thereto, submit to the Florida Lime Administrative Committee an application containing the following information: (1) Name and address of applicant; (2) location of processing facilities; (3) proposed type of product or products to be made or derived from limes; (4) description of facilities for processing limes; (5) quantity of limes processed during the previous year and estimate of quantity to be processed during current year; (6) expected source of limes for processing; (7) method of transporting and unloading point; (8) Lime Administrative Committee handler certificate of registration number, if any; (9) a statement that the limes obtained for processing into products will be used for that purpose only and will not be resold or disposed of in fresh fruit channels; and (10) an agreement to submit such reports as are required by the Florida Lime Administrative Committee. Each application shall be investigated by the Florida Lime Administrative Committee. Based upon the results of such investigation and other available information, the committee shall approve or disapprove the application and notify the applicant accordingly. If the application is approved the applicant's name shall be placed upon the list of approved manufacturers of lime products.

(c) Each handler registered with the Florida Lime Administrative Committee shall render a report to the committee of the disposition of each lot of noncertified limes removed from the premises of his handling facilities during each week in which any limes are handled subject to the provisions of §§ 1001.41, 1001.52, and 1001.55, or exemptions therefrom pursuant to § 1001.56. Such report shall be on forms prescribed by the committee and shall include (1) the quantity; (2) purpose for which removed; (3) date of removal; and (4) the name of the person or firm to which the limes were delivered or consigned. Each such report shall be signed by the handler or his authorized representative, shall cover the period Sunday through Saturday, and shall be placed in the mail not later than the close of business of the Saturday ending the period covered by the report.

§ 1001.140 *Report of interdistrict transfer of noncertified limes.* Each handler shall render a report to the Florida Lime Administrative Committee of each lot of noncertified limes received from a district other than that in which his handling facilities are located. Such report shall be on forms prescribed by the committee and shall include: (a) The name of the handler; (b) the quantity of limes received; (c) date received; (d) name and address of the person from whom the limes were purchased; (e) the district from which the limes were transferred; and (f) the district to which the limes were transferred. Each such report shall cover the period Sunday through Saturday and shall be placed in the mail not later than the close of business of the Saturday ending the period covered by the report.

It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date hereof later than the date of publication of this document in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that: (1) Shipments of limes are now being made and are currently subject to regulations issued pursuant to §§ 1001.51 and 1001.52 of the said marketing agreement and order; (2) limes for certain specified purposes are being handled exempt from such regulations as provided in § 1001.56; (3) the said marketing agreement and order provide for the furnishing of reports and establishment of such rules, regulations, and safeguards as may be deemed necessary to prevent limes handled under the provisions of such section from entering channels of trade for other than authorized purposes; (4) it is necessary that the rules, regulations, and safeguards herein provided be established as soon as possible to enable the Florida Lime Administrative Committee effectively to perform its duties in accordance with provisions of the said marketing agreement and order, and to prevent limes so handled from being used for other than authorized purposes; (5) producers and handlers have been notified of the proposed adoption and recommendation to the Secretary, by the Florida Administrative Committee of the said amendments to the rules and regulations; (6) notice that the Department was considering such amendments was published in the FEDERAL REGISTER and interested parties afforded opportunity to file written data, views, or arguments in connection therewith; and (7) adoption of the said amendments to the rules and regulations will not require any preparation which cannot be completed by the effective time thereof.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Issued at Washington, D. C., this 30th day of August 1956, to be effective upon publication in the FEDERAL REGISTER.

[SEAL] ROY W. LENNARTSON, *Deputy Administrator.*

[F. R. Doc. 56-7074; Filed, Sept. 4, 1956; 8:49 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

Subchapter A—Civil Air Regulations

PART 20—PILOT AND INSTRUCTOR CERTIFICATES

Correction

In Federal Register Document 56-6959, appearing at page 6501, Wednesday, August 29, 1956, §§ 20.131 and 20.135 to 20.137, were inadvertently omitted. These sections read as follows:

§ 20.131 *Renewal and reissuance.* A limited flight instructor certificate shall expire 24 calendar months after date of issuance but may be renewed or reissued upon presentation to the Administrator of a satisfactory flight instruction record or upon a practical demonstration of continued competence.

§ 20.135 *Flight instructor certificates.* A flight instructor certificate with appropriate ratings shall be issued to an applicant who meets the following requirements:

(a) He has held a limited flight instructor certificate for a period of at least one year;

(b) He has trained at least 5 successful candidates for pilot certificates or instrument ratings; and

(c) He has demonstrated his competence in giving flight instruction as evidenced by the ability of his students to maintain a satisfactory level of flight safety while under his supervision and to pass the certification and rating tests for which he has prepared them.

§ 20.136 *Flight instruction records.* A flight instructor or limited flight instructor shall comply with the following:

(a) He shall sign the student pilot's record for each period of flight instruction;

(b) He shall make a record containing the name of each student pilot whose certificate he has endorsed and to whom he has given flight instruction, the type of endorsement, and the date of each endorsement or flight instruction period, such record to be retained so long as he exercises the privileges of his flight instructor's certificate or 3 years, whichever is the shorter period of time.

(c) He shall not endorse a student pilot certificate for sole flight or for flight outside of the local designated area until he has ascertained that the student has met the appropriate instructional requirements and he has personally checked the student and deems him competent to make such flights.

§ 20.137 *Limited flight instructor limitations.* A pilot certificate or instrument rating will be issued to a student trained by the holder of a limited flight instructor certificate only after such student has passed a flight test given by an Aviation Safety Agent.

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6519]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

REVLON PRODUCTS CORP.

Subpart—*Discriminating in price under section 2, Clayton Act, as amended*—Payment for services or facilities for processing or sale under 2 (d): § 13.825 *Allowances for services or facilities; [Discriminating in price under section 2, Clayton Act, as amended]*—Furnishing services or facilities for processing, handling, etc., under 2 (e): § 13.830 *Furnishing services or facilities;* § 13.835 *"Demonstrators";* § 13.843 *Promotional enterprises.*

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 2, 38 Stat. 730, as amended; 15 U. S. C. 13) [Cease and desist order, Revlon Products Corporation, New York, N. Y., Docket 6519, August 17, 1956.]

This proceeding was heard by a hearing examiner on the complaint of the Commission—charging a New York manufacturer of cosmetic products, with annual sales volume in excess of $30,000,000, with discriminating in price among its competing customers in violation of sections 2 (d) and 2 (e) of the Clayton Act as amended, through paying money or other things of value or furnishing such services as demonstrators and promotional facilities in varying amounts not proportionally equal by any test to some customers but not to others competing with them—and an agreement between counsel containing a consent order to cease and desist.

On this basis, the hearing examiner made his initial decision and order to cease and desist which became, on August 17, the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That Respondent Revlon, Inc., a corporation, successor to Revlon Products Corporation, a corporation, and respondent's officers, employees, agents, and representatives, directly or through any corporate or other device, in connection with the sale or offering for sale, of cosmetics, beauty aids, and toilet preparations in commerce, as "commerce" is defined in the Clayton Act is amended, do forthwith cease and desist from:

1. Paying, or contracting to pay to, or for the benefit of, any customer, anything of value as compensation or in consideration for services or facilities furnished by or through such customer in connection with the handling, processing, sale or offering for sale of respondent's products unless such payment or consideration is made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

2. Furnishing or contributing to the furnishing of services or facilities in connection with the handling, process-

ing, sale or offering for sale of respondent's products to any purchaser from respondent of such products bought for resale, when such services or facilities are not accorded on proportionally equal terms to all other purchasers from respondent who resell such products in competition with such purchasers who receive such services or facilities.

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

It is ordered, That Respondent Revlon, Inc., a corporation, successor to Revlon Products Corporation, a corporation, shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: August 17, 1956.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 56-7067; Filed, Sept. 4, 1956; 8:48 a. m.]

[Docket 6549]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

DEX PHARMACAL CO. ET AL.

Subpart—*Advertising falsely or misleadingly:* § 13.170 *Qualities or properties of product or service.*

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45) [Cease and desist order, Clemmie L. Carmichael t. a. Dex Pharmacal Company et al., Birmingham, Ala., Docket 6549, August 18, 1956]

In the Matter of Clemmie L. Carmichael, Trading as Dex Pharmacal Company, and Irving Z. Harris and Pauline B. Harris, Copartners Trading as Veltex Company, United Chemical Company and T-Lax Products Company

This proceeding was heard by a hearing examiner on the complaint of the Commission—charging three individuals engaged under various trade names in Birmingham, Alabama, in the sale of a drug preparation designated as "K & K", with representing in advertising, mainly by radio, that said "K & K" would cure colds and prevent pneumonia and was an effective treatment for various nose and throat ailments and their symptoms, among other things, when in fact, its only therapeutic value was in providing temporary relief of coughs due to colds and minor throat irritations—and an agreement between the parties containing a consent order to cease and desist.

On this basis, the hearing examiner made his initial decision and order to cease and desist which by order of August 17 became on August 18 the decision of the Commission.

Said order to cease and desist is as follows:

It is ordered, That respondents Clemmie L. Carmichael, trading as Dex Pharmacal Company or under any other name, and respondents Irving Z. Harris and Pauline B. Harris, individually and as copartners trading as Veltex Company, United Chemical Company and T-Lax Products Company, or under any other name, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the preparation known as K & K, or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That the use of said preparation will cure colds, prevent pneumonia or is of any value in the treatment of sore throat or chest congestion;

(b) That said preparation constitutes a competent or effective treatment for coughs due to colds or throat irritations, except to the extent that it will afford temporary relief for coughs so caused and for minor throat irritations;

(c) That said preparation, used as directed, constitutes a competent or effective treatment for running nose, watery eyes, asthma, hay fever, catarrh, chest congestion, bronchitis, sinus trouble, allergic conditions due to coughs or colds, other nose, throat or chest ailments, or that its use will make one healthy;

(d) That when used as directed, the pyrilamine content in said preparation will provide an antihistamine effect;

(e) That when used as directed, said preparation will, in case of colds:

(1) Open up the bronchial tubes;

(2) Alkalize the system;

(3) Relieve aches or pains or reduce fever;

(4) Make breathing easier;

(5) Soothe the bronchi or the after effects of a cold;

(6) Have any therapeutic value in excess of providing temporary relief of coughs due to colds and of minor throat irritations.

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 of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

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

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

Issued: August 17, 1956.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F. R. Doc. 56-7066; Filed, Sept. 4, 1956; 8:47 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter II—Bureau of Narcotics, Department of the Treasury

[T. D. 55]

PART 306—SURRENDER OF HEROIN

On August 2, 1956, notice of proposed rule making with respect to regulations under 18 U. S. C. 1402 (Public Law 728, 84th Cong., 2d Session) was published in the FEDERAL REGISTER (21 F. R. 5778). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted.

Dated: September 4, 1956.

[SEAL] H. J. ANSLINGER, *Commissioner of Narcotics.*

The regulations set forth below are hereby prescribed under 18 U. S. C. 1402 (Pub. Law 728, 84th Cong., 2d Session) and shall be effective upon publication in the FEDERAL REGISTER.

Sec.
306.1 Compensation for surrendered heroin.
306.2 Inventory.
306.3 Forfeiture of heroin.
306.4 Disposition of surrendered and forfeited heroin.
306.5 Heroin for scientific research purposes.

AUTHORITY: §§ 306.1 to 306.5 issued under Pub. Law 728, 84th Cong.

§ 306.1 *Compensation for surrendered heroin.* Within 120 days from the 19th day of July 1956, all heroin (diacetylmorphine) and compounds containing heroin in the lawful possession of a registrant shall be surrendered to the Commissioner of Narcotics. Shipment, charges prepaid (other than by mail), may be made to the narcotic district supervisor of the district in which the heroin is located. Compensation for the heroin or compounds containing heroin, if surrendered within the prescribed period will be made at the rate per ounce for the heroin content as will equal the acquisition cost of the person surrendering it as established by competent proof, such as in invoice, bill of sale or other business record, or at the rate of $100.00 per ounce for the heroin whichever is greater. In the event of lack of proof of cost the latter figure will be used.

§ 306.2 *Inventory.* If the person surrendering the heroin has paid tax in a class under which returns are required to be rendered and the heroin is a part of the stock for such class, an inventory of the heroin shipped shall be prepared in quadruplicate on the form used for detailed reporting of dispositions. The original inventory shall be filed with the return for such class for the month in

which the disposition takes place, the duplicate copy made a part of the retained copy of the return, the triplicate copy forwarded with the heroin when shipped for disposition, and the quadruplicate forwarded to the narcotic district supervisor together with a properly executed voucher, Standard Form 1034. If the person surrendering the heroin is a registrant in a class for which returns are not required, an inventory shall be prepared in quadruplicate on Form 142, the triplicate of which shall be forwarded with the heroin when shipped, the duplicate retained on file by the registrant for a period of 2 years, and the original and quadruplicate forwarded to the narcotic district supervisor together with a properly executed voucher, Standard Form 1034.

§ 306.3 *Forfeiture of heroin.* All heroin heretofore lawfully possessed by any registrant and not surrendered in accordance with §§ 306.1 and 306.2, shall after the 16th day of November 1956, be seized and forfeited to the United States without compensation.

§ 306.4 *Disposition of surrendered and forfeited heroin.* All heroin acquired by the United States pursuant to section 1402 of title 18 of the United States Code shall be disposed of in accordance with the provisions of 4733 of the Internal Revenue Code of 1954.

§ 306.5 *Heroin for scientific research purposes.* Any heroin acquired under the provisions of section 1402 of title 18 of the United States Code, shall be available, in the discretion of the Commissioner of Narcotics, for scientific research purposes in accordance with the provisions of section 4733 of the Internal Revenue Code of 1954.

[F. R. Doc. 56-7065; Filed, Sept. 4, 1956; 8:47 a. m.]

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter A—Income Tax

[T. D. 6201]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

INSURANCE COMPANIES

On January 19, 1956, notice of proposed rule making regarding the regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, under subchapter L of chapter 1 of the Internal Revenue Code of 1954, was published in the FEDERAL REGISTER (21 F. R. 388). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted subject to the changes set forth below. Since the regulations adopted do not give effect to the amendments made by the Life Insurance Company Tax Act for 1955, such regulations are effective only for taxable years beginning after December 31, 1953, but before January 1, 1955, and ending after August 16, 1954. It should be observed that the regulations adopted do not include the rules contained in the notice of proposed rule making with respect to the application of sections 802 (a) and 804 since the amendments made by the Life Insurance Company Tax Act for 1955 make such rules inapplicable. Regulations under the Life Insurance Company Tax Act for 1955 will be published as a notice of proposed rule making at a subsequent date.

PARAGRAPH 1. Section 1.801-1 (a) is revised by adding immediately before the last sentence thereof the following new sentence: "For the purpose of the preceding sentence, the term 'unearned premium' means the amount which will cover the cost of carrying the insurance risk for the period for which the premium has been paid in advance."

PAR. 2. Section 1.802 is deleted and a new § 1.802 (b) is inserted in lieu thereof.

PAR. 3. Section 1.802-1 is revised as follows:

(A) The number of the section is changed from 1.802-1 to 1.802 (b)-1.

(B) By striking paragraph (a) and inserting a new paragraph (a) in lieu thereof.

(C) By striking the last two sentences of paragraph (b).

PAR. 4. Section 1.803 is revised by striking paragraph (d) thereof.

PAR. 5. Sections 1.803-2, 1.803-3, 1.805-1, 1.806-1 are revised in their entirety.

PAR. 6. Sections 1.804 and 1.804-1 are deleted.

PAR. 7. Section 1.821 is revised as follows:

(A) By striking "1956" wherever it appears in subsection (a) (1) (A) (i) and inserting in lieu thereof "1955".

(B) By striking subsection (a) (1) (A) (ii).

(C) By striking "1956" wherever it appears in subsection (b) (1) (A) and inserting in lieu thereof "1955".

(D) By striking subsection (b) (1) (B).

(E) By striking the historical note at the end thereof.

PAR. 8. Section 1.821-1 is revised as follows:

(A) The first sentence of paragraph (a) (1) is revised to read as follows: "For taxable years beginning after December 31, 1953, but before January 1, 1955, and ending after August 16, 1954, all mutual insurance companies, including foreign insurance companies carrying on an insurance business within the United States, not taxable under section 801 or 831 and not specifically exempt under the provisions of section 501 (c) (15), are subject to the tax imposed by section 821 on their investment income or on their gross income, whichever tax is the greater, except interinsurers and reciprocal underwriters which are taxed only on their investment income."

(B) Paragraph (b) (1) is revised in its entirety.

(C) The second sentence of paragraph (b) (3) is revised to read as follows: "The rate applicable in computing the normal tax of such companies is 60 percent."

(D) The first sentence of paragraph (b) (4) is revised to read as follows:

(4) Under section 821 (b) (1), interinsurers and reciprocal underwriters with mutual insurance company taxable income for purposes of the normal tax of over $50,000 and not over $100,000 pay a normal tax computed on that portion of such income in excess of $50,000 at the rate of 60 percent. * * *

PAR. 9. The first sentence of § 1.822-1 (a) is revised to read as follows: "For taxable years beginning after December 31, 1953, but before January 1, 1955, and ending after August 16, 1954, the taxable income of a mutual insurance company subject to the tax imposed by section 821 is its gross investment income, namely, the gross amount of income during the taxable year from interest, dividends, rents, and gains from sales or exchanges of capital assets, less the deductions provided in section 822 (c) for wholly tax-exempt interest, investment expenses, real estate expenses, depreciation, interest paid or accrued, capital losses to the extent provided in subchapter P (sec. 1201 and following) and the special deductions provided in part VIII of subchapter B (except section 248).

[SEAL] RUSSELL C. HARRINGTON,
Commissioner of Internal Revenue.

Approved: August 28, 1956.

DAN THROOP SMITH,
Special Assistant to the Secretary in Charge of Tax Policy.

The following regulations, relating to taxation of insurance companies, are hereby prescribed under subchapter L of chapter 1 of the Internal Revenue Code of 1954, and are effective for taxable years beginning after December 31, 1953, and ending after August 16, 1954:

INSURANCE COMPANIES

LIFE INSURANCE COMPANIES

Sec.	
1.801	Statutory provisions; life insurance companies; definition of life insurance company.
1.801-1	Definitions.
1.802 (b)	Statutory provisions; life insurance companies; imposition of tax.
1.802 (b)-1	Tax on life insurance companies.
1.803	Statutory provisions; life insurance companies; other definitions and rules.
1.803-1	Life insurance reserves.
1.803-2	Adjusted reserves.
1.803-3	Interest paid or accrued.
1.803-4	Taxable income and deductions.
1.803-5	Real estate owned and occupied.
1.803-6	Amortization of premium and accrual of discount.
1.805	Statutory provisions; life insurance companies; life insurance company taxable income.
1.805-1	Tax on life insurance companies in the case of a taxable year beginning in 1954.
1.805-2	Reserve interest credit.
1.806	Statutory provisions; life insurance companies; adjustment for certain reserves.
1.806-1	Adjustment for certain reserves.
1.807	Statutory provisions; life insurance companies; foreign life insurance companies.
1.807-1	Foreign life insurance companies.

MUTUAL INSURANCE COMPANIES (OTHER THAN LIFE OR MARINE OR FIRE INSURANCE COMPANIES ISSUING PERPETUAL POLICIES)

1.821	Statutory provisions; tax on mutual insurance companies (other than life or marine or fire insurance companies issuing perpetual policies).

Sec.
1.821-1 Tax on mutual insurance companies other than life or marine or fire insurance companies subject to the tax imposed by section 831.
1.822 Statutory provisions; determination of mutual insurance company taxable income.
1.822-1 Taxable income and deductions.
1.822-2 Real estate owned and occupied.
1.822-3 Amortization of premium and accrual of discount.
1.823 Statutory provisions; other definitions.
1.823-1 Net premiums.
1.823-2 Dividends to policyholders.

OTHER INSURANCE COMPANIES

1.831 Statutory provisions; tax on insurance companies (other than life or mutual), mutual marine insurance companies, and mutual fire insurance companies issuing perpetual policies.
1.831-1 Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and mutual fire insurance companies issuing perpetual policies.
1.832 Statutory provisions; insurance company taxable income.
1.832-1 Gross income.
1.832-2 Deductions.

PROVISIONS OF GENERAL APPLICATION

1.841 Statutory provisions; credit for foreign taxes.
1.842 Statutory provisions; computation of gross income.

AUTHORITY: §§ 1.801 to 1.842 issued under sec.7805, 68A Stat. 917; 26 U. S. C. 7805.

INSURANCE COMPANIES

LIFE INSURANCE COMPANIES

§ 1.801 *Statutory provisions; life insurance companies; definition of life insurance company.*

SEC. 801. *Definition of life insurance company.* For purposes of this subtitle, the term "life insurance company" means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with health and accident insurance), or noncancellable contracts of health and accident insurance, if its life insurance reserves (as defined in section 803 (b)), plus unearned premiums and unpaid losses on noncancellable life, health, or accident policies not included in life insurance reserves, comprise more than 50 percent of its total reserves. For purposes of this section, the term "total reserves" means life insurance reserves, unearned premiums and unpaid losses not included in life insurance reserves, and all other insurance reserves required by law. A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under section 802 but shall be taxable under section 821 or section 831.

§ 1.801-1 *Definitions*—(a) *Life Insurance company.* The term "life insurance company" as used in subtitle A is defined in section 801. For the purpose of determining whether a company is a "life insurance company" within the meaning of that term as used in section 801, it must first be determined whether the company is taxable as an insurance company under the Internal Revenue Code. For the definition of an "insurance company", see paragraph (b) of this section. In determining whether an insurance company is a life insurance company, the life insurance reserves (as defined in section 803 (b)) plus any unearned premiums and unpaid losses on noncancellable life, health, or accident policies, not included in "life insurance reserves" must comprise more than 50 percent of its total reserves (as defined in section 801). An insurance company writing only noncancellable life, health, or accident policies and having no "life insurance reserves" may qualify as a life insurance company if its unearned premiums and unpaid losses on such policies comprise more than 50 percent of its total reserves. A noncancellable insurance policy means a contract which the insurance company is under an obligation to renew or continue at a specified premium and with respect to which a reserve in addition to the unearned premium must be carried to cover that obligation. For the purpose of the preceding sentence, the term "unearned premium" means the amount which will cover the cost of carrying the insurance risk for the period for which the premium has been paid in advance. A burial or funeral benefit insurance company qualifying as a life insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services will be taxable under section 821 or section 831 as an insurance company other than life.

(b) *Insurance companies.* (1) Insurance companies include both stock and mutual companies, as well as mutual benefit insurance companies. A voluntary unincorporated association of employees formed for the purpose of relieving sick and aged members and the dependents of deceased members is an insurance company, whether the fund for such purpose is created wholly by membership dues or partly by contributions from the employer. A corporation which merely sets aside a fund for the insurance of its employees is not required to file a separate return for such fund, but the income therefrom shall be included in the return of the corporation.

(2) Though its name, charter powers, and subjection to State insurance laws are significant in determining the business which a corporation is authorized and intends to carry on, the character of the business actually done in the taxable year determines whether it is taxable as an insurance company under the Internal Revenue Code. For example, during the year 1954 the M Corporation, incorporated under the insurance laws of the State of R, carried on the business of lending money in addition to guaranteeing the payment of principal and interest of mortgage loans. Of its total income for the year, one-third was derived from its insurance business of guaranteeing the payment of principal and interest of mortgage loans and two-thirds was derived from its noninsurance business of lending money. The M Corporation is not an insurance company for the year 1954 within the meaning of the Code and the regulations thereunder.

§ 1.802 (b) *Statutory provisions; life insurance companies; imposition of tax.*

SEC. 802. *Imposition of tax.* * * *

(b) *Taxable years beginning in 1954.* In lieu of the tax imposed by subsection (a) there shall be imposed, for taxable years beginning in 1954, on the 1954 life insurance company taxable income (as defined in section 805) of every life insurance company a tax equal to the sum of the following:

(1) 3¾ percent of the amount thereof not in excess of $200,000, plus

(2) 6½ percent of the amount thereof in excess of $200,000.

§ 1.802 (b)-1 *Tax on life insurance companies.* (a) For taxable years beginning after December 31, 1953, but before January 1, 1955, and ending after August 16, 1954, section 802 (b) imposes a tax on the 1954 life insurance company taxable income of all life insurance companies (including a foreign life insurance company carrying on a life insurance business within the United States if with respect to its United States business it would qualify as a life insurance company under section 801). The tax so imposed is equal to 3¾ percent of the amount of such income not in excess of $200,000, plus 6½ percent of the amount of such income in excess of $200,000. For the definition of the term "1954 life insurance company taxable income", see § 1.805-1.

(b) The taxable income of life insurance companies differs from the taxable income of other corporations. See section 803. Life insurance companies are entitled, in computing life insurance company taxable income, to the special deductions provided in part VIII of subchapter B (except section 248). The gross income, the deduction under section 803 (g) (1) for wholly tax-exempt interest, and the deduction under section 242 for partially tax-exempt interest, are decreased by the appropriate amortization of premium and increased by the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. See section 803 (i) and § 1.803-6. Such companies are not subject to the provisions of subchapter P (section 1201 and following, relating to capital gains and losses) nor to the provisions of section 171 (amortizable bond premium).

(c) All provisions of the Internal Revenue Code and of the regulations in this part not inconsistent with the specific provisions of sections 801 to 807, inclusive, are applicable to the assessment and collection of the tax imposed by section 802, and life insurance companies are subject to the same penalties as are provided in the case of returns and payment of income tax by other corporations. The return shall be on Form 1120L.

(d) Foreign life insurance companies not carrying on an insurance business within the United States are not taxable under section 802, but are taxable as other foreign corporations. See section 881.

§ 1.803 *Statutory provisions; life insurance companies; other definitions and rules.*

SEC. 803. *Other definitions and rules*—(a) *Application of section; gross income*—(1) *Application.* The definitions and rules contained in this section shall apply only in the case of life insurance companies.

(2) *Gross income.* The term "gross income" means the gross amount of income received or accrued during the taxable year from interest, dividends, and rents.

(b) *Life insurance reserves.* The term "life insurance reserves" means amounts which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance) involving, at the time with respect to which the reserve is computed, life, health, or accident contingencies. Such life insurance reserves, except in the case of policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation and except as hereinafter provided in the case of assessment life insurance, must also be required by law. In the case of an assessment life insurance company or association, the term "life insurance reserves" includes sums actually deposited by such company or association with State or Territorial officers pursuant to law as guaranty or reserve funds, and any funds maintained, under the charter or articles of incorporation or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

(c) *Adjusted reserves.* The term "adjusted reserves" means life insurance reserves plus 7 percent of that portion of such reserves as are computed on a preliminary term basis.

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(e) *Reserve for deferred dividends.* The term "reserve for deferred dividends" means sums held at the end of the taxable year as a reserve for dividends (other than dividends payable during the year following the taxable year) the payment of which is deferred for a period of not less than 5 years from the date of the policy-contract.

(f) *Interest paid.* The term "interest paid" means—

(1) All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from taxation under this chapter, and

(2) All amounts in the nature of interest, whether or not guaranteed, paid or accrued within the taxable year on insurance or annuity contracts (or contracts arising out of insurance or annuity contracts) which do not involve, at the time of payment or accrual, life, health, or accident contingencies.

(g) *Taxable income.* The term "taxable income" means the gross income less the following deductions:

(1) *Tax-free interest.* The amount of interest received or accrued during the taxable year which under section 103 is excluded from gross income.

(2) *Investment expenses.* Investment expenses paid or incurred during the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 percent of the mean of the book value of the invested assets held at the beginning and end of the taxable year plus one-fourth of the amount by which taxable income (computed without any deduction for investment expenses allowed by this paragraph, for tax-free interest allowed by paragraph (1), or for partially tax-exempt interest and dividends received allowed by paragraph (5)) exceeds 3¾ percent of the book value of the mean of the invested assets held at the beginning and end of the taxable year.

(3) *Real estate expenses.* Taxes and other expenses paid or accrued during the taxable year exclusively on or with respect to the real estate owned by the company, not including taxes assessed against local benefits of a kind tending to increase the value of the property assessed, and not including any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property. The deduction allowed by this paragraph shall be allowed in the case of taxes imposed on a shareholder of a company on his interest as shareholder, which are paid or accrued by the company without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes.

(4) *Depreciation.* The depreciation deduction allowed by section 167.

(5) *Special deductions.* The special deductions allowed by part VIII of subchapter B (except section 248).

(h) *Rental value of real estate.* The deduction under subsection (g) (3) and (4) on account of any real estate owned and occupied in whole or in part by a life insurance company shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this subsection) as the rental value of the space not so occupied bears to the rental value of the entire property.

(i) *Amortization of premium and accrual of discount.* The gross income, the deduction provided in subsection (g) (1), and the deduction allowed by section 242 (relating to partially tax-exempt interest) shall each be decreased to reflect the appropriate amortization of premium and increased to reflect the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

(1) In accordance with the method regularly employed by such company, if such method is reasonable, and

(2) In all other cases, in accordance with regulations prescribed by the Secretary or his delegate.

(j) *Double deductions.* Nothing in this part shall permit the same item to be deducted more than once.

§ 1.803–1 *Life insurance reserves.* (a) The term "life insurance reserves" is defined in section 803 (b). Generally, such reserves, as in the case of level premium life insurance, are held to supplement the future premium receipts when the latter, alone, are insufficient to cover the increased risk in the later years. In the case of cancellable health and accident policies and similar cancellable contracts, the unearned premiums held to cover the risk for the unexpired period covered by the premiums are not included in life insurance reserves. Unpaid loss reserves for noncancellable health and accident policies are included in life insurance reserves if they are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest.

(b) In the case of an assessment life insurance company or association, life insurance reserves include sums actually deposited by such company or association with State or Territorial officers pursuant to law as guaranty or reserve funds, and any funds maintained under the charter or articles of incorporation or association of such company or association, or bylaws (approved by the State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued upon the assessment plan and not subject to any other use.

(c) Life insurance reserves, except as otherwise provided in section 803 (b), must be required by law either by express statutory provisions or by rules and regulations of the insurance department of a State, Territory, or the District of Columbia when promulgated in the exercise of a power conferred by statute, but such requirement, without more, is not conclusive; for example, life insurance reserves do not include reserves required to be maintained to provide for the ordinary running expenses of a business which must be currently paid by every company from its income if its business is to continue, such as taxes, salaries, and unpaid brokerage; nor do they include the net value of risks reinsured in other solvent companies; liability for premiums paid in advance; liability for annual and deferred dividends declared or apportioned; liability for dividends left on deposit at interest; liability for accrued but unsettled policy claims whether known or unreported; liability for supplementary contracts not involving, at the time with respect to which the liability is computed, life, health, or accident contingencies.

(d) In any case where reserves are claimed, sufficient information must be filed with the return to enable the district director to determine the validity of the claim. Only reserves which are required by law or insurance department ruling, which are peculiar to insurance companies, and which are dependent upon interest earnings for their maintenance will, except as otherwise specifically provided in section 803 (b), be considered as life insurance reserves. A company is permitted to make use of the highest aggregate reserve required by any State or Territory or the District of Columbia in which it transacts business, but the reserve must have been actually held.

(e) In the case of life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, it is required that reserve funds thereon be based upon recognized mortality or morbidity tables covering disability benefits of the kind contained in policies issued by this particular class of companies but they need not be required by law.

§ 1.803–2 *Adjusted reserves.* For the purpose of determining "required interest" for taxable years beginning after December 31, 1953, but before January 1, 1955, and ending after August 16, 1954, certain reserves computed on a preliminary term method are to be adjusted by increasing such reserves by 7 percent. The reserves to be thus adjusted are reserves computed on preliminary term methods, such as the Illinois Standard, or the Select and Ultimate methods. Only reserves on policies in the modification period are to be so adjusted. Where reserves under a preliminary term method are the same as on the level premium method, and in the case of reserves

for extended or paid-up insurance, no adjustment is to be made. The reserves as thus adjusted, and the rate of interest on which they are computed, should be reported in Schedule A, Form 1120L.

§ 1.803–3 *Interest paid or accrued.* Interest paid or accrued is one of the elements to be used in computing the amount of "required interest" for purposes of determining the reserve interest credit provided in section 805. See § 1.805–1. Interest paid or accrued consists of (a) interest paid or accrued on indebtedness (except indebtedness incurred or continued to purchase or carry tax-exempt securities as set forth in section 803 (f) (1)) and (b) amounts in the nature of interest paid or accrued on certain contracts, as provided in section 803 (f) (2). Interest on indebtedness includes interest on dividends held on deposit and surrendered during the taxable year but does not include interest paid or accrued on deferred dividends. Life insurance reserves as defined in § 1.803–1 are not indebtedness. Dividends left with the company to accumulate at interest are a debt and not a reserve liability. Amounts in the nature of interest include so-called excess-interest dividends as well as guaranteed interest paid or accrued within the taxable year on insurance or annuity contracts (or contracts arising out of insurance or annuity contracts) which, at the time of payment, do not involve life, health, or accident contingencies. It is immaterial whether the optional mode of settlement specified in the insurance or annuity contract arises from an option exercised by the insured during his or her lifetime or from an option exercised by a beneficiary after the policy has matured, frequently referred to as a supplementary contract not involving life contingencies; for example, a contract to pay the insurance benefit in 10 annual installments. No distinction is made based on the person choosing the method of payment, and the full amount of the interest paid or accrued and not merely the guaranteed interest is considered as interest paid or accrued.

§ 1.803–4 *Taxable income and deductions*—(a) *In general.* The taxable income of a life insurance company is its gross amount of income received or accrued during the taxable year from interest, dividends, and rents, less the deductions provided in section 803 (g) for wholly tax-exempt interest, investment expenses, real estate expenses, depreciation, and the special deductions provided in part VIII of subchapter B (except section 248). In addition to the limitations on deductions relating to real estate owned and occupied by a life insurance company provided in section 803 (h), the limitations on the adjustment for amortization of premium and accrual of discount provided in section 803 (i), and the limitation on the deduction for investment expenses where general expenses are allocated to investment income provided in section 803 (g) (2), life insurance companies are subject to the limitations on deductions relating to wholly tax-exempt income provided in section 265. Life insurance companies are not entitled to the net operating loss deduction provided in section 172.

(b) *Wholly tax-exempt interest.* Interest which in the case of other taxpayers is excluded from gross income by section 103 but included in the gross income of a life insurance company by section 803 (a) (2) is allowed as a deduction from gross income by section 803 (g) (1).

(c) *Investment expenses.* (1) As used in the Internal Revenue Code, the term "general expenses" means any expense paid or incurred for the benefit of more than one department of the company rather than for the benefit of a particular department thereof. Any assignment of such expense to the investment department of the company for which a deduction is claimed under section 803 (g) (2) subjects the entire deduction for investment expenses to the limitation provided in that section. The accounting procedure employed is not conclusive as to whether any assignment has in fact been made. Investment expenses do not include Federal income and excess profits taxes.

(2) If no general expenses are assigned to or included in investment expenses the deduction may consist of investment expenses paid or incurred during the taxable year in which case an itemized schedule of such expenses must be appended to the return.

(3) Invested assets for the purpose of section 803 (g) (2) and this section are those which are owned and used, and to the extent used, for the purpose of producing the income specified in section 803 (a) (2). They do not include real estate owned and occupied, and to the extent owned and occupied, by the company. If general expenses are assigned to or included in investment expenses, the maximum allowance will not be granted unless it is shown to the satisfaction of the district director that such allowance is justified by a reasonable assignment of actual expenses.

(d) *Taxes and expenses with respect to real estate.* The deduction for taxes and expenses under section 803 (g) (3) includes taxes and expenses paid or accrued during the taxable year exclusively upon or with respect to real estate owned by the company and any sum representing taxes imposed upon a shareholder of the company upon his interest as shareholder which is paid or accrued by the company without reimbursement from the shareholder. No deduction shall be allowed, however, for taxes, expenses, and depreciation upon or with respect to any real estate owned by the company except to the extent used for the purpose of producing investment income. See paragraph (c) of this section. As to real estate owned and occupied by the company, see § 1.803–5.

(e) *Depreciation.* The deduction allowed for depreciation is, except as provided in section 803 (h), identical with that allowed other corporations by section 167. The amount allowed by section 167 in the case of life insurance companies is limited to depreciation sustained on the property used, and to the extent used, for the purpose of producing the income specified in section 803 (a) (2).

§ 1.803–5 *Real estate owned and occupied.* The amount allowable as a deduction for taxes, expenses, and depreciation upon or with respect to any real estate owned and occupied in whole or in part by a life insurance company is limited to an amount which bears the same ratio to such deduction (computed without regard to this limitation) as the rental value of the space not so occupied bears to the rental value of the entire property. For example, if the rental value of the space not occupied by the company is equal to one-half of the rental value of the entire property, the deduction for taxes, expenses, and depreciation is one-half of the taxes, expenses, and depreciation on account of the entire property. Where a deduction is claimed as provided in this section, the parts of the property occupied and the parts not occupied by the company, together with the respective rental values thereof, must be shown in a statement accompanying the return.

§ 1.803–6 *Amortization of premium and accrual of discount.* (a) Section 803 (i) provides for certain adjustments on account of amortization of premium and accrual of discount on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such adjustments are limited to the amount of appropriate amortization or accrual attributable to the taxable year with respect to such securities which are not in default as to principal or interest and which are amply secured. The question of ample security will be resolved according to the rules laid down from time to time by the National Association of Insurance Commissioners. The adjustment for amortization of premium decreases, and for accrual of discount increases, (1) the gross income, (2) the deduction for wholly tax-exempt interest, and (3) the deduction for partially tax-exempt interest.

(b) The premium for any such security is the excess of its acquisition value over its maturity value and the discount is the excess of its maturity value over its acquisition value. The acquisition value of any such security is its cost (including buying commissions or brokerage but excluding any amounts paid for accrued interest) if purchased for cash, or if not purchased for cash, then its fair market value. The maturity value of any such security is the amount payable thereunder either at the maturity date or an earlier call date. The earlier call date of any such security may be the earliest call date specified therein as a day certain, the earliest interest payment date if it is callable or payable at such date, the earliest date at which it is callable at par, or such other call or payment date, prior to maturity, specified in the security as may be selected by the life insurance company. A life insurance company which adjusts amortization of premium or accrual of discount with reference to a particular call or payment date must make the adjustments with reference to the value on such date and may not, after selecting such date, use a different call or payment date, or value, in the calculation of such amortization or discount with respect to such

security unless the security was not in fact called or paid on such selected date.

(c) The adjustments for amortization of premium and accrual of discount will be determined—

(1) According to the method regularly employed by the company, if such method is reasonable, or

(2) According to the method prescribed by this section.

A method of amortization of premium or accrual of discount will be deemed "regularly employed" by a life insurance company if the method was consistently followed in prior taxable years; or if, in the case of a company which has never before made such adjustments, the company initiates in the first taxable year for which the adjustments are made a reasonable method of amortization of premium or accrual of discount and consistently follows such method thereafter. Ordinarily, a company regularly employs a method in accordance with the statute of some State, Territory, or the District of Columbia, in which it operates.

(d) The method of amortization and accrual prescribed by this section is as follows:

(1) The premium (or discount) shall be determined in accordance with this section; and

(2) The appropriate amortization of premium (or accrual of discount) attributable to the taxable year shall be an amount which bears the same ratio to the premium (or discount) as the number of months in the taxable year during which the security was owned by the life insurance company bears to the number of months between the date of acquisition of the security and its maturity or earlier call date, determined in accordance with this section. For the purpose of this section, a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month.

§ 1.805 *Statutory provisions; life insurance companies; life insurance company taxable income.*

SEC. 805. *1954 life insurance company taxable income*—(a) *Definition.* For purposes of section 802 (b), the term "1954 life insurance company taxable income" means the taxable income (as defined in section 803 (g)), plus 8 times the amount of the adjustment for certain reserves provided in section 806, and minus the reserve interest credit, if any, provided in subsection (b) of this section.

(b) *Reserve interest credit.* For purposes of subsection (a), the reserve interest credit shall be an amount determined as follows:

(1) Divide the amount of the adjusted taxable income (as defined in subsection (c)) by the amount of the required interest (as defined in subsection (d)).

(2) If the quotient obtained in paragraph (1) is 1.05 or more, the reserve interest credit shall be zero.

(3) If the quotient obtained in paragraph (1) is 1.00 or less, the reserve interest credit shall be an amount equal to 50 percent of the taxable income.

(4) If the quotient obtained in paragraph (1) is more than 1.00 but less than 1.05, the reserve interest credit shall be the amount obtained by multiplying the taxable income by 10 times the difference between the figures 1.05 and such quotient.

(c) *Adjusted taxable income.* For purposes of subsection (b) (1), the term "adjusted taxable income" means the taxable income (computed without the deductions provided in section 803 (g) (1) or (5)) minus 50 percent of the amount of the adjustment for certain reserves provided in section 806.

(d) *Required interest.* For purposes of subsection (b) (1), the term "required interest" means the total of—

(1) The sum of the amounts obtained by multiplying—

(A) Each rate of interest assumed in computing the taxpayer's life insurance reserves by

(B) The means of the amounts of the taxpayer's adjusted reserves computed at that rate at the beginning and end of the taxable year,

(2) 2 percent of the reserve for deferred dividends, and

(3) Interest paid.

§ 1.805–1 *Tax on life insurance companies in the case of a taxable year beginning in 1954.* (a) Section 802 (b) imposes a tax on the "1954 life insurance company taxable income" of all life insurance companies for taxable years beginning after December 31, 1953, but before January 1, 1955, and ending after August 16, 1954. See § 1.802 (b)–1 (a).

(b) For purposes of section 802 (b), the term "1954 life insurance company taxable income" means the taxable income (consisting of income computed as provided in § 1.803–4) for the taxable year beginning in 1954 plus eight times the amount of the adjustment for certain reserves computed as provided in section 806 (see § 1.806–1), and minus the reserve interest credit, if any, provided in section 805 (b) (see § 1.805–2).

§ 1.805–2 *Reserve interest credit.* (a) In computing 1954 life insurance company taxable income, a reserve interest credit is allowed where the "adjusted taxable income" of the company is less than 105 percent of its required interest. For the purpose of computing the reserve interest credit, the term "adjusted taxable income" means the taxable income of the company computed without the deductions provided in section 803 (g) (1) or (5), less 50 percent of the adjustment for certain reserves on contracts other than life insurance or annuity contracts provided in section 806.

(b) The required interest for which a credit may be allowed consists of the total of—

(1) The sum of amounts obtained by multiplying each rate of interest assumed in computing life insurance reserves (see section 803 (b) and § 1.803–1) by the means of the amounts of the adjusted reserves, as defined in section 803 (c), computed at that rate at the beginning and the end of the taxable year;

(2) Two percent of the reserve for deferred dividends; and

(3) Interest paid or accrued.

(c) To determine the amount of the reserve interest credit, it is necessary to divide the amount of the adjusted taxable income by the amount of the required interest. If the adjusted taxable income is 100 percent or less of the required interest, the reserve interest credit is an amount equal to 50 percent of the life insurance company taxable income. If the adjusted taxable income is 105 percent or more of the required interest, the reserve interest credit is zero. If the adjusted taxable income is more than 100 percent and less than 105 percent of the required interest, the reserve interest credit is computed by multiplying the life insurance company taxable income by ten times the difference between 105 percent and the percentage established. Thus, if the adjusted taxable income of a life insurance company for the calendar year 1954 is $103,000 and the required interest for such year is $100,000, the adjusted taxable income is 103 percent of the required interest and the reserve interest, accordingly, is the life insurance company taxable income multiplied by 20 percent (10 times 2 percent, the difference between 105 percent and 103 percent).

(d) In determining the percentage of the adjusted taxable income to required interest for purposes of determining the reserve interest credit, the figures shall be computed to at least the nearest one-tenth of a percentage point.

§ 1.806 *Statutory provisions; life insurance companies; adjustment for certain reserves.*

SEC. 806. *Adjustment for certain reserves.* In the case of a life insurance company writing contracts other than life insurance or annuity contracts (either separately or combined with noncancellable health and accident insurance), the term "adjustment for certain reserves" means an amount equal to 3¼ percent of the unearned premiums and unpaid losses on such other contracts which are not included in life insurance reserves (as defined in section 803 (b). For purposes of this section, such unearned premiums shall not be considered to be less than 25 percent of the net premiums written during the taxable year on such other contracts.

§ 1.806–1 *Adjustment for certain reserves.* (a) For taxable years beginning after December 31, 1953, but before January 1, 1955, and ending after August 16, 1954, a life insurance company writing contracts other than life insurance or annuity contracts (either separately or combined with noncancellable health and accident insurance contracts) must add to its life insurance company taxable income (as a factor in determining 1954 adjusted taxable income) an amount equal to eight times the amount of the adjustment for certain reserves provided in paragraph (b) of this section.

(b) The adjustment for certain reserves referred to in paragraph (a) of this section shall be an amount equal to 3¼ percent of the mean of the unearned premiums and unpaid losses at the beginning and end of the taxable year on such other contracts as are not included in life insurance reserves. If such unearned premiums, however, are less than 25 percent of the net premiums written during the taxable year on such other contracts, then the adjustment shall be 3¼ percent of 25 percent of the net premiums written during the taxable year on such other contracts plus 3¼ percent of the mean of the unpaid losses at the beginning and end of the taxable year on such other contracts. As used in this section, the term "unearned premiums" has the same meaning as in section 832 (b) (4) and § 1.832–1.

§ 1.807 *Statutory provisions; life insurance companies; foreign life insurance companies.*

SEC. 807. *Foreign life insurance companies* (a) *Carrying on United States insurance business.* A foreign life insurance company carrying on a life insurance business within the United States, if with respect to its United States business it would qualify as a life insurance company under section 801, shall be taxable in the same manner as a domestic life insurance company; except that the determinations necessary for purposes of this subtitle shall be made on the basis of the income, disbursements, assets, and liabilities reported in the annual statement for the taxable year of the United States business of such company on the form approved for life insurance companies by the National Association of Insurance Commissioners.

(b) *No United States insurance business.* Foreign life insurance companies not carrying on an insurance business within the United States shall not be taxable under this section but shall be taxable as other foreign corporations.

§ 1.807-1 *Foreign life insurance companies.* A foreign life insurance company carrying on a life insurance business within the United States, if with respect to its United States business it would qualify as a life insurance company under section 801, is taxable on its income received during the taxable year from interest, dividends, and rents, from sources within and without the United States, pertaining to its United States business. Such a company is taxable in the same manner as a domestic life insurance company except that the determinations necessary for the purposes of subtitle A, such as gross income, the adjustment for certain reserves, deductions and limitations on deductions, amortization of premiums and accrual of discount, and the deductions allowed the company in part VIII of subchapter B, shall be made on the basis of the income, disbursements, assets, and liabilities reported in the annual statement for the taxable year of the United States business of such company on the form approved for life insurance companies by the National Association of Life Insurance Commissioners. This statement is presumed to reflect the income, disbursements, assets, and liabilities of the United States business of the company and insofar as it is not inconsistent with the provisions of the Internal Revenue Code will be recognized and used as a basis for that purpose.

MUTUAL INSURANCE COMPANIES (OTHER THAN LIFE OR MARINE OR FIRE INSURANCE COMPANIES ISSUING PERPETUAL POLICIES)

§ 1.821 *Statutory provisions; tax on mutual insurance companies (other than life or marine or fire insurance companies issuing perpetual policies).*

SEC. 821. *Tax on mutual insurance companies (other than life or marine or fire insurance companies issuing perpetual policies)*—(a) *Imposition of tax on mutual companies other than interinsurers.* There shall be imposed for each taxable year on the income of every mutual insurance company (other than a life or a marine insurance company or a fire insurance company subject to the tax imposed by section 831 and other than an interinsurer or reciprocal underwriter) a tax computed under paragraph (1) or paragraph (2), whichever is the greater:

(1) If the mutual insurance company taxable income (computed without regard to the deduction provided in section 242 for partially tax-exempt interest) is over $3,000, a tax computed as follows:

(A) *Normal tax*—(i) *Taxable years beginning before April 1, 1955.* In the case of taxable years beginning before April 1, 1955, a normal tax of 30 percent of the mutual insurance company taxable income, or 60 percent of the amount by which such taxable income exceeds $3,000, whichever is the lesser;

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(B) *Surtax.* A surtax of 22 percent of the mutual insurance company taxable income (computed without regard to the deduction provided in section 242 for partially tax-exempt interest) in excess of $25,000.

(2) If for the taxable year the gross amount of income from interest, dividends, rents, and net premiums, minus dividends to policyholders, minus the interest which under section 103 is excluded from gross income, exceeds $75,000, a tax equal to 1 percent of the amount so computed, or 2 percent of the excess of the amount so computed over $75,000, whichever is the lesser.

(b) *Imposition of tax on interinsurers.* In the case of every mutual insurance company which is an interinsurer or reciprocal underwriter (other than a life or a marine insurance company or a fire insurance company subject to the tax imposed by section 831), if the mutual insurance company taxable income (computed as provided in subsection (a) (1)) is over $50,000, there shall be imposed for each taxable year on the mutual insurance company taxable income a tax computed as follows:

(1) *Normal tax*—(A) *Taxable years beginning before April 1, 1955.* In the case of taxable years beginning before April 1, 1955, a normal tax of 30 percent of the mutual insurance company taxable income, or 60 percent of the amount by which such taxable income exceeds $50,000, whichever is the lesser;

* * * * *

(2) *Surtax.* A surtax of 22 percent of the mutual insurance company taxable income (computed as provided in subsection (a) (1)) in excess of $25,000, or 33 percent of the amount by which such taxable income exceeds $50,000, whichever is the lesser.

(c) *Gross amount received, over $75,000 but less than $125,000.* If the gross amount received during the taxable year from interest, dividends, rents, and premiums (including deposits and assessments) is over $75,000 but less than $125,000, the tax imposed by subsection (a) or subsection (b), whichever applies, shall be reduced to an amount which bears the same proportion to the amount of the tax determined under such subsection as the excess over $75,000 of such gross amount received bears to $50,000.

(d) *No United States insurance business.* Foreign mutual insurance companies (other than a life or marine insurance company or a fire insurance company subject to the tax imposed by section 831) not carrying on an insurance business within the United States shall not be subject to this part but shall be taxable as other foreign corporations.

(e) *Alternative tax on capital gains.* For alternative tax in case of capital gains, see section 1201 (a).

§ 1.821-1 *Tax on mutual insurance companies other than life or marine or fire insurance companies subject to the tax imposed by section 831*—(a) *In general.* (1) For taxable years beginning after December 31, 1953, but before January 1, 1955, and ending after August 16, 1954, all mutual insurance companies, including foreign insurance companies carrying on an insurance business within the United States, not taxable under section 801 or 831 and not specifically exempt under the provisions of section 501 (c) (15), are subject to the tax imposed by section 821 on their investment income or on their gross income, whichever tax is the greater, except interinsurers and reciprocal underwriters which are taxed only on their investment income. For the alternative tax, in lieu of the tax imposed by section 821 (a) or (b), where the net long-term capital gain for any taxable year exceeds the net short-term capital loss, see section 1201 (a) and the regulations thereunder.

(2) The taxable income of mutual insurance companies subject to the tax imposed by section 821 differs from the taxable income of other corporations. See section 821 (a) (2) and section 822. Such companies are entitled, in computing mutual insurance company taxable income, to the deductions provided in part VIII of subchapter B (except section 248). The gross amount of income during the taxable year from interest, the deduction under section 822 (c) (1) for wholly tax-exempt interest, and the deduction under section 242 for partially tax-exempt interest, are decreased by the appropriate amortization of premium and increased by the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures or other evidences of indebtedness held by a mutual insurance company subject to the tax imposed by section 821. See section 822 (d) (2) and § 1.822-3.

(3) All provisions of the Internal Revenue Code and of the regulations in this part not inconsistent with the specific provisions of section 821 are applicable to the assessment and collection of the tax imposed by section 821 (a) or (b) and mutual insurance companies subject to the tax imposed by section 821 are subject to the same penalties as are provided in the case of returns and payment of income tax by other corporations. The return shall be on Form 1120M.

(4) Foreign mutual insurance companies not carrying on an insurance business within the United States are not taxable under section 821 (a) or (b), but are taxable as other foreign corporations. See section 881.

(5) Mutual insurance companies subject to the tax imposed by section 821, except interinsurers or reciprocal underwriters, with mutual insurance company taxable income (computed without regard to the deduction provided in section 242 for partially tax-exempt interest) of over $3,000 or with gross amounts of income from interest, dividends, rents, and net premiums (minus dividends to policyholders and wholly tax-exempt interest) in excess of $75,000, are subject to a tax computed under section 821 (a) (1) or section 821 (a) (2) whichever is the greater. Interinsurers and reciprocal underwriters with mutual insurance company taxable income (computed without regard to the deduction provided in section 242 for partially tax-exempt interest) of over $50,000 are subject to a tax computed under section 821 (b).

(b) *Rates of tax.* (1) The normal tax under section 821 (a) (1) (A) and 821 (b) (1), except as hereinafter indicated, is computed upon mutual insurance company taxable income for purposes of the normal tax at the rate of 30 percent.

(2) The surtax under section 821 (a) (1) (B) and 821 (b) (2), except as hereinafter indicated, is computed on that portion of the mutual insurance company taxable income for purposes of the surtax in excess of $25,000 at the rate of 22 percent. The tax under section 821 (a) (2), except as hereinafter indicated, is 1 percent of the gross amount of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and minus wholly tax-exempt interest.

(3) Under section 821 (a) (1) (A) companies with mutual insurance company taxable income for purposes of the normal tax of over $3,000 and not over $6,000 pay a normal tax, at a specified rate, on that portion of such income in excess of $3,000. The rate applicable in computing the normal tax of such companies is 60 percent.

Under section 821 (a) (2) companies with gross amounts of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and minus wholly tax-exempt interest, of over $75,000 and not over $150,000 pay a tax equal to 2 percent of that portion in excess of $75,000.

(4) Under section 821 (b) (1), interinsurers and reciprocal underwriters with mutual insurance company taxable income for purposes of the normal tax of over $50,000 and not over $100,000 pay a normal tax computed on that portion of such income in excess of $50,000 at the rate of 60 percent.

Under section 821 (b) (2) interinsurers and reciprocal underwriters with mutual insurance company taxable income for purposes of the surtax of over $50,000 and not over $100,000 pay a surtax, at the rate of 33 percent, on that portion of such income in excess of $50,000.

(5) Section 821 (c) provides for an adjustment of the amount computed under section 821 (a) (1), section 821 (a) (2), and section 821 (b) where the gross amount received during the taxable year from interest, dividends, rents, and premiums (including deposits and assessments) is over $75,000 and less than $125,000. The adjustment reduces the tax otherwise computed under those sections to an amount which bears the same proportion to such tax as the excess over $75,000 bears to $50,000.

(c) *Application.* The application of sections 821 (a) to (c) inclusive, may be illustrated by the following examples:

Example (1). The W Company, a mutual casualty insurance company, for the calendar year 1954, has mutual insurance company taxable income for purposes of the surtax of $5,500 and, due to partially tax-exempt interest of $800, has income for purposes of the normal tax of $4,700. The gross amount of income of the W Company from interest, dividends, rents and net premiums, minus dividends to policyholders and wholly tax-exempt interest, is $150,000. Its normal tax under section 821 (a) (1) for the calendar year 1954 is 60 percent of $1,700 ($4,700 minus $3,000) or $1,020, since its income subject to normal tax is not over $6,000. It is not liable for surtax for the calendar year 1954 as its mutual insurance company taxable income for purposes of the surtax does not exceed $25,000. It has no surtax and, therefore, its total tax under section 821 (a) (1) (A) is the normal tax of $1,020. The tax under section 821 (a) (2) is 2 percent of $75,000 ($150,000—$75,000), or $1,500. Since the tax under section 821 (a) (2) exceeds the tax under section 821 (a) (1), the tax under section 821 is $1,500, namely, that imposed by section 821 (a) (2).

Example (2). If in the above example the income for purposes of the normal tax were not over $3,000, the income for purposes of the surtax were not over $25,000, the gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) were $90,000, and the gross amount of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and wholly tax-exempt interest, were $70,000, the W Company would be required to file an income tax return but due to section 821 (a) no income tax would be imposed.

Example (3). The X Company, a mutual casualty insurance company, for the calendar year 1954 has mutual insurance company taxable income for surtax purposes of $28,000 and, due to partially tax-exempt interest of $5,000, has income for normal tax purposes of $23,000. The gross amount of income of the X Company from interest, dividends, rents, and net premiums, minus dividends to policyholders and wholly tax-exempt interest, is $1,200,000. Under section 821 (a) (1) its normal tax for the calendar year 1954 is 30 percent of $23,000, or $6,900, and the surtax is 22 percent of $3,000 ($28,000—$25,000), or $660. The combined tax under section 821 (a) (1) is $7,560 ($6,900 plus $660). The tax under section 821 (a) (2) is 1 percent of $1,200,000, or $12,000. Since the tax under section 821 (a) (2) exceeds the tax under section 821 (a) (1), the tax under section 821 (a) is $12,000, namely, that imposed by section 821 (a) (2).

Example (4). The Y Company, a mutual fire insurance company subject to the tax imposed by section 821 for the calendar year 1954, has mutual insurance company taxable income for purposes of the surtax of $35,000 and, due to partially tax-exempt interest of $5,000, has income for purposes of the normal tax of $30,000. The gross amount received from interest, dividends, rents and premiums (including deposits and assessments) is $120,000, and the gross amount of income from interest, dividends, rents, and net premiums, minus dividends to policyholders and wholly tax-exempt interest, is $100,000. Under section 821 (a) (1), without application of section 821 (c), the normal tax would be 30 percent of $30,000, or $9,000, since this is less than $16,200, 60 percent of $27,000 (excess of $30,000 over $3,000); and the surtax would be 22 percent of $10,000 (excess of $35,000 over $25,000), or $2,200. The combined tax of $11,200 ($9,000 plus $2,200) would then be reduced by applying section 821 (c), since the gross receipts are between $75,000 and $125,000. The tax under section 821 (a) (1), as thus adjusted, would be 90 percent of $11,200, or $10,080, since $45,000 (excess of $120,000 over $75,000) is 90 percent of $50,000. Under section 821 (a) (2), without reference to section 821 (c), the tax is 2 percent of $25,000 (excess of $100,000 over $75,000), or $500, since this is less than $1,000, 1 percent of $100,000. Applying section 821 (c) reduces this to $450, or 90 percent of $500. Since $10,080, the tax under section 821 (a) (1), as adjusted, exceeds $450, the tax under section 821 (a) (2), as adjusted, the tax under section 821 (a) (1), as adjusted, is applicable. The Y Company would accordingly pay a combined normal tax and surtax of $10,080.

Example (5). The Z Exchange, an interinsurer, for the calendar year 1954 has mutual insurance company taxable income for purposes of the surtax of $60,000 and, due to partially tax-exempt interest of $12,000, has income for purposes of the normal tax of $48,000. The gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) is $2,700,000. The Z Exchange is not liable for normal tax under section 821 (b) (1) for the calendar year 1954 as its mutual insurance company taxable income for purposes of the normal tax does not exceed $50,000. Its surtax is 33 percent of $10,000 ($60,000 minus $50,000), or $3,300, since that amount is less than $7,700, 22 percent of $35,000 (excess of $60,000 over $25,000). Since the Z Exchange has no normal tax, is not subject to the tax imposed by section 821 (a) (2), and is not entitled to the adjustment provided in section 821 (c), its total tax under section 821 (a) is $3,300.

§ 1.822 *Statutory provisions; determination of mutual insurance company taxable income.*

SEC. 822. *Determination of mutual insurance company taxable income*—(a) *Definition.* For purposes of section 821, the term "mutual insurance company taxable income" means the gross investment income minus the deductions provided in subsection (c).

(b) *Gross investment income.* For purposes of subsection (a), the term "gross investment income" means the gross amount of income during the taxable year from interest, dividends, rents, and gains from sales or exchanges of capital assets to the extent provided in subchapter P (sec. 1201 and following, relating to capital gains and losses).

(c) *Deductions.* In computing mutual insurance company taxable income, the following deductions shall be allowed:

(1) *Tax-free interest.* The amount of interest which under section 103 is excluded for the taxable year from gross income.

(2) *Investment expenses.* Investment expenses paid or accrued during the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 percent of the mean of the book value of the invested assets held at the beginning and end of the taxable year plus one-fourth of the amount by which mutual insurance company taxable income (computed without any deduction for investment expenses allowed by this paragraph, for tax-free interest allowed by paragraph (1), or for partially tax-exempt interest and dividends received allowed by paragraph (7)), exceeds 3¾ percent of the book value of the mean of the invested assets held at the beginning and end of the taxable year.

(3) *Real estate expenses.* Taxes and other expenses paid or accrued during the taxable year exclusively on or with respect to the real estate owned by the company, not including taxes assessed against local benefits of a kind tending to increase the value of the property assessed, and not including any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property. The deduction allowed by this paragraph shall be allowed in the case of taxes imposed on a shareholder of a company on his interest as shareholder, which are paid or accrued by the company without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes.

(4) *Depreciation.* The depreciation deduction allowed by section 167.

(5) *Interest paid or accrued.* All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest on which is wholly exempt from taxation under this subtitle.

(6) *Capital losses.* Capital losses to the extent provided in subchapter P (sec. 1201 and following) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and

to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders, losses paid, and expenses paid over the sum of interest, dividends, rents, and net premiums received. In the application of section 1211 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser;

(A) The mutual insurance company taxable income (computed without regard to gains or losses from sales or exchanges of capital assets or to the deduction provided in section 242 for partially tax-exempt interest); or

(B) Losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders.

(7) *Special deductions.* The special deductions allowed by part VIII (except section 248) of subchapter B (sec. 241 and following, relating to partially tax-exempt interest and to dividends received).

(d) *Other applicable rules*—(1) *Rental value of real estate.* The deduction under subsection (e) (3) or (4) on account of any real estate owned and occupied in whole or in part by a mutual insurance company subject to the tax imposed by section 821 shall be limited to an amount which bears the same ratio to such deductions (computed without regard to this paragraph) as the rental value of the space not so occupied bears to the rental value of the entire property.

(2) *Amortization of premium and accrual of discount.* The gross amount of income during the taxable year from interest, the deduction provided in subsection (c) (1), and the deduction allowed by section 242 (relating to partially tax-exempt interest) shall each be decreased to reflect the appropriate amortization of premium and increased to reflect the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a mutual insurance company subject to the tax imposed by section 821. Such amortization and accrual shall be determined—

(A) In accordance with the method regularly employed by such company, if such method is reasonable, and

(B) In all other cases, in accordance with regulations prescribed by the Secretary or his delegate.

(3) *Double deductions.* Nothing in this part shall permit the same item to be deducted more than once.

(e) *Foreign mutual insurance companies other than life or marine.* In the case of a foreign mutual insurance company (other than a life or marine insurance company or a fire insurance company subject to the tax imposed by section 831), the mutual insurance company taxable income shall be the taxable income from sources within the United States (computed without regard to the deductions allowed by subsection (c) (7)), and the gross amount of income from the interest, dividends, rents, and net premiums shall be the amount of such income from sources within the United States. In the case of a company to which the preceding sentence applies, the deductions allowed in this section shall be allowed to the extent provided in subpart B of part II of subchapter N (sec. 881 and following) in the case of a foreign corporation engaged in trade or business within the United States.

§ 1.822-1 *Taxable income and deductions*—(a) *In general.* For taxable years beginning after December 31, 1953, but before January 1, 1955, and ending after August 16, 1954, the taxable income of a mutual insurance company subject to the tax imposed by section 821 is its gross investment income, namely, the gross amount of income during the taxable year from interest, dividends, rents, and gains from sales or exchanges of capital assets, less the deductions provided in section 822 (c) for wholly tax-exempt interest, investment expenses, real estate expenses, depreciation, interest paid or accrued, capital losses to the extent provided in subchapter P (sec. 1201 and following), and the special deductions provided in part VIII of subchapter B (except section 248). In addition to the limitations on deductions relating to real estate owned and occupied by a mutual insurance company subject to the tax imposed by section 821 provided in section 822 (d) (1), the adjustment for amortization of premium and accrual of discount provided in section 822 (d) (2), and the limitation on the deduction for investment expenses where general expenses are allocated to investment income provided in section 822 (c) (2), mutual insurance companies subject to the tax imposed by section 821 are subject to the limitation on deductions relating to wholly tax-exempt income provided in section 265. Such companies are not entitled to the net operating loss deduction provided in section 172.

(b) *Wholly tax-exempt interest.* Interest which in the case of other taxpayers is excluded from gross income by section 103 but included in the gross investment income by section 822 (b) is allowed as a deduction from gross investment income by section 822 (c) (1).

(c) *Investment expenses.* The deduction allowed by section 822 (c) (2) for investment expenses is the same as that allowed life insurance companies by section 803 (g) (2). See § 1.803-4 (c).

(d) *Taxes and expenses with respect to real estate.* The deduction allowed by section 822 (c) (3) for taxes and expenses with respect to real estate owned by the company is the same as that allowed life insurance companies by section 803 (g) (3). See § 1.803-4 (d).

(e) *Depreciation.* The deduction allowed by section 822 (c) (4) for depreciation is the same as that allowed life insurance companies by section 803 (g) (4). See § 1.803-4 (e).

(f) *Interest paid or accrued.* The deduction allowed by section 822 (c) (5) for interest on indebtedness is the same as that allowed other corporations by section 163. See § 1.163-1.

(g) *Capital losses.* (1) The deduction for capital losses under section 822 (c) (6) includes not only capital losses to the extent provided in subchapter P but in addition thereto losses from capital assets sold or exchanged to provide funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Losses in the latter case may be deducted from ordinary income while the deduction for losses under subchapter P is limited to the gains. See section 1211.

(2) Capital assets are considered as sold or exchanged to provide for the funds or payments specified in section 822 (c) (6), to the extent that the gross receipts from the sale or exchange of such assets are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders, and losses and expense paid over the sum of interest, dividends, rents, and net premiums received. If, by reason of a particular sale or exchange of a capital asset, gross receipts are greater than such excess, the gross receipts and the resulting loss should be apportioned and the excess included in capital losses subject to the provisions of subchapter P. Capital losses actually used to reduce net income in any taxable year may not again be used in a succeeding taxable year as an offset against capital gains in that year and for that purpose a special rule is set forth for the application of section 1212.

(3) The application of section 822 (c) (6) may be illustrated by the following examples:

Example (1). The X Company, a mutual fire insurance company subject to the tax imposed by section 821, in the taxable year 1954 sells capital assets in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. The gross receipts from the sale are $30,000, resulting in losses of $20,000. It pays dividends to policyholders of $150,000. It sustains losses of $25,000, and pays expenses of $25,000. It receives interest of $50,000, dividends of $5,000, rents of $4,000, and net premiums of $66,000. The excess of the sum of dividends, losses, and expenses paid ($200,000) over the sum of interest, dividends, rents, and net premiums received ($125,000) is $75,000. As the gross receipts from the sale of capital assets ($60,000) do not exceed such excess ($75,000), the losses of $20,000 are allowable as a deduction from gross investment income.

Example (2). If in the above example the gross receipts were $76,000 and the last capital asset sold, for the purpose therein specified, resulted in gross receipts of $2,000 and a loss of $500, the losses allowable as a deduction from gross investment income would be $19,750. The last sale made the gross receipts of $76,000 exceed by $1,000 the excess ($75,000) of the sum of dividends, losses, and expenses paid ($200,000) over the sum of interest, dividends, rents, and net premiums received ($125,000). The gross receipts and the resulting loss from the last sale are apportioned on the basis of the ratio of the excess of $1,000 to the gross receipts of $2,000, or 50 percent. Fifty percent of the loss of $500 is deducted from the total loss of $20,000. The remaining gross receipts of $1,000 and the proportionate loss of $250 should be reported as capital losses under subchapter P.

Example (3). If in example (1) the X Company had mutual insurance company taxable income for purposes of the surtax of $9,750 and, under the provisions of subchapter P, had capital losses of $18,000 and capital gains of $10,000, the net capital loss for the taxable year 1954, in applying section 1212 for the purposes of section 822 (c) (6), would be $8,000. This is determined by subtracting from total losses of $38,000 ($18,000 capital losses under subchapter P plus $20,000 other capital losses under section 822 (c) (6)) the sum of capital gains of $10,000 and losses from the sale or exchange of capital assets

sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders of $20,000. Such losses of $20,000 are added to capital gains of $10,000, since they are less than taxable income for purposes of the surtax, computed without regard to gains or losses from sales or exchanges of capital assets, of $29,750 ($9,750 taxable income for purposes of the surtax plus $20,000 other capital losses under section 822 (c) (6) plus the portion of capital losses allowable under subchapter P of $10,000 minus capital gains under subchapter P of $10,000).

(h) *Special deductions.* Section 822 (c) (7) allows a mutual insurance company the special deductions provided by part VIII (except section 248) of subchapter B (sec. 241 and following, relating to partially tax-exempt interest and to dividends received).

§ 1.822–2 *Real estate owned and occupied.* The limitation in section 822 (d) (1) on the amount allowable as a deduction for taxes, expenses, and depreciation upon or with respect to any real estate owned and occupied in whole or in part by a mutual insurance company subject to the tax imposed by section 821 is the same as that provided in the case of life insurance companies by section 803 (h). See § 1.803–5.

§ 1.822–3 *Amortization of premium and accrual of discount.* Section 822 (d) (2) makes provision for the appropriate amortization of premium and the appropriate accrual of discount, attributable to the taxable year, on bonds, notes, debentures or other evidences of indebtedness held by a mutual insurance company subject to the tax imposed by section 821. Such amortization and accrual is the same as that provided for life insurance companies by section 803 (i) and shall be determined in accordance with § 1.803–6, except that in determining the premium and discount of a mutual insurance company subject to the tax imposed by section 821 the basis provided in section 1012 shall be used in lieu of the acquisition value.

§ 1.823 *Statutory provisions; other definitions.*

SEC. 823. *Other definitions.* For purposes of this part—

(1) *Net premiums.* The term "net premiums" means gross premiums (including deposits and assessments) written or received on insurance contracts during the taxable year less return premiums and premiums paid or incurred for reinsurance. Amounts returned where the amount is not fixed in the insurance contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums but shall be treated as dividends to policyholders under paragraph (2).

(2) *Dividends to policyholders.* The term "dividends to policyholders" means dividends and similar distributions paid or declared to policyholders. For purposes of the preceding sentence, the term "paid or declared" shall be construed according to the method regularly employed in keeping the books of the insurance company.

§ 1.823–1 *Net premiums.* Net premiums are one of the items used, together with interest, dividends, and rents, less dividends to policyholders and wholly tax-exempt interest, in determining tax liability under section 821 (a) (2). They are also used in section 822 (c) (6) in determining the limitation on certain capital losses and in the application of section 1212. The term "net premiums" is defined in section 823 (1) and includes deposits and assessments, but excludes amounts returned to policyholders which are treated as dividends under section 823 (2).

§ 1.823–2 *Dividends to policyholders.* (a) Dividends to policyholders is one of the deductions used, together with wholly tax-exempt interest, in determining tax liability under section 821 (a) (2). They are also used in section 822 (c) (6) in determining the limitation on certain capital losses and in the application of section 1212. The term "dividends to policyholders" is defined in section 823 (2) as dividends and similar distributions paid or declared to policyholders. It includes amounts returned to policyholders where the amount is not fixed in the insurance contract but depends upon the experience of the company or the discretion of the management. Such amounts are not to be treated as return premiums under section 823 (1). Similar distributions include such payments as the so-called unabsorbed premium deposits returned to policyholders by factory mutual fire insurance companies. The term "paid or declared" is to be construed according to the method of accounting regularly employed in keeping the books of the insurance company, and such method shall be consistently followed with respect to all deductions (including dividends and similar distributions to policyholders) and all items of income.

(b) If the method of accounting so employed is the cash receipts and disbursements method, the deduction is limited to the dividends and similar distributions actually paid to policyholders in the taxable year. If, on the other hand, the method of accounting so employed is the accrual method, the deduction, or a reasonably accurate estimate thereof, for dividends and similar distributions declared to policyholders for any taxable year will, in general, be computed as follows:

To dividends and similar distributions paid during the taxable year add the amount of dividends and similar distributions declared but unpaid at the end of the taxable year and deduct dividends and similar distributions declared but unpaid at the beginning of the taxable year.

If an insurance company using the accrual method does not compute the deduction for dividends and similar distributions declared to policyholders in the manner stated, it must submit with its return a full and complete explanation of the manner in which the deduction is computed. For the rule as to when dividends are considered paid, see the regulations under section 561.

OTHER INSURANCE COMPANIES

§ 1.831 *Statutory provisions; tax on insurance companies (other than life or mutual), mutual marine insurance companies, and mutual fire insurance companies issuing perpetual policies.*

SEC. 831. *Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and mutual fire insurance companies issuing perpetual policies*—

(a) *Imposition of tax.* Taxes computed as provided in section 11 shall be imposed for each taxable year on the taxable income of every insurance company (other than a life or mutual insurance company), every mutual marine insurance company, and every mutual fire insurance company exclusively issuing either perpetual policies or policies for which the sole premium charged is a single deposit which (except for such deduction of underwriting costs as may be provided) is refundable on cancellation or expiration of the policy.

(b) *No United States insurance business.* Foreign insurance companies (other than a life or mutual insurance company), foreign mutual marine insurance companies, and foreign mutual fire insurance companies described in subsection (a), not carrying on an insurance business within the United States, shall not be subject to this part but shall be taxable as other foreign corporations.

(c) *Alternative tax on capital gains.* For alternative tax in case of capital gains, see section 1201 (a).

§ 1.831–1 *Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and mutual fire insurance companies issuing perpetual policies.* (a) All insurance companies, other than life or mutual or foreign insurance companies not carrying on an insurance business within the United States, and all mutual marine insurance companies and mutual fire insurance companies exclusively issuing either perpetual policies, or policies for which the sole premium charged is a single deposit which, except for such deduction of underwriting costs as may be provided, is refundable upon cancellation or expiration of the policy, are subject to the tax imposed by section 831. As used in this section and §§ 1.832–1 and 1.832–2, the term "insurance companies" means only those companies which qualify as insurance companies under the definition provided by § 1.801–1 (b) and which are subject to the tax imposed by section 831.

(b) All provisions of the Internal Revenue Code and of the regulations in this part not inconsistent with the specific provisions of section 831 are applicable to the assessment and collection of the tax imposed by section 831 (a), and insurance companies are subject to the same penalties as are provided in the case of returns and payment of income tax by other corporations.

(c) Since section 832 provides that the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners shall be the basis for computing gross income and since the annual statement is rendered on the calendar year basis, the returns under section 831 shall be made on the basis of the calendar year and shall be on Form 1120. Insurance companies are entitled, in computing insurance company taxable income, to the deductions provided in part VIII of subchapter B.

(d) Foreign insurance companies not carrying on an insurance business within the United States are not taxable under section 831 but are taxable as other foreign corporations. See section 881.

(e) Insurance companies are subject to both normal tax and surtax. The normal tax shall be computed as provided in section 11 (b) and the surtax

shall be computed as provided in section 11 (c). For the circumstances under which the $25,000 exemption from surtax for certain taxable years may be disallowed in whole or in part, see section 1551. For alternative tax where the net long-term capital gain for any taxable year exceeds the net short-term capital loss, see section 1201 (a) and the regulations thereunder.

§ 1.832 *Statutory provisions; insurance company taxable income.*

SEC. 832. *Insurance company taxable income*—(a) *Definition of taxable income.* In the case of an insurance company subject to the tax imposed by section 831, the term "taxable income" means the gross income as defined in subsection (b) (1) less the deductions allowed by subsection (c).

(b) *Definitions.* In the case of an insurance company subject to the tax imposed by section 831—

(1) *Gross income.* The term "gross income" means the sum of—

(A) The combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners.

(B) Gain during the taxable year from the sale or other disposition of property, and

(C) All other items constituting gross income under subchapter B, except that, in the case of a mutual fire insurance company described in section 831 (a), the amount of single deposit premiums paid to such company shall not be included in gross income.

(2) *Investment income.* The term "investment income" means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows: To all interest, dividends, and rents received during the taxable year, add interest, dividends, and rents due and accrued at the end of the taxable year, and deduct all interest, dividends, and rents due and accrued at the end of the preceding taxable year.

(3) *Underwriting income.* The term "underwriting income" means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred.

(4) *Premiums earned.* The term "premiums earned on insurance contracts during the taxable year" means an amount computed as follows:

(A) From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance.

(B) To the result so obtained, add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year.

For purposes of this subsection, unearned premiums shall include life insurance reserves, as defined in section 806, pertaining to the life, burial, or funeral insurance, or annuity business of an insurance company subject to the tax imposed by section 831 and not qualifying as a life insurance company under section 801.

(5) *Losses incurred.* The term "losses incurred" means losses incurred during the taxable year on insurance contracts, computed as follows:

(A) To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year.

(B) To the result so obtained, add all unpaid losses outstanding at the end of the taxable year and deduct unpaid losses outstanding at the end of the preceding taxable year.

(6) *Expenses incurred.* The term "expenses incurred" means all expenses shown on the annual statement approved by the National Convention of Insurance Commissioners, and shall be computed as follows: To all expenses paid during the taxable year, add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For the purpose of computing the taxable income subject to the tax imposed by section 831, there shall be deducted from the expenses incurred (as defined in this paragraph) all expenses incurred which are not allowed as deductions by subsection (c).

(c) *Deductions allowed.* In computing the taxable income of an insurance company subject to the tax imposed by section 831, there shall be allowed as deductions:

(1) All ordinary and necessary expenses incurred, as provided in section 162 (relating to trade or business expenses);

(2) All interest, as provided in section 163;

(3) Taxes, as provided in section 164;

(4) Losses incurred, as defined in subsection (b) (5) of this section;

(5) Capital losses to the extent provided in subchapter P (sec. 1201 and following, relating to capital gains and losses) plus losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. Capital assets shall be considered as sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders to the extent that the gross receipts from their sale or exchange are not greater than the excess, if any, for the taxable year of the sum of dividends and similar distributions paid to policyholders in their capacity as such, losses paid, and expenses paid over the sum of interest, dividends, rents, and net premiums received. In the application of section 1211 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser:

(A) The taxable income (computed without regard to gains or losses from sales or exchanges of capital assets or to the deductions provided in section 242 for partially tax-exempt interest); or

(B) Losses from the sale or exchange of capital assets sold or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders;

(6) Debts in the nature of agency balances and bills receivable which become worthless within the taxable year;

(7) The amount of interest earned during the taxable year which under section 103 is excluded from gross income;

(8) The depreciation deduction allowed by section 167;

(9) Charitable, etc., contributions, as provided in section 170;

(10) Deductions (other than those specified in this subsection) as provided in part VI of subchapter B (sec. 161 and following, relating to itemized deductions for individuals and corporations);

(11) Dividends and similar distributions paid or declared to policyholders in their capacity as such, except in the case of a mutual fire insurance company described in section 831 (a). For purposes of the preceding sentence, the term "paid or declared" shall be construed according to the method of accounting regularly employed in keeping the books of the insurance company; and

(12) The special deductions allowed by part VIII of subchapter B (sec. 241 and following, relating to partially tax-exempt interest and to dividends received).

(d) *Taxable income of foreign insurance companies other than life or mutual and foreign mutual marine.* In the case of a foreign insurance company (other than a life or mutual insurance company), a foreign mutual marine insurance company, and a foreign mutual fire insurance company described in section 831 (a), the taxable income shall be the taxable income from sources within the United States. In the case of a company to which the preceding sentence applies, the deductions allowed in this section shall be allowed to the extent provided in subpart B of part II of subchapter N (sec. 881 and following) in the case of a foreign corporation engaged in trade or business within the United States.

(e) *Double deductions.* Nothing in this section shall permit the same item to be deducted more than once.

§ 1.832–1 *Gross income.* (a) Gross income as defined in section 832 (b) (1) means the gross amount of income earned during the taxable year from interest, dividends, rents, and premium income, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners, as well as the gain derived from the sale or other disposition of property, and all other items constituting gross income under section 61, except that in the case of a mutual fire insurance company described in § 1.831–1 the amount of single deposit premiums received, but not assessments, shall be excluded from gross income. Gross income does not include increase in liabilities during the year on account of reinsurance treaties, remittances from the home office of a foreign insurance company to the United States branch, borrowed money, or gross increase due to adjustments in book value of capital assets. The underwriting and investment exhibit is presumed to reflect the true net income of the company, and insofar as it is not inconsistent with the provisions of the Internal Revenue Code will be recognized and used as a basis for that purpose. All items of the exhibit, however, do not reflect an insurance company's income as defined in the Code. By reason of the definition of investment income, miscellaneous items which are intended to reflect surplus but do not properly enter into the computation of income, such as dividends declared to shareholders in their capacity as such, home office remittances and receipts, and special deposits, are ignored. Gain or loss from agency balances and bills receivable not admitted as assets on the underwriting and investment exhibit will be ignored, excepting only such agency balances and bills receivable as have been allowed as deductions for worthless debts or, having been previously so allowed, are recovered during the taxable year. In computing "premiums earned on insurance contracts during the taxable year" the amount of the unearned premiums shall include (1) life insurance reserves as defined in section 803 (b) and § 1.803–1 pertaining

to the life, burial, or funeral insurance, or annuity business of an insurance company subject to the tax imposed by section 831 and not qualifying as a life insurance company under section 801, and (2) liability for return premiums under a rate credit or retrospective rating plan based on experience, such as the "War Department Insurance Rating Plan," and which return premiums are therefore not earned premiums. In computing "losses incurred" the determination of unpaid losses at the close of each year must represent actual unpaid losses as nearly as it is possible to ascertain them.

(b) Every insurance company to which this section applies must be prepared to establish to the satisfaction of the district director that the part of the deduction for "losses incurred" which represents unpaid losses at the close of the taxable year comprises only actual unpaid losses stated in amounts which, based upon the facts in each case and the company's experience with similar cases, can be said to represent a fair and reasonable estimate of the amount the company will be required to pay. Amounts included in, or added to, the estimates of such losses which, in the opinion of the district director are in excess of the actual liability determined as provided in the preceding sentence will be disallowed as a deduction. The district director may require any such insurance company to submit such detailed information with respect to its actual experience as is deemed necessary to establish the reasonableness of the deduction for "losses incurred."

(c) That part of the deduction for "losses incurred" which represents an adjustment to losses paid for salvage and reinsurance recoverable shall, except as hereinafter provided, include all salvage in course of liquidation, and all reinsurance in process of collection not otherwise taken into account as a reduction of losses paid, outstanding at the end of the taxable year. Salvage in course of liquidation includes all property (other than cash), real or personal, tangible or intangible, except that which may not be included by reason of express statutory provisions (or rules and regulations of an insurance department) of any State or Territory or the District of Columbia in which the company transacts business. Such salvage in course of liquidation shall be taken into account to the extent of the value thereof at the end of the taxable year as determined from a fair and reasonable estimate based upon either the facts in each case or the company's experience with similar cases. Cash received during the taxable year with respect to items of salvage or reinsurance shall be taken into account in computing losses paid during such taxable year.

§ 1.832–2 *Deductions.* (a) The deductions allowable are specified in section 832 (c) and by reason of the provisions of section 832 (c) (10) and (12) include in addition certain deductions provided in sections 161, 241 and following. The deductions, however, are subject to the limitation provided in section 265, relating to expenses and interest in respect of tax-exempt income. The net operating loss deduction is computed under section 172 and the regulations thereunder. For the purposes of section 172, relating to net operating loss deduction, "gross income" shall mean gross income as defined in section 832 (b) (1) and the allowable deductions shall be those allowed by section 832 (c) with the exceptions and limitations set forth in section 172 (d). In addition to the deduction for capital losses provided in subchapter P (section 1201 and following), insurance companies are allowed a deduction for losses from capital assets sold or exchanged in order to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders. A special rule is provided for the application of the 5-year capital loss carryover provisions of section 1212. The deduction is the same as that allowed mutual insurance ocmpanies subject to the tax imposed by section 821; see section 822 (c) (6) and the regulations thereunder. Insurance companies, other than mutual fire insurance companies described in § 1.831–1, are also allowed a deduction for dividends and similar distributions paid or declared to policyholders in their capacity as such. The deduction is otherwise the same as that allowed mutual insurance companies subject to the tax imposed by section 821; see section 823 (2) and the regulations thereunder.

(b) Among the items which may not be deducted are income and profits taxes imposed by the United States, income and profits taxes imposed by any foreign country or possession of the United States (in cases where the company chooses to claim to any extent a credit for such taxes), taxes assessed against local benefits, decrease during the year due to adjustments in the book value of capital assets, decrease in liabilities during the year on account of reinsurance treaties, dividends paid to shareholders in their capacity as such, remittances to the home office of a foreign insurance company by the United States branch, and borrowed money repaid.

(c) In computing taxable income of insurance companies, losses sustained during the taxable year from the sale or other disposition of property are deductible subject to the limitation contained in section 1211. Insurance companies are entitled to the alternative taxes provided in section 1201.

PROVISIONS OF GENERAL APPLICATION

§ 1.841 *Statutory provisions; credit for foreign taxes.*

SEC. 841. *Credit for foreign taxes.* The taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section 802, 821, or 831, to the extent provided in the case of a domestic corporation in section 901 (relating to foreign tax credit). For purposes of the preceding sentence, the term "taxable income" as used in section 904 means—

(1) In the case of the tax imposed by section 802, the taxable income (as defined in section 803 (g)),

(2) In the case of the tax imposed by section 831, the taxable income (as defined in section 832 (a)).

§ 1.842 *Statutory provisions; computation of gross income.*

SEC. 842. *Computation of gross income.* The gross income of insurance companies subject to the tax imposed by section 802 or 831 shall not be determined in the manner provided in part I of subchapter N (relating to determination of sources of income).

[F. R. Doc. 56–7030; Filed, Sept. 4, 1956; 8:45 a. m.]

Subchapter C—Employment Taxes

[T. D. 6200]

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

SUBPART C—RAILROAD RETIREMENT TAX ACT (CHAPTER 22, INTERNAL REVENUE CODE OF 1954)

On March 15, 1956, notice of proposed rule making with respect to regulations under chapter 22 (Railroad Retirement Tax Act) of the Internal Revenue Code of 1954, as amended, was published in the FEDERAL REGISTER (21 F. R. 1648). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted.

[SEAL] O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved: August 28, 1956.

DAN THROOP SMITH,
Special Assistant to the Secretary in Charge of Tax Policy.

TAX ON EMPLOYEES

Sec.	
31.3201	Statutory provisions; rate of tax.
31.3201–1	Measure of employee tax.
31.3201–2	Rate and computation of employee tax.
31.3202	Statutory provisions; deduction of tax from compensation.
31.3202–1	Collection of, and liability for, employee tax.

TAX ON EMPLOYEE REPRESENTATIVES

31.3211	Statutory provisions; rate of tax.
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TAX ON EMPLOYERS

31.3221	Statutory provisions; rate of tax.
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GENERAL PROVISIONS

31.3231 (a)	Statutory provisions; definitions; employer.
31.3231 (a)–1	Who are employers.
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31.3231 (d) Statutory provisions; definitions; service.
31.3231 (d)-1 Service.
31.3231 (e) Statutory provisions; definitions; compensation.
31.3231 (e)-1 Compensation.
31.3231 (f) Statutory provisions; definitions; company.
31.3231 (g) Statutory provisions; definitions; carrier.
31.3232 Statutory provisions; court jurisdiction.
31.3233 Statutory provisions; short title.

AUTHORITY: §§ 31.3201 to 31.3233 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Interpret or apply Chapter 22, 68A Stat. 431; 26 U. S. C., ch. 22.

TAX ON EMPLOYEES

§ 31.3201. *Statutory provisions; rate of tax.*

SEC. 3201. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of every employee a tax equal to 6¼ percent of so much of the compensation paid to such employee after December 31, 1954, for services rendered by him after such date as is not in excess of $350 for any calendar month.

[Sec. 3201 as amended by sec. 206 (a), Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3201-1 *Measure of employee tax.* The employee tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid to an individual for services rendered as an employee to one or more employers, excluding, however, the amount of compensation in excess of $350 which is paid after 1954 to the employee for services rendered during any one calendar month after 1954. For provisions relating to compensation, see § 31.3231 (e)-1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax, see § 31.3231 (e)-1 (a) (4) and (5).

§ 31.3201-2 *Rate and computation of employee tax.* The rate of the employee tax is 6¼ percent. The employee tax is computed by multiplying the amount of the employee's compensation with respect to which the employee tax is imposed by 6¼ percent.

§ 31.3202 *Statutory provisions; deduction of tax from compensation.*

SEC. 3202. *Deduction of tax from compensation*—(a) *Requirement.* The tax imposed by section 3201 shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation after December 31, 1954, by more than one employer for services rendered during any calendar month after 1954 and the aggregate of such compensation is in excess of $350, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1954, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $350, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after December 31, 1954, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month.

(b) *Indemnification of employer.* Every employer required under subsection (a) to deduct the tax shall be made liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

[Sec. 3202 as amended by sec. 206 (a), Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3202-1 *Collection of, and liability for, employee tax*—(a) *Collection; general rule.* The employer shall collect from each of his employees the employee tax imposed with respect to the compensation of the employee by deducting or causing to be deducted the amount of such tax from the compensation subject to the tax as and when such compensation is paid. As to the measure of the employee tax, see § 31.3201-1.

(b) *Collection; aggregate monthly compensation in excess of $350 paid by two or more employers.* (1) If an employee is paid compensation after 1954 by two or more employers for services rendered during any one calendar month after 1954, and if the aggregate compensation paid to such employee after 1954 by all employers for services rendered during such month is in excess of $350, the employee tax to be deducted by each employer from the compensation as and when paid by him to the employee shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see § 31.3231 (a)-1 (a) (6)), each employer shall deduct the employee tax with respect to that proportion of $350 of compensation which the compensation paid after 1954 by such employer to the employee for the month bears to the total compensation paid after 1954 to such employee by all employers for that month. See example (1) in subparagraph (2) of this paragraph.

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, each subordinate unit shall deduct the employee tax with respect to that proportion of $350 of compensation which the compensation paid after 1954 by such subordinate unit to the employee for the month bears to the total compensation paid after 1954 to such employee by all such subordinate units for that month.

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after 1954 to the employee by the employer other than a subordinate unit equals or exceeds $350 for the month, then no employee tax shall be deducted by any such subordinate unit from the compensation paid by it after 1954 to such employee for that month, and the employer other than a subordinate unit shall deduct the employee tax with respect to $350 of compensation paid by him after 1954 to such employee for that month. See example (2) in subparagraph (2) of this paragraph.

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by the employers other than a subordinate unit equals or exceeds $350 for the month, then no employee tax shall be deducted by any such subordinate unit from the compensation paid by it after 1954 to such employee for that month, and each employer other than a subordinate unit shall deduct the employee tax with respect to that proportion of $350 of compensation which the compensation paid after 1954 by such employer to the employee for the month bears to the total compensation paid after 1954 to such employee by all such employers other than a subordinate unit for that month. See example (3) in subparagraph (2) of this paragraph.

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate unit is less than $350 for the month, then each employer other than the subordinate unit shall deduct the employee tax with respect to the full amount of compensation paid by him after 1954 to such employee for that month, and the subordinate unit of a national railway-labor-organization employer shall deduct the employee tax with respect to the remainder of $350 of compensation less the total compensation paid after 1954 to such employee for that month by all other employers. See example (4) in subparagraph (2) of this paragraph.

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate units is less than $350 for the month, then each employer other than the subordinate units shall deduct the employee tax with respect to the full amount of compensation paid by him after 1954 to such employee for that month, and each subordinate unit of a national railway-labor-organization employer shall deduct the employee tax with respect to that proportion of the remainder of $350 of compensation less the total compensation paid after 1954 to such employee for the month by all employers other than the subordinate units which the compensation paid after 1954 by such subordinate unit to the employee for that month bears to the total compensation paid after 1954 to such employee by all such

subordinate units for that month. See example (5) in subparagraph (2) of this paragraph.

See § 31.3231 (e)-1 (a) (4) and (5) for provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax.

(2) The application of certain of the principles stated in subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). A, an employee, renders services during January 1955 for employers X, Y, and Z, none of whom is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter, compensation of $100 by X, $100 by Y, and $300 by Z, or an aggregate of $500 for the month. In such case X pays one-fifth of A's aggregate compensation for the month, Y pays one-fifth, and Z pays three-fifths. X and Y, therefore, are each required to deduct the employee tax with respect to one-fifth of $350, or $70, and Z is required to deduct the employee tax with respect to three-fifths of $350, or $210.

Example (2). A, an employee, renders services during January 1955 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $350 by X, $50 by Y, and $25 by Z. Since the compensation paid A for the month by X equals $350, neither Y nor Z is required to deduct any employee tax from the compensation paid by him to A for the month; and X is required to deduct the employee tax with respect to the full $350 paid by him to A for the month.

Example (3). A, an employee, renders services during January 1955 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $200 by W and $300 by X, or an aggregate of $500 for the month, and compensation of $50 by Y and $50 by Z. Since the aggregate compensation paid A for the month by W and X is in excess of $350, neither Y nor Z is required to deduct any employee tax from the compensation paid by him to A for the month. Of the aggregate compensation of $500 paid A for the month by W and X, W pays two-fifths and X pays three-fifths. W, therefore, is required to deduct the employee tax with respect to two-fifths of $350, or $140, and X is required to deduct the employee tax with respect to three-fifths of $350, or $210.

Example (4). A, an employee, renders services during January 1955 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $250 by X and $200 by Y. In such case X is required to deduct the employee tax with respect to the full $250 paid by him to A for the month; and Y is required to deduct the employee tax only with respect to $100 ($350 minus $250 paid by X).

Example (5). A, an employee, renders services during January 1955 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $190 by W, $100 by X, $50 by Y, and $100 by Z. In such case W and X are each required to deduct the employee tax with respect to the full amount paid to A for the month, that is, W with respect to $190 and X with respect to $100; and Y and Z are required to deduct the employee tax with respect to their proportionate share of $60 ($350 minus $290 paid by W and X). Of the aggregate compensation of $150 paid by Y and Z, $50, or one-third, was paid by Y, and $100, or two-thirds, was paid by Z. In such case Y is required to deduct the employee tax with respect to one-third of $60, or $20, and Z is required to deduct the employee tax with respect to two-thirds of $60, or $40.

(c) *Undercollections or overcollections.* Any undercollection or overcollection of employee tax resulting from the employer's inability to determine, at the time compensation is paid, the correct amount of compensation with respect to which the deduction should be made shall be corrected in accordance with the provisions of Subpart G of this part relating to adjustments, credits, refunds, and abatements.

(d) *When fractional part of cent may be disregarded.* In collecting the employee tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(e) *Employer's liability.* The employer is liable for the employee tax with respect to compensation paid by him, whether or not collected from the employee. If the employer deducts less than the correct amount of employee tax or fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him, the employee is also liable for the employee tax. Any employee tax collected by or on behalf of an employer is a special fund in trust for the United States. See section 7501. An employer is not liable to any person for the amount of the employee tax deducted by him and paid to the district director.

TAX ON EMPLOYEE REPRESENTATIVES

§ 31.3211 *Statutory provisions; rate of tax.*

SEC. 3211. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to 12½ percent of so much of the compensation, paid to such employee representative after December 31, 1954, for services rendered by him after such date as is not in excess of $350 for any calendar month.

[Sec. 3211 as amended by sec. 206 (a), Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3211-1 *Measure of employee representative tax*—(a) *General rule.* Except as provided in paragraph (b) of this section, the employee representative tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid to an individual for services rendered as an employee representative, excluding, however, the amount of compensation in excess of $350 which is paid after 1954 to the employee representative for services rendered during any one calendar month after 1954. See § 31.3231 (e)-1, relating to compensation.

(b) *Aggregate monthly compensation in excess of $350 as employee representative and employee.* (1) If during any one calendar month after 1954 an individual renders services as an employee representative and as an employee and the total compensation paid after 1954 to the individual for services rendered during such month as an employee representative and as an employee exceeds $350, the measure of the employee representative tax for such month shall be $350 minus the compensation paid after 1954 to such individual for services rendered by him during the month as an employee.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. A renders services as an employee representative during January 1955 for which he is paid in the month or thereafter $100. During January 1955 A also renders services as an employee for one or more employers and receives during the month or thereafter compensation of $300. Inasmuch as A's total compensation for services rendered during January 1955 as an employee representative and as an employee exceeds $350 ($300 plus $100), the measure of the employee representative tax is $350 minus $300 (A's compensation for services rendered as an employee), or $50.

§ 31.3211-2 *Rate and computation of employee representative tax.* The rate of the employee representative tax is 12½ percent. The employee representative tax is computed by multiplying the amount of the employee representative's compensation with respect to which the employee representative tax is imposed by 12½ percent.

§ 31.3212 *Statutory provisions; determination of compensation.*

SEC. 3212. *Determination of compensation.* The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 3231 (a).

§ 31.3212-1 *Determination of compensation.* See § 31.3231 (e)-1 for regulations applicable to compensation.

TAX ON EMPLOYERS

§ 31.3221 *Statutory provisions; rate of tax.*

SEC. 3221. *Rate of tax.* In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 6¼ percent of so much of the compensation paid by such employer after December 31, 1954, for services rendered to him after December 31, 1954, as is, with respect to any employee for any calendar month, not in excess of $350; except that if an employee is paid compensation after December 31, 1954, by more than one employer for services rendered during any calendar month after 1954, the tax imposed by this section shall apply to not more than $350 of the aggregate compensation paid to such employee by all such employers after December 31, 1954, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the com-

pensation paid by him after December 31, 1954, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $350, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after December 31, 1954, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month.

[Sec. 3221 as amended by sec. 206 (a), Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3221–1 *Measure of employer tax*—(a) *General rule.* Except as provided in paragraph (b) of this section, the employer tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid by an employer to his employees, excluding, however, the amount of compensation in excess of $350 which is paid after 1954 by the employer to any employee for services rendered during any one calendar month after 1954. For provisions relating to compensation, see § 31.3231 (e)–1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employer tax, see § 31.3231 (e)–1 (a) (4) and (5).

(b) *Aggregate monthly compensation in excess of $350 paid by two or more employers.* (1) If an employee is paid compensation after 1954 by two or more employers for services rendered during any one calendar month after 1954, and if the aggregate compensation paid to such employee after 1954 by all employers for services rendered during such month is in excess of $350, the measure of the employer tax of each employer with respect to the compensation paid by him after 1954 to the employee for the month shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see § 31.3231 (a)–1 (a) (6)), the measure of the employer tax of each employer shall be that proportion of $350 which the compensation paid after 1954 by such employer to the employee for the month bears to the total compensation paid after 1954 to such employee by all employers for that month.

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, the measure of the employer tax of each subordinate unit shall be that proportion of $350 which the compensation paid after 1954 by such subordinate unit to the employee for the month bears to the total compensation paid after 1954 to such employee by all such subordinate units for that month.

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after 1954 to the employee by the employer other than a subordinate unit equals or exceeds $350 for the month, then no subordinate unit shall be liable for any employer tax with respect to the compensation paid by it after 1954 to such employee for that month, and the measure of the employer tax of the employer other than a subordinate unit with respect to the compensation paid by him after 1954 to such employee for that month shall be $350.

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by the employers other than a subordinate unit equals or exceeds $350 for the month, then no subordinate unit shall be liable for any employer tax with respect to the compensation paid by it after 1954 to such employee for that month, and the measure of the employer tax of each employer other than a subordinate unit shall be that proportion of $350 which the compensation paid after 1954 by such employer to the employee for the month bears to the total compensation paid after 1954 to such employee by all such employers other than a subordinate unit for that month.

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate unit is less than $350 for the month, then the measure of the employer tax of each employer other than the subordinate unit shall be the full amount of compensation paid by him after 1954 to such employee for that month, and the measure of the employer tax of the subordinate unit of a national railway-labor-organization employer shall be the remainder of $350 less the total compensation paid after 1954 to such employee for that month by all other employers.

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer, and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate units is less than $350 for the month, then the measure of the employer tax of each employer other than the subordinate units shall be the full amount of compensation paid by him after 1954 to such employee for that month, and the measure of the employer tax of each subordinate unit of a national railway-labor-organization employer shall be that proportion of the remainder of $350 less the total compensation paid after 1954 to such employee for the month by all employers other than the subordinate units which the compensation paid after 1954 by such subordinate unit to the employee for that month bears to the total compensation paid after 1954 to such employee by all such subordinate units for that month.

See § 31.3231 (e)–1 (a) (4) and (5) for provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employer tax.

(2) For illustrations of the application of certain of the principles in subparagraph (1) of this paragraph, see the examples, illustrating the analogous principles with respect to the deduction of employee tax, set forth in § 31.3202–1 (b) (2).

(c) *Underpayments or overpayments.* Any underpayment or overpayment of employer tax resulting from the employer's inability to determine, at the time such tax is paid, the correct amount of compensation with respect to which the tax should be paid shall be corrected in accordance with the provisions of Subpart G of the regulations in this part relating to adjustments, credits, refunds, and abatements.

§ 31.3221–2 *Rate and computation of employer tax.* The rate of employer tax is 6¼ percent. The employer tax is computed by multiplying the amount of the compensation with respect to which the employer tax is imposed by 6¼ percent.

GENERAL PROVISIONS

§ 31.3231 (a) *Statutory provisions; definitions; employer.*

SEC. 3231. *Definitions*—(a) *Employer.* For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Secretary or his delegate, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (44 Stat. 577; 45 U. S. C., chapter 8), and their State and National legislative committees and

their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitutions and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

§ 31.3231 (a)-1 *Who are employers.* (a) Each of the following persons is an employer within the meaning of the act:

(1) Any carrier, that is, any express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act;

(2) Any company—

(i) Which is directly or indirectly owned or controlled by one or more employers as defined in subparagraph (1) of this paragraph, or under common control therewith, and

(ii) Which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with—

(*a*). The transportation of passengers or property by railroad, or

(*b*) The receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

(3) Any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in subparagraph (1) or (2) of this paragraph;

(4) Any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and any other association, bureau, agency, or organization controlled and maintained wholly or principally by two or more employers as defined in subparagraph (1), (2) or (3) of this paragraph and engaged in the performance of services in connection with or incidental to railroad transportation;

(5) Any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act; and

(6) Any subordinate unit of a national railway-labor-organization employer, that is, any State or National legislative committee, general committee, insurance department, or local lodge or division, of an employer as defined in subparagraph (5) of this paragraph, established pursuant to the constitution and bylaws of such employer.

(b) As used in paragraph (a) (2) of this section, the term "controlled" includes direct or indirect control, whether legally enforceable and however exercisable or exercised. The control may be by means of stock ownership, or by agreements, licenses, or any other devices which insure that the operation of the company is in the interest of one or more carriers. It is the reality of the control, however, which is decisive, not its form nor the mode of its exercise.

(c) The term "employer" does not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation which is operated by any other motive power.

(d) The term "employer" does not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities for such mining or supplying of coal, or in any of such activities.

§ 31.3231 (b) *Statutory provisions; definitions; employee.*

SEC. 3231. *Definitions.* * * *

(b) *Employee.* For purposes of this chapter, the term "employee" means any individual in the service of one or more employers for compensation; except that the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if—

(1) He was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or

(2) He was in the service of a carrier after August 29, 1935, and before January 1946 in each of 6 calendar months, whether or not consecutive; or

(3) Before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but—

(A) Solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or

(B) Solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or

(C) If he was so called he was solely for such reason unable to render service in 6 calendar months as provided in paragraph (2); or

(4) He was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights;

except that an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (50 Stat. 312; 45 U. S. C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a). The term "employee" includes an officer of an employer. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

§ 31.3231 (b)-1 *Who are employees*—(a) *In general.* (1) An individual who is in the service of one or more employers for compensation is an employee within the meaning of the act. (For definitions of the terms "employer", "service", and "compensation", see subsections (a), (d), and (e), respectively, of section 3231.) An individual is in the service of an employer, with respect to services rendered for compensation, if—

(i) He is subject to the continuing authority of the employer to supervise and direct the manner in which he renders such services; or

(ii) He is rendering professional or technical services and is integrated into the staff of the employer; or

(iii) He is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations.

(2) In order that an individual may be in the service of an employer within the meaning of subparagraph (1) (i) of this paragraph, it is not necessary that the employer actually direct or control the manner in which the services are rendered; it is sufficient if the employer has the right to do so. The right of an employer to discharge an individual is also an important factor indicating that the individual is subject to the continuing authority of the employer to supervise and direct the manner of rendition of the services. Other factors indicating that an individual is subject to the continuing authority of the employer to supervise and direct the manner of rendition of the services are the furnishing of tools and the furnishing of a place to work by the employer to the individual who renders the services.

(3) In general, if an individual is subject to the control or direction of an employer merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not, as to such services, in the service of an employer within the meaning of subparagraph (1) (i) of this paragraph. However, an individual performing services as an independent contractor may be, as to such services, in the service of an employer within the meaning of subparagraph (1) (ii) or (iii) of this paragraph.

(4) Whether or not an individual is an employee will be determined upon an examination of the particular facts of the case.

(5) If an individual is an employee, it is of no consequence that he is designated as a partner, coadventurer, agent, independent contractor, or otherwise, or that he performs services on a part-time basis.

(6) No distinction is made between classes or grades of employees. Thus,

superintendents, managers, and other supervisory personnel are employees within the meaning of the act. An officer of an employer is an employee, but a director as such is not.

(7) In determining whether an individual is an employee with respect to services rendered within the United States, the citizenship or residence of the individual, or the place where the contract of service was entered into, is immaterial.

(8) If an individual performs services for an employer (other than a local lodge or division or a general committee of a railway-labor-organization employer) which does not conduct the principal part of its business within the United States, such individual shall be deemed to be in the service of such employer only to the extent that he performs services for it in the United States. Thus, with respect to services rendered for such employer outside the United States, such individual is not in the service of an employer.

(9) If an individual performs services for an employer (other than a local lodge or division or a general committee of a railway-labor-organization employer) which conducts the principal part of its business within the United States, he is in the service of such employer whether his services are rendered within or without the United States. In the case of an individual, not a citizen or resident of the United States, rendering services in a place outside the United States to an employer which is required under the laws applicable in such place to employ, in whole or in part, citizens or residents thereof, such individual shall not be deemed to be in the service of an employer with respect to services so rendered.

(10) The term "employee" does not include any individual while he is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(b) *Employees of local lodges or divisions of railway-labor-organization employers.* (1) An individual is in the service of a local lodge or division of a railway-labor-organization employer (see § 31.3231 (a)-1 (a) (6)) only if—

(i) All, or substantially all, the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or

(ii) The headquarters of such local lodge or division is located in the United States.

(2) (i) An individual in the service of a local lodge or division is not an employee within the meaning of the act unless he was, on or after August 29, 1935, in the service of a carrier (see § 31.3231 (g) for definition of carrier) or he was, on August 29, 1935, in the "employment relation" to a carrier.

(ii) An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (*a*) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or (*b*) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (*c*) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (*1*) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (*2*) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (*3*) if he was so called he was solely for such reason unable to render service in six calendar months as provided in (*b*) of this subdivision; or (*d*) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights. However, an individual shall not be deemed to have been in the employment relation to a carrier on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not, with respect to any service in such payroll period, in the service of an employer (see paragraph (a) of this section).

(c) *Employees of general committees of railway-labor-organization employers.* An individual is in the service of a general committee of a railway-labor-organization employer (see § 31.3231 (a)-1 (a) (6)) only if—

(1) He is representing a local lodge or division described in paragraph (b) (1) of this section; or

(2) All, or substantially all, the individuals represented by such general committee are employees of an employer conducting the principal part of its business in the United States; or

(3) He acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer. In such case, if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only a part of his remuneration for such service shall be regarded as compensation. The part of his remuneration regarded as compensation shall be in the same proportion to his total remuneration as the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1 (c) of the Railroad Retirement Act of 1937 shall be applicable. However, no part of his remuneration for such service shall be regarded as compensation if the application of such mileage formula, or such other formula as the Railroad Retirement Board may have prescribed, would result in his compensation for the service being less than 10 percent of his remuneration for such service.

§ 31.3231 (c) *Statutory provisions; definitions; employee representative.*

SEC. 3231. *Definitions.* * * *

(c) *Employee representative.* For purposes of this chapter, the term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act (44 Stat. 577; 45 U. S. C., chapter 8), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

§ 31.3231 (c)-1 *Who are employee representatives.* (a) An employee representative within the meaning of the act is—

(1) Any officer or official representative of a railway labor organization which is not included as an employer under section 3231 (a) who—

(i) Was in the service of an employer either before or after June 29, 1937, and

(ii) Is duly authorized and designated to represent employees in accordance with the Railway Labor Act.

For railway labor organizations which are employers under section 3231 (a), see § 31.3231 (a)-1 (a) (5) and (6).

(2) Any individual who is regularly assigned to or regularly employed by an employee representative, as defined in subparagraph (1) of this paragraph, in connection with the duties of such employee representative's office.

(b) In determining whether an individual is an employee representative, his citizenship or residence is material only insofar as those factors may affect the determination of whether he was "in the service of an employer" (see § 31.3231 (b)-1 (a)).

§ 31.3231 (d) *Statutory provisions; definitions; service.*

SEC. 3231. *Definitions.* * * *

(d) *Service.* For purposes of this chapter, an individual is in the service of an employer whether his service is rendered within or without the United States, if—

(1) He is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or techni-

cal services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

(2) He renders such service for compensation;

except that an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States, only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if—

(3) All, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or

(4) The headquarters of such local lodge or division is located in the United States;

and an individual shall be deemed to be in the service of such a general committee only if—

(5) He is representing a local lodge or division described in paragraph (3) or (4) immediately above; or

(6) All, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or

(7) He acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1 (c) of the Railroad Retirement Act of 1937 (50 Stat. 308; 45 U. S. C. 228a) shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 percent of his remuneration for such service, no part of such remuneration shall be regarded as compensation;

Provided, however, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

§ 31.3231 (d)-1 *Service.* See § 31.3231 (b)-1 for regulations relating to the term "in the service of an employer."

§ 31.3231 (e) *Statutory provisions; definitions; compensation.*

SEC. 3231. *Definitions.* * * *

(e) *Compensation.* For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201. Compensation which is earned during the period for which the Secretary or his delegate shall require a return of taxes under this chapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

[Sec. 3231 (e) as amended by section 206 (b), Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3231 (e)-1 *Compensation*—(a) *Definition.* (1) The term "compensation" means all remuneration in money, or in something which may be used in lieu of money (for example, scrip and merchandise orders), which is earned by an individual for services rendered as an employee to one or more employers or as an employee representative. A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by such individual as an employee of the employer. Likewise, a payment made by an employee organization to an employee representative through the organization's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by the employee representative as such.

(2) The term "compensation" is not confined to amounts earned or paid for active service, but includes amounts earned or paid for an identifiable period during which the employee is absent from the active service of the employer and, in the case of an employee representative, amounts earned or paid for an identifiable period during which the employee representative is absent from the active service of the employee organization.

(3) The term "compensation" does not include tips or the voluntary payment by an employer of the employee tax without the deduction of such tax from the remuneration of the employee.

(4) If the amount of compensation earned in any calendar month by an individual as an employee in the service of a local lodge or division of a railway-labor-organization employer is less than $3, such amount shall be disregarded for purposes of determining the employee tax under section 3201 and the employer tax under section 3221.

(5) Compensation for service as a delegate to a national or international convention of a railway-labor-organization employer shall be disregarded for purposes of determining the employee tax under section 3201 and the employer tax under section 3221 if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act of 1937.

(6) For special provisions relating to the compensation of certain general chairmen or assistant general chairmen of a general committee of a railway-labor-organization employer, see § 31.3231 (b)-1 (c) (3).

(b) *Items included as compensation.* The following items are included in compensation with respect to employees and in analogous situations with respect to employee representatives:

(1) Salaries, wages, commissions, fees, bonuses, and any other remuneration in money or in something which may be used in lieu of money. The name by which remuneration is designated, the amount, and the basis upon which it is paid are immaterial. It may be paid upon the basis of piece-work, a percentage of profits, or on a daily, hourly, weekly, monthly, annual, or other basis.

(2) Sick pay, vacation allowances, or back pay upon reinstatement after wrongful discharge.

(3) Amounts paid to an employee for an identifiable period of absence from the active service of the employer on account of personal injury. If a payment is made to an employee with respect to a personal injury and includes pay for an identifiable period of absence from active service, the total payment shall be deemed to be paid for such period of absence from active service unless, at the time of payment, a part of such payment is specifically apportioned to factors other than absence from active service, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for such period of absence from active service.

(4) Amounts paid to an employee for loss of earnings during an identifiable period as the result of the displacement of the employee to a less remunerative position or occupation.

(5) Amounts paid as allowance or reimbursement for traveling or other expenses incurred in the business of the employer to the extent of the excess of such amounts, if any, over such expenses

actually incurred and accounted for by the employee to the employer.

(6) Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee, if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life insurance covering the lives of his employees are not compensation, if the employee has no option to take the amount of the premiums instead of accepting the insurance and has no equity in the policy (such as the right of assignment or the right to the surrender value on termination of his employment).

(7) Amounts deducted from the compensation of an employee, including the amount of the employee tax deducted pursuant to section 3202, constitute compensation paid to the employee.

(8) Payments made by an employer into a stock bonus, pension, or profit-sharing fund, if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time, or upon resignation or dismissal, or if the contract for services requires such payment as part of the remuneration. Whether or not under other circumstances such payments constitute compensation depends upon the particular facts of each case.

(c) *When compensation is earned.* Compensation is earned when an employee, or employee representative, as such, performs services for which he is paid or for which there is a present or future obligation to pay, regardless of the time at which payment is made or is to be made. Remuneration paid for any period of absence from active service shall be deemed to have been earned in the month in which such absence from service occurred. A payment made by an employer or employee organization to an individual through the payroll of the employer or employee organization shall be presumed, in the absence of evidence to the contrary, to be for services rendered by such individual in the period covered by the payroll and, thus, to have been earned in such period.

(d) *When compensation is paid.* Compensation is deemed to be paid—

(1) When it is actually paid; or

(2) When it is constructively paid, that is, credited to the account of or set apart for an employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and made available to him so that it may be drawn upon at any time and its payment brought within his own control and disposition; or

(3) Within the period for which a return of tax is required to be made, if the compensation was earned during such period and is payable during the calendar month following such period. For provisions relating to periods for which a return of tax is required, see the regulations under section 6011 in Subpart G of this part. See also paragraph (c) of this section, relating to when compensation is earned.

Example (1). During September 1955 (which falls in a period for which a return of tax is required to be made), A is employed by employer X at a monthly salary of $200, one-half of which is payable on the 25th of the month in which the services are performed and the other half on the 10th of the following month. Thus on October 10, A is paid $100 which was earned during September. That $100 is deemed to have been paid to A in September and should be included in X's return filed for the period in which September falls.

Example (2). During September 1955 (which falls in a period for which a return of tax is required to be made), A is employed by employer X on the basis of a 6-day week at a weekly salary of $60 payable on Saturday of each week. Thus on Saturday, October 1, 1955, A is paid $60 for services performed during the week September 26, 1955, to October 1, 1955, inclusive. In such case five-sixths of that amount or $50 is deemed to have been paid in September and should be included in X's return filed for the period in which September falls. The balance of A's salary for that week ($10) should be included in the return filed for the period in which October 1955 falls. But see the provisions of the regulations under section 6011 in Subpart G of this part, relating to returns of employers required by State law to pay compensation on a weekly basis.

§ 31.3231 (f) *Statutory provisions; definitions; company.*

SEC. 3231. *Definitions.* * * *

(f) *Company.* For purposes of this chapter, the term "company" includes corporations, associations, and joint-stock companies.

§ 31.3231 (g) *Statutory provisions; definitions; carrier.*

SEC. 3231. *Definitions.* * * *

(g) *Carrier.* For purposes of this chapter, the term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U. S. C., chapter 1).

§ 31.3232 *Statutory provisions; court jurisdiction.*

SEC. 3232. *Court jurisdiction.* The several district courts of the United States shall have jurisdiction to entertain an application by the Attorney General on behalf of the Secretary or his delegate to compel an employee or other person residing within the jurisdiction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this chapter. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain civil actions, whether legal or equitable in nature, in aid of the enforcement of rights or obligations arising under the provisions of this chapter.

§ 31.3233 *Statutory provisions; short title.*

SEC. 3233. *Short title.* This chapter may be cited as the "Railroad Retirement Tax Act."

[F. R. Doc. 56-7029; Filed, Sept. 4, 1956; 8:45 a. m.]

[T. D. 6199]

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

SUBPART D—FEDERAL UNEMPLOYMENT TAX ACT (CHAPTER 23, INTERNAL REVENUE CODE OF 1954)

On March 30, 1956, notice of proposed rule making with respect to regulations under chapter 23 (Federal Unemployment Tax Act) of the Internal Revenue Code of 1954, as amended, was published in the FEDERAL REGISTER (21 F. R. 1991). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted.

[SEAL] O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved: August 28, 1956.

DAN THROOP SMITH,
Special Assistant to the Secretary in Charge of Tax Policy.

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AUTHORITY: §§ 31.3301 to 31.3308 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Interpret or apply chapter 23, 68A Stat. 439; 26 U. S. C. Ch. 23.

§ 31.3301 *Statutory provisions; rate of tax.*

SEC. 3301. *Rate of tax.* There is hereby imposed on every employer (as defined in section 3306 (a)) for the calendar year 1955 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3 percent of the total wages (as defined in section 3306 (b)) paid by him during the calendar year with respect to employment (as defined in section 3306 (c)) after December 31, 1938.

§ 31.3301-1 *Persons liable for tax.* Every person who is an employer as defined in section 3306 (a) (see § 31.3306 (a)-1) is liable for the tax. Even if an employer is not subject to any State unemployment compensation law, he is nevertheless liable for the tax. However, if he is subject to such a State law, he may be entitled to certain credits against the tax (see §§ 31.3302 (a)-1 to 31.3302 (c)-1, inclusive). For provisions relating to payment of the tax, see Subpart G of the regulations in this part.

§ 31.3301-2 *Measure of tax.* The tax for any calendar year is measured by the amount of wages paid by the employer during such year with respect to employment after December 31, 1938. (See §§ 31.3306 (c)-1 to 31.3306 (c) (17)-1, inclusive, relating to employment, and §§ 31.3306 (b)-1 to 31.3306 (b) (8)-1, inclusive, relating to wages.)

§ 31.3301-3 *Rate and computation of tax.* The rate of tax is 3 percent. The tax is computed by applying the 3 percent rate to the wages paid during the calendar year with respect to employment after December 31, 1938.

§ 31.3301-4 *When wages are paid.* Wages are paid when actually or constructively paid. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition. See Subpart G of the regulations in this part, relating to the return on which wages are to be reported.

§ 31.3302 (a) *Statutory provisions; credits against tax; contributions to State unemployment funds.*

SEC. 3302. *Credits against tax*—(a) *Contributions to State unemployment funds.* (1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified for the taxable year as provided in section 3304.

(2) The credit shall be permitted against the tax for the taxable year only for the

amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

§ 31.3302 (a)-1 *Credit against tax for contributions paid*—(a) *In general.* Subject to the provisions of paragraphs (b) and (c) of this section and to the provisions of § 31.3302 (c)-1, the taxpayer may credit against the tax for any taxable year the total amount of contributions paid by him into an unemployment fund maintained during such year under a State law which has been found by the Secretary of Labor to contain the provisions specified in section 3304 (a); *Provided, however,* That no credit may be taken for contributions under a State law if such State has not been duly certified for the calendar year to the Secretary of the Treasury by the Secretary of Labor. The contributions may be credited against the tax whether or not they are paid with respect to employment as defined in section 3306 (c). For provisions relating to additional credit against the tax, see § 31.3302 (b)-1.

(b) *Limitation on the taxable year with respect to which contributions are allowable.* In order to be allowable as credit against the tax for any taxable year, the contributions must have been paid with respect to such year.

Example (1). Under the unemployment compensation law of State X, employer M is required to report in his contribution return for the quarter ending December 31, 1955, all remuneration payable for services rendered in such quarter. A portion of such remuneration is not paid to his employees until February 1, 1956. On January 20, 1956, M pays to the State the total amount of contributions due with respect to all remuneration so required to be reported. Such contributions, including those with respect to the remuneration paid on February 1, 1956, may be included in computing the credit against the tax for the calendar year 1955. This is true even though the remuneration paid on February 1, 1956 (if it constitutes "wages") is required to be reported in the Federal return for 1956 and not in the Federal return for 1955.

Example (2). Under the unemployment compensation law of State Y, employer N is required to include in his contribution return for the quarter ending December 31, 1955, certain remuneration paid on December 30, 1955, to an employee for services to be rendered after December 31. On January 20, 1956, N pays to the State the total amount of contributions due with respect to all remuneration required to be reported on the contribution return. Such contributions, including those with respect to the remuneration paid on December 30, 1955, may be included in computing the credit against the tax for the calendar year 1955.

(c) *Limitation on amount of credit allowable based on time when contributions are paid*—(1) *In general.* The amount of credit allowable for contributions paid into a State unemployment fund depends in part on the time of payment of such contributions. Although contributions paid at any time may be credited against the tax (subject to the limitations referred to in subparagraphs (2) and (3) of this paragraph), no refund or credit of the tax based on credit for contributions paid will be allowed unless the contributions are paid prior to the expiration of the period of limitations applicable to refund or credit of the tax. See Subpart G of the regulations in this part.

(2) *Amount of credit allowable when contributions are paid on or before last day for filing return.* Contributions paid into a State unemployment fund on or before the last day upon which the Federal return for the taxable year is required to be filed may be credited against the tax in an amount equal to such contributions, but not, however, to exceed the limit on total credits prescribed in section 3302 (c). (See § 31.3302 (c)-1.) For provisions relating to the time for filing the return see § 31.6071 in Subpart G of this part.

(3) *Amount of credit allowable when contributions are paid after last day for filing return.* Contributions paid into a State unemployment fund after the last day upon which the Federal return for the taxable year is required to be filed may be credited against the tax in an amount not to exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid into a State unemployment fund on or before such last day. However, see subparagraph (4) of this paragraph relating to the payment of contributions to the wrong State. For provisions relating to refund, credit, or abatement of the tax based on credit with respect to contributions, see Subpart G of the regulations in this part.

Example (1). The Federal return of the M Company for the calendar year 1955 discloses a total tax of $12,000. The company is liable for total State contributions of $8,000 for such year. The due date of the company's Federal return is January 31, 1956, no extension of time for filing the return having been granted. The contributions are not paid until February 1, 1956. If the contributions had been paid on or before January 31, 1956, the entire amount could have been credited against the tax (such amount not exceeding 90 percent of the Federal tax of $12,000). Since the contributions were paid after January 31, 1956, the M Company is entitled to a credit of 90 percent of the amount of the contributions ($8,000), or $7,200, the net liability for Federal tax being $4,800 ($12,000 minus $7,200).

Example (2). The facts are the same as in example (1), except that the M Company is liable for and pays total State contributions of $12,000, instead of $8,000. If the contributions had been paid on or before January 31, 1956, the amount allowable as credit would have been $10,800 (90 percent of the Federal tax of $12,000). Since the contributions were paid after January 31, 1956, the M Company is entitled to a credit of 90 percent of $10,800, or $9,720, the net liability for Federal tax being $2,280 ($12,000 minus $9,720).

Example (3). The Federal return of the R Company for the calendar year 1955 discloses a total tax of $10,000. The company is liable for total State contributions of $9,000 for such year. The due date of the company's Federal return is January 31, 1956, no extension of time for filing the return having been granted. The R Company pays $8,000 of the total State contributions on or before such date, and the remaining $1,000 on February 1, 1956. If the $1,000 had been paid on or before January 31, 1956, that amount could have been credited against the tax (such amount plus the $8,000 paid on or before January 31, 1956, not exceeding 90 percent of the Federal tax of $10,000). Since the $1,000 was paid after January 31, 1956, the R Company is entitled to a credit of 90 percent of this amount or $900, plus the credit of $8,000 allowable for the contributions paid on or before January 31, 1956. The net liability for Federal tax is thus $1,100 ($10,000 minus $8,900).

(4) *Amount of credit allowable when contributions are paid to wrong State.* Contributions for the taxable year paid into a State unemployment fund which are required under the unemployment compensation law of that State, but which are paid with respect to remuneration on the basis of which the taxpayer had, prior to such payment, erroneously paid an amount as contributions under another unemployment compensation law, shall be deemed for purposes of the credit to have been paid at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions for such taxable year with respect to services subject to such other law, the payment into the proper fund shall be deemed for purposes of credit to have been made on the date the Federal return for such year was actually filed by the taxpayer under § 31.6011 (a) (3) in Subpart G of this part.

Example. Employer N, whose Federal return for the calendar year 1955 discloses a total tax of $1,000, employs individuals in State X and State Y during the calendar year 1955. N assumes in good faith that the services of his employees are covered by the unemployment compensation law of State Y, and pays as contributions to State Y the amount of $900 based upon the remuneration of the employees. All of the services were in fact covered by the unemployment compensation law of State X, and none by the law of State Y. The payment to State Y was made on January 31, 1956. When the error was discovered thereafter, N paid to State X contributions in the amount of $900 based upon such remuneration. Since the contributions were paid to State Y on January 31, 1956, the contributions to State X are, for purposes of the credit, deemed to have been paid on such date. N is entitled to a credit of $900 against the Federal tax of $1,000, the net liability for Federal tax being $100 ($1,000 minus $900).

§ 31.3302 (a)-2 *Refund of State contributions.* If, subsequent to the filing of the return, a refund is made by a State to the taxpayer of any part of his contribution credited against the tax, the

taxpayer is required to advise the district director of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due.

§ 31.3302 (a)-3 *Proof of credit under section 3302 (a).* Credit against the tax for any calendar year for contributions paid into State unemployment funds shall not be allowed unless there is submitted to the district director:

(a) A certificate of the proper officer of each State (the laws of which required the contributions to be paid) showing, for the taxpayer:

(1) The total amount of contributions required to be paid under the State law with respect to such calendar year (exclusive of penalties and interest) which was actually paid on or before the date the Federal return is required to be filed; and

(2) The amounts and dates of such required payments (exclusive of penalties and interest) actually paid after the date the Federal return is required to be filed.

(b) A statement by the taxpayer that no part of any payment made by him into a State unemployment fund for such calendar year, which is claimed as a credit against the tax, was deducted or is to be deducted from the remuneration of individuals in his employ. Such statement shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(c) Such other or additional proof as the Commissioner or the district director may deem necessary to establish the right to the credit provided for under section 3302 (a).

§ 31.3302 (b) *Statutory provisions; credits against tax; additional credit.*

SEC. 3302. *Credits against tax.* * * *

(b) *Additional credit.* In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified for the taxable year as provided in section 3303 (or with respect to any provisions thereof so certified), equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in the taxable year to any person having individuals in his employ, or to a rate of 2.7 percent, whichever rate is lower.

§ 31.3302 (b)-1 *Additional credit against tax*—(a) *In general.* In addition to the credit against the tax allowable for contributions actually paid to State unemployment funds (see § 31.3302 (a)-1), the taxpayer may be entitled to a credit under section 3302 (b). This additional credit is allowable to the taxpayer with respect to the amount of contributions which he is relieved from paying to an unemployment fund under the provisions of a State law which have been certified for the taxable year as provided in section 3303. Generally, an additional credit is available to an employer, if under the provisions of a State law which have been so certified he is permitted to pay contributions to such State for the taxable year, or portion thereof, at a rate which is both lower than the highest rate applied under such law in such year and lower than 2.7 percent. No additional credit is allowable except with respect to a State law certified by the Secretary of Labor for the taxable year as provided in section 3303 (or with respect to any provisions thereof so certified).

(b) *Method of computing amount of additional credit allowable with respect to a State law*—(1) *Certification of a State law as a whole.* In ascertaining the additional credit for any taxable year with respect to a particular State law which the Secretary of Labor certifies as a whole to the Secretary of the Treasury in accordance with the provisions of section 3303, the taxpayer must first compute the following amounts:

(i) The amount of contributions (whether or not with respect to employment as defined in section 3306 (c)) which the taxpayer would have been required to pay under the State law for such year if throughout the year he had been subject to the highest rate applied under such law in such year, or to a rate of 2.7 percent, whichever rate is lower.

(ii) The amount of contributions (whether or not with respect to employment as defined in section 3306 (c)) he was required to pay under the State law with respect to such year, whether or not paid.

The amount computed under subdivision (ii) of this subparagraph should then be subtracted from the amount computed under subdivision (i) of this subparagraph and the result will be the additional credit for the taxable year with respect to the law of that State.

Example. A employs individuals only in State X during the calendar year 1955. The unemployment compensation law of State X has been certified in its entirety to the Secretary of the Treasury by the Secretary of Labor for such year. The highest rate applied in such year under such State law to any taxpayer is 3 percent. However, A has obtained a rate of 1 percent under the law of such State and is required to pay his entire year's contributions at that rate. The amount of remuneration of A's employees subject to contributions under such State law is $25,000. The amount of wages paid by A during that year with respect to employment under the Federal law likewise is $25,000, the Federal tax at the 3 percent rate being $750. A's additional credit under section 3302 (b) is $425, computed as follows:

Remuneration subject to contributions	$25,000
Contributions at 2.7 percent rate	675
Less:	
Contributions required to be paid at 1 percent rate	250
Additional credit to A	425

Since the 2.7 percent rate is less than the highest rate applied (3 percent), the 2.7 percent rate is used in computing the amount ($675) from which the amount of contributions required to be paid at the 1 percent rate ($250) is deducted in order to ascertain the additional credit ($425).

(2) *Certification with respect to particular provisions of a State law.* If the Secretary of Labor makes a certification to the Secretary of the Treasury with respect to particular provisions of a State law for any taxable year pursuant to section 3303, the additional credit of the taxpayer for such year with respect to such law shall be computed in such manner as the Commissioner shall determine.

(c) *Amount of additional credit allowable to taxpayer with respect to more than one State law.* If the taxpayer is entitled to additional credit with respect to more than one State law in any taxable year, the additional credit allowable with respect to each State law shall be computed separately (in accordance with paragraph (b) of this section) and the total additional credit allowable against the tax for such year shall be the aggregate of the additional credits allowable with respect to such State laws. For limitation on total credits, see § 31.3302 (c)-1.

§ 31.3302 (b)-2 *Proof of additional credit under section 3302 (b).* Additional credit under section 3302 (b) shall not be allowed against the tax for any calendar year unless there is submitted—

(a) To the Commissioner a certificate of the proper officer of each State (with respect to the law of which the additional credit is claimed) showing the highest rate of contributions applied under the State law in such calendar year to any person having individuals in his employ; and

(b) To the district director a certificate of the proper officer of each State (with respect to the law of which the additional credit is claimed) showing for the taxpayer—

(1) The total remuneration with respect to which contributions were required to be paid by the taxpayer under the State law with respect to such calendar year; and

(2) The rate of contributions applied to the taxpayer under the State law with respect to such calendar year.

If under the law of such State different rates of contributions were applied to the taxpayer during particular periods of such calendar year, the certificate shall set forth the information called for in subparagraphs (1) and (2) of this paragraph with respect to each such period.

(c) Such other or additional proof as the Commissioner or the district director may deem necessary to establish the right to the additional credit provided for under section 3302 (b).

§ 31.3302 (c) *Statutory provisions; credits against tax; limit on total credits.*

SEC. 3302. *Credits against tax.* * * *

(c) *Limit on total credits.* (1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, and if any balance of such advance or advances has not been returned to the Federal unemployment account as provided in that title before December 1 of the taxable year, then the total credits (after other reductions under this section) otherwise allowable under this section for such taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) In the case of a taxable year beginning with the fourth consecutive January 1 on which such a balance of unreturned advances existed, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(B) In the case of any succeeding taxable year beginning with a consecutive January 1 on which such a balance of unreturned advances existed, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State.

For purposes of this paragraph, wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary or his delegate) to be attributable to such State.

§ 31.3302 (c)-1 *Limit on total credits*—(a) *Ninety percent limitation on credits against tax.* The aggregate of the credit under section 3302 (a) and the additional credit under section 3302 (b) shall not exceed 90 percent of the tax against which credit is taken.

(b) *Reduction of amount of total credit otherwise allowable.* (1) Section 3302 (c) (2) provides for a reduction, under certain circumstances, of the amount of the total credits allowable under section 3302 (a), (b), and (c) (1). If any balance of an advance or advances made under title XII of the Social Security Act to the unemployment account of a State remains unpaid on January 1 of 4 consecutive taxable years, the total credits which would be allowable under section 3302 (without regard to the provisions of section 3302 (c) (2)) to a taxpayer subject to the unemployment compensation law of such State shall be reduced for the taxable year beginning with the fourth consecutive January 1, unless prior to December 1 of that taxable year the total amount of any advance or advances made to the account of such State has been fully repaid. The reduction in the total credits allowable under section 3302 (without regard to the provisions of section 3302 (c) (2)) for the taxable year beginning with the fourth consecutive January 1 shall be 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State. In the case of any succeeding taxable year beginning with a consecutive January 1 on which such a balance of an unreturned advance or advances exists, the total credits which would be allowable (without regard to the provisions of section 3302 (c) (2)) shall be reduced unless prior to December 1 of such succeeding taxable year the total amount of any advance or advances made to the account of the State has been fully repaid. The reduction for each such succeeding taxable year beginning with a consecutive January 1 on which such a balance exists shall be a percentage of the tax imposed by section 3301 with respect to the wages paid by the taxpayer during such succeeding taxable year which are attributable to such State. The percentage reduction for any such succeeding taxable year shall be the percentage reduction for the immediately preceding taxable year plus 5 percent.

(2) The computation of the percentage reduction referred to in subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). If an advance is made, under title XII of the Social Security Act, to the unemployment account of State X in 1955 and if such advance is not fully returned before December 1, 1959, a balance of an advance will remain unreturned on January 1 of each of 4 consecutive taxable years (1956 through 1959), and will remain unreturned on December 1, 1959. In such event, the total credits which would be allowable under section 3302 (without regard to section 3302 (c) (2)) will be reduced for the taxable year 1959 in the case of any taxpayer who during such year is subject to the unemployment compensation law of State X. The reduction will be 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during 1959 which are attributable to State X.

Example (2). If an advance made in 1955 to the unemployment account of State Y is fully returned in 1956 but an advance made to the account of such State in 1956 is not fully returned before December 1, 1959, a reduction of 5 percent (as in example (1)) will be imposed for the taxable year 1959 because a balance of advances will remain unreturned on January 1 of each of 4 consecutive taxable years (1956 through 1959) and will remain unreturned on December 1, 1959. If such a balance also exists on January 1, 1960, and all advances made before December 1, 1960, to the unemployment account of State Y are not fully returned before December 1, 1960, the total credits will be reduced for the taxable year 1960. The reduction in the total credits for the taxable year 1960 in the case of any taxpayer who during such year is subject to the unemployment compensation law of State Y will be 10 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during 1960 which are attributable to State Y. If such a balance also exists on January 1, 1961, and if all advances made before December 1, 1961, to the unemployment account of State Y are not fully returned before December 1, 1961, the total credits will be reduced for the taxable year 1961. The reduction in the total credits for the taxable year 1961 in the case of any taxpayer who during such year is subject to the unemployment compensation law of State Y will be 15 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during 1961 which are attributable to State Y.

(3) For purposes of section 3302 (c) (2), wages are attributable to a particular State if they are subject to the unemployment compensation law of the State. If wages are not subject to the unemployment compensation law of any State, the determination as to whether such wages, or any portion thereof, are attributable to the particular State with respect to which the reduction in total credits is imposed shall be made in accordance with rules prescribed by the Commissioner.

§ 31.3303 *Statutory provisions; conditions of additional credit allowance.*

SEC. 3303. *Conditions of additional credit allowance*—(a) *State standards.* A taxpayer shall be allowed an additional credit under section 3302 (b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) No reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

(2) No reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless—

(A) The guaranty of remuneration was fulfilled in the year preceding the computation date; and

(B) The balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding the computation date by which contributions to such account were measured; and

(C) Such contributions were payable to such account with respect to 3 years preceding the computation date;

(3) No reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless—

(A) Compensation has been payable from such account throughout the year preceding the computation date, and

(B) The balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) The balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding such date by which contributions to such account were measured, and

(D) Such contributions were payable to such account with respect to the 3 years preceding the computation date.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3-year basis, the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date.

[Sec. 3303 (a) as amended by sec. 2, Act of Sept. 1, 1954, 68 Stat. 1130]

(b) *Certification by the Secretary of Labor with respect to additional credit allowance.* (1) On December 31 in each taxable year, the Secretary of Labor shall certify to the Secretary the law of each State (certified with respect to such year by the Secretary of Labor as provided in section 3304) with respect to which he finds that reduced rates of contributions were allowable with respect to such taxable year only in accordance with the provisions of subsection (a).

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any taxable year, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on December 31 of such taxable year, certify to the Secretary only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such taxable year under conditions fulfilling the requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions

payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of such State law, or of the provisions thereof with respect to which such findings were made, for any taxable year pursuant to paragraph (1) or (2), unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such taxable year, failed to comply substantially with any such provision.

(c) *Definitions.* As used in this section—

(1) *Reserve account.* The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) *Pooled fund.* The term "pooled fund" means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) *Partially pooled account.* The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

(4) *Guaranteed employment account.* The term "guaranteed employment account" means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) Guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) Gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) *Year.* The term "year" means any 12 consecutive calendar months.

(6) *Balance.* The term "balance", with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) *Computation date.* The term "computation date" means the date, occuring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) *Reduced rate.* The term "reduced rate" means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed.

(d) *Voluntary contributions.* A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

§ 31.3304 *Statutory provisions; approval of State laws.*

SEC. 3304. *Approval of State laws*—(a) *Requirements.* The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) All compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305 (b)) immediately upon such receipt be paid over to the Secretary to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (49 Stat. 640; 52 Stat. 1104, 1105; 42 U. S. C. 1104);

(4) All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(A) An amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(B) The amounts specified by section 903 (c) (2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) *Notification.* The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

(c) *Certification.* On December 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision and such finding has become effective. Such finding shall become effective on the 90th day after the governor of the State has been notified thereof, unless the State has before such 90th day so amended its law that it will comply substantially with the Secretary of Labor's interpretation of the provision of subsection (a), in which event such finding shall not become effective. No finding of a failure to comply substantially with the provision in State law specified in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law with respect to which further administrative or judicial review is provided for under the laws of the State.

(d) *Notice of Noncertification.* If, at any time during the taxable year, the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

§ 31.3305 *Statutory provisions; applicability of State law.*

SEC. 3305. *Applicability of State law*—(a) *Interstate and foreign commerce.* No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) *Federal instrumentalities in general.* The legislature of any State may require any instrumentality of the United States (except such as are (1) wholly owned by the United States, or (2) exempt from the tax imposed by section 3301 by virtue of any other provision of law), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment

compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U. S. C. 484), and as modified by subsection (c)) to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk, and (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event said State is not certified by the Secretary of Labor under section 3304 with respect to such year.

(c) *National banks.* Nothing contained in section 5240 of the Revised Statutes, as amended (12 U. S. C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) *Federal property.* No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

(e) *Bonneville Power Administrator.* [Repealed, effective with respect to services performed after 1954, by sec. 4 (c), Act of Sept. 1, 1954, 68 Stat. 1135]

(f) *American vessels.* The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) *Vessels operated by general agents of United States.* The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed on or after July 1, 1953, by officers and members of the crew on or in connection with American vessels—

(1) Owned by or bareboat chartered to the United States, and

(2) Whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States not wholly owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) *Requirement by State of contributions.* Any State may, as to service performed on or after July 1, 1953, and on account of which contributions are made pursuant to subsection (g)—

(1) Require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and

(2) Require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) *General agent as legal entity.* Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

§ 31.3306 (a) *Statutory provisions; definitions; employer.*

SEC. 3306. *Definitions*—(a) *Employer.* For purposes of this chapter, the term "employer" does not include any person unless on each of some 20 days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was 4 or more.

[Sec. 3306 (a) as amended by sec. 1, Act of Sept. 1, 1954, 68 Stat. 1130, effective with respect to services performed after December 31, 1955. With respect to services performed before 1956, sec. 3306 (a), as set forth below, is applicable.

SEC. 3306. *Definitions*—(a) *Employer.* For purposes of this chapter, the term "employer" does not include any person unless on each of some 20 days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was 8 or more.]

§ 31.3306 (a)-1 *Who are employers*—(a) *Definition*—(1) *For 1956 and subsequent calendar years.* Every person who employs 4 or more employees in employment (within the meaning of section 3306 (c) and (d)) on a total of 20 or more calendar days during any calendar year after 1955, each such day being in a different calendar week, is with respect to such year an employer subject to the tax.

(2) *For calendar year 1955.* Every person who employs 8 or more employees in employment (within the meaning of section 3306 (c) and (d)) on a total of 20 or more calendar days during the calendar year 1955, each such day being in a different calendar week, is with respect to such year an employer subject to the tax.

(3) *General agents of the Secretary of Commerce.* For provisions relating to the circumstances under which an employee who performs services as an officer or member of the crew of an American vessel (i) which is owned by or bareboat chartered to the United States and (ii) whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than for the United States, see § 31.3306 (n)-1.

(b) The several weeks in each of which occurs a day on which the prescribed number of employees are employed need not be consecutive weeks. It is not necessary that the employees so employed be the same individuals; they may be different individuals on each day. Neither is it necessary that the prescribed number of employees be employed at the same moment of time or for any particular length of time or on any particular basis of compensation. It is sufficient if the total number of employees employed during the 24 hours of a calendar day is 4 or more (8 or more for the calendar year 1955).

(c) In determining whether a person employs a sufficient number of employees to be an employer subject to the tax, each employee is counted with respect to services which constitute employment as defined in section 3306 (c) (see § 31.3306 (c)-2). No employee is counted with respect to services which do not constitute employment as so defined. See, however, paragraph (d) of this section.

(d) The provisions of paragraph (c) of this section are subject to the provisions of section 3306 (d), relating to services which do not constitute employment but which are deemed to be employment, and relating to services which constitute employment but which are deemed not to be employment (see § 31.3306 (d)-1). For example, if the services of an employee during a pay period are deemed to be employment under section 3306 (d), even though a portion thereof does not constitute employment under section 3306 (c), the employee is counted with respect to all

services during the pay period. On the other hand, if the services of an employee during a pay period are deemed not to be employment, even though a portion thereof constitutes employment, the employee is not counted with respect to any services during the pay period.

§ 31.3306 (b) *Statutory provisions; definitions; wages.*

SEC. 3306. *Definitions.* * * *

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

§ 31.3306 (b)-1 *Wages*—(a) *Applicable law and regulations*—(1) *Remuneration paid after 1954.* Whether remuneration paid after 1954 for employment performed after 1938 constitutes wages is determined under section 3306 (b). Accordingly, only remuneration paid after 1954 for employment performed after 1938 is covered by this section of the regulations and by the sections relating to the statutory exclusions from wages (§§ 31.3306 (b) (1)-1 to 31.3306 (b) (8)-1).

(2) *Remuneration paid after 1939 and before 1955.* Whether remuneration paid after 1939 and before 1955 for employment performed after 1938 constitutes wages shall be determined in accordance with the applicable provisions of law and of Regulations 107; 26 CFR (1939) Part 403.

(3) *Remuneration paid in 1939.* Whether remuneration paid in 1939 for employment performed after 1938 constitutes wages shall be determined in accordance with the applicable provisions of law and of Regulations 90; 26 CFR (1939) Part 400.

(b) The term "wages" means all remuneration for employment unless specifically excepted under section 3306 (b) (see §§ 31.3306 (b) (1)-1 to 31.3306 (b) (8)-1, inclusive) or paragraph (j) of this section.

(c) The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions are wages if paid as compensation for employment.

(d) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

(e) Except in the case of remuneration paid for services not in the course of the employer's trade or business (see § 31.3306 (b) (7)-1), the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment.

(f) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term "facilities or privileges", however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

(g) Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(h) Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(i) Remuneration paid by an employer to an individual for employment, unless such remuneration is specifically excepted under section 3306 (b), constitutes wages even though at the time paid the individual is no longer an employee.

Example. A is employed by B, an employer, during the month of June 1955 in employment and is entitled to receive remuneration of $100 for the services performed for B during the month. A leaves the employ of B at the close of business on June 30, 1955. On July 15, 1955 (when A is no longer an employee of B), B pays A the remuneration of $100 which was earned for the services performed in June. The $100 is wages, and the tax is payable with respect thereto.

(j) In addition to the exclusions specified in §§ 31.3306 (b) (1)-1 to 31.3306 (b) (8)-1, inclusive, the following types of payments are excluded from wages:

(1) Remuneration for services which do not constitute employment under section 3306 (c) (§§ 31.3306 (c) (1)-1 to 31.3306 (c) (17)-1, inclusive).

(2) Remuneration for services which are deemed not to be employment under section 3306 (d) (§ 31.3306 (d)-1).

(3) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.

(k) For provisions relating to the treatment of deductions from remuneration as payments of remuneration, see § 31.3307-1.

§ 31.3306 (b) (1) *Statutory provisions; definitions; wages; $3,000 limitation.*

SEC. 3306. *Definitions.* * * *

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $3,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $3,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecesor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

§ 31.3306 (b) (1)-1 *$3,000 limitation*—(a) *In general.* (1) The term "wages" does not include that part of the remuneration paid within any calendar year by an employer to an employee which exceeds the first $3,000 of remuneration (exclusive of remuneration excepted from wages in accordance with § 31.3306 (b)-1 (j) or §§ 31.3306 (b) (2)-1 to 31.3306 (b) (8)-1, inclusive), paid within such calendar year by such employer to such employee for employment performed for him at any time after 1938.

(2) The $3,000 limitation applies only if the remuneration paid during any one calendar year by an employer to the same employee for employment performed after 1938 exceeds $3,000. The limitation in such case relates to the amount of remuneration paid during any one calendar year for employment after 1938 and not to the amount of remuneration for employment performed in any one calendar year.

Example. Employer B, in 1955, pays employee A $2,500 on account of $3,000 due him for employment performed in 1955. In 1956 employer B pays employee A the balance of $500 due him for employment performed in the prior year (1955), and thereafter in 1956 also pays A $3,000 for employment performed in 1956. The $2,500 paid in 1955 is subject to tax in 1955. The balance of $500 paid in 1956 for employment during 1955 is subject to tax in 1956, as is also the first $2,500 paid of the $3,000 for employment during 1956 (this $500 for 1955 employment added to the first $2,500 paid for 1956 employment constitutes the maximum wages subject to the tax which could be paid in 1956 by B to A). The final $500 paid by B to A in 1956 is not included as wages and is not subject to the tax.

(3) If during a calendar year an employee is paid remuneration by more than one employer, the limitation of wages to the first $3,000 of remuneration paid applies, not to the aggregate remuneration paid by all employers with respect to employment performed after 1938, but instead to the remuneration paid during such calendar year by each employer with respect to employment performed after 1938. In such case the first $3,000 paid during the calendar year by each employer constitutes wages and

is subject to the tax. In connection with the application of the $3,000 limitation, see also paragraph (b) of this section relating to the circumstances under which wages paid by a predecessor employer are deemed to be paid by his successor.

Example (1). During 1955 employer D pays to employee C a salary of $600 a month for employment performed for D during the first seven months of 1955, or total remuneration of $4,200. At the end of the fifth month C has been paid $3,000 by employer D, and only that part of his total remuneration from D constitutes wages subject to the tax. The $600 paid to employee C by employer D in the sixth month, and the like amount paid in the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month C leaves the employ of D and enters the employ of E. Employer E pays to C remuneration of $600 a month in each of the remaining five months of 1955, or total remuneration of $3,000. The entire $3,000 paid by E to employee C constitutes wages and is subject to the tax. Thus, the first $3,000 paid by employer D and the entire $3,000 paid by employer E constitute wages.

Example (2). During the calendar year 1955 F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation, each such corporation being an employer for such year. During such year F is paid a salary of $3,000 by each corporation. Each $3,000 paid to F by each of the corporations, X, Y, and Z (whether or not such corporations are related), constitutes wages and is subject to the tax.

(b) *Wages paid by predecessor attributed to successor.* (1) If an employer (hereinafter referred to as a successor) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and if immediately after the acquisition the successor employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for purposes of the application of the $3,000 limitation set forth in paragraph (a) of this section, any remuneration (exclusive of remuneration excepted from wages in accordance with § 31.3306 (b)–1 (j) or §§ 31.3306 (b) (2)–1 to 31.3306 (b) (8)–1, inclusive), with respect to employment paid (or considered under this provision as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor. Wages paid by a predecessor shall not be considered as having been paid by the successor unless both the predecessor and the successor are employers as defined in section 3306 (a) for the calendar year in which the acquisition occurs (see § 31.3306 (a)–1, relating to who are employers).

(2) The wages paid, or considered as having been paid, by a predecessor to an employee shall, for purposes of the $3,000 limitation, be treated as having been paid to such employee by a successor, if:

(i) The successor during a calendar year acquired substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of the predecessor;

(ii) Such employee was employed in the trade or business of the predecessor immediately prior to the acquisition and is employed by the successor in his trade or business immediately after the acquisition; and

(iii) Such wages were paid during the calendar year in which the acquisition occurred and prior to such acquisition.

(3) The method of acquisition of the property is immaterial. The acquisition may occur as a consequence of a corporate merger or consolidation, the incorporation of a business by a sole proprietor or a partnership, the continuance without interruption of the business of a previously existing partnership by a new partnership or by a sole proprietor, or a purchase or any other transaction whereby substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of one employer is acquired by another employer.

(4) Substantially all the property used in a separate unit of a trade or business may consist of substantially all the property used in the performance of an essential operation of the trade or business, or it may consist of substantially all the property used in a relatively self-sustaining entity which forms a part of the trade or business.

Example (1). The M Corporation which is engaged in the manufacture of automobiles, including the manufacture of automobile engines, discontinues the manufacture of the engines and transfers all the property used in such manufacturing operations to the N Company. The N Company is considered to have acquired a separate unit of the trade or business of the M Corporation, namely, its engine manufacturing unit.

Example (2). The R Corporation which is engaged in the operation of a chain of grocery stores transfers one of such stores to the S Company. The S Company is considered to have acquired a separate unit of the trade or business of the R Corporation.

(5) A successor may receive credit for wages paid to an employee by a predecessor only if immediately prior to the acquisition the employee was employed by the predecessor in his trade or business which was acquired by the successor and if immediately after the acquisition such employee is employed by the successor in his trade or business (whether or not in the same trade or business in which the acquired property is used). If the acquisition involves only a separate unit of a trade or business of the predecessor, the employee need not have been employed by the predecessor in that unit provided he was employed in the trade or business of which the acquired unit was a part.

Example. The Y Corporation in 1955 acquires all the property of the X Manufacturing Company and immediately after the acquisition employs in its trade or business employee A, who, immediately prior to the acquisition, was employed by the X Company. Both the Y Corporation and the X Company are employers, as defined in the Act, for the calendar year 1955. The X Company has in 1955 (the calendar year in which the acquisition occurs) and prior to the acquisition paid $2,000 of wages to A. The Y Corporation in 1955 pays to A remuneration with respect to employment of $2,000. Only $1,000 of such remuneration is considered to be wages. For purposes of the $3,000 limitation, the Y Corporation is credited with the $2,000 paid to A by the X Company. If, in the same calendar year, the property is acquired from the Y Corporation by the Z Company, an employer for such year, and A immediately after the the acquisition is employed by the Z Company in its trade or business, no part of the remuneration paid to A by the Z Company in the year of the acquisition will be considered to be wages. The Z Company will be credited with the remuneration paid to A by the Y Corporation and also with the wages paid to A by the X Company (considered for purposes of the application of the $3,000 limitation as having also been paid by the Y Corporation).

§ 31.3306 (b) (2) *Statutory provisions; definitions; wages; payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.*

SEC. 3306. *Definitions.* * * *

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical or hospitalization expenses in connection with sickness or accident disability, or

(D) Death;

§ 31.3306 (b) (2)–1 *Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.* (a) The term "wages" does not include the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of:

(1) An employee's retirement,

(2) Sickness or accident disability of an employee or any of his dependents,

(3) Medical or hospitalization expenses in connection with sickness or accident disability of an employee or any of his dependents, or

(4) Death of an employee or any of his dependents.

(b) The plan or system established by an employer need not provide for payments on account of all of the specified

items, but such plan or system may provide for any one or more of such items. Payments for any one or more of such items under a plan or system established by an employer solely for the dependents of his employees are not within this exclusion from wages.

(c) Dependents of an employee include the employee's husband or wife, children, and any other members of the employee's immediate family.

(d) It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

§ 31.3306 (b) (3) *Statutory provisions; definitions; wages; retirement payments.*

SEC. 3306. *Definitions.* * * *

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

§ 31.3306 (b) (3)-1 *Retirement payments.* The term "wages" does not include any payment made by an employer to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of the employee's retirement. Thus, payments made to an employee on account of his retirement are excluded from wages under this exception even though not made under a plan or system.

§ 31.3306 (b) (4) *Statutory provisions; definitions; wages; payments on account of sickness or accident disability, or medical or hospitalization expenses.*

SEC. 3306. *Definitions.* * * *

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

§ 31.3306 (b) (4)-1 *Payments on account of sickness or accident disability, or medical or hospitalization expenses.* The term "wages" does not include any payment made by an employer to, or on behalf of, an employee on account of the employee's sickness or accident disability or the medical or hospitalization expenses in connection with the employee's sickness or accident disability, if such payment is made after the expiration of 6 calendar months following the last calendar month in which such employee worked for such employer. Such payments are excluded from wages under this exception even though not made under a plan or system. If the employee does not actually perform services for the employer during the requisite period, the existence of the employer-employee relationship during that period is immaterial.

§ 31.3306 (b) (5) *Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.*

SEC. 3306. *Definitions.* * * *

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(5) Any payment made to, or on behalf of, an employee or his beneficiary—

(A) From or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 (a) (3), (4), (5), and (6);

§ 31.3306 (b) (5)-1 *Payments from or to certain tax-exempt trusts or under or to certain annuity plans.* The term "wages" does not include—

(a) Any payment made by an employer, on behalf of an employee or his beneficiary, into a trust or annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6); or

(b) Any payment made to, or on behalf of, an employee or his beneficiary from a trust or under an annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6).

A payment made to an employee of a trust described in section 401 (a) which is exempt from tax under section 501 (a) for services rendered as an employee of such trust and not as a beneficiary of the trust is not within this exclusion from wages.

§ 31.3306 (b) (6) *Statutory provisions; definitions; wages; payment by employer of employee tax under section 3101 or employee contributions under a State law.*

SEC. 3306. *Definitions.* * * *

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(6) The payment by an employer (without deduction from the remuneration of the employee)—

(A) Of the tax imposed upon a employee under section 3101 (or the corresponding section of prior law), or

(B) Of any payment required from an employee under a State unemployment compensation law;

§ 31.3306 (b) (6)-1 *Payment by an employer of employee tax under section 3101 or employee contributions under a State law.* The term "wages" does not include any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (a) the employee tax imposed by section 3101 or the corresponding section of prior law, or (b) any payment required from an employee under a State unemployment compensation law.

§ 31.3306 (b) (7) *Statutory provisions; definitions; wages; payments other than in cash for service not in the course of the employer's trade or business.*

SEC. 3306. *Definitions.* * * *

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

§ 31.3306 (b) (7)-1 *Payments other than in cash for service not in the course of employer's trade or business.* The term "wages" does not include remuneration paid in any medium other than cash for service not in the course of the employer's trade or business. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, or other goods or commodities, for service not in the course of the employer's trade or business does not constitute wages. Remuneration paid in any medium other than cash for other types of services does not come within this exclusion from wages. For provisions relating to the circumstances under which service not in the course of the employer's trade or business does not constitute employment, see § 31.3306 (c) (3)-1.

§ 31.3306 (b) (8) *Statutory provisions; definitions; wages; payments to stand-by employees.*

SEC. 3306. *Definitions.* * * *

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made.

§ 31.3306 (b) (8)-1 *Payments to stand-by employees.* The term "wages" does not include any payment (other than vacation or sick pay) made by an employer to an employee after the calendar month in which the employee attains age 65, if—

(a) Such employee does no work (other than being subject to call for the performance of work) for such employer

in the period for which such payment is made; and

(b) The employer-employee relationship exists between the employer and employee throughout the period for which such payment is made.

Vacation or sick pay is not within this exclusion from wages. If the employee does any work for the employer in the period for which the payment is made, no remuneration paid by such employer to such employee with respect to such period is within this exclusion from wages. For example, if employee A, who attained the age of 65 in January 1955, is employed by the X Company on a standby basis and is paid $200 by the X Company for being subject to call during the month of February 1955 and an additional $25 for work performed for the X Company on one day in February 1955, then none of the $225 is excluded from wages under this exception.

§ 31.3306 (c) *Statutory provisions; definitions; employment.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

§ 31.3306 (c)-1 *Employment; services performed before 1955.* (a) Services performed after 1938 and before 1955 constitute employment under section 3306 (c) if such services were employment under the law applicable to the period in which they were performed.

(b) The tax applies with respect to remuneration paid by an employer after 1954 for services performed after 1938 and before 1955, as well as for services performed after 1954, to the extent that the remuneration and services constitute wages and employment. See §§ 31.3306 (b)-1 to 31.3306 (b) (8)-1, inclusive, relating to wages.

(c) Determination of whether services performed after 1938 and before 1955 constitute employment shall be made in accordance with the provisions of law applicable to the period in which they were performed and of the regulations thereunder. The regulations applicable in determining whether services performed after 1938 and before 1955 constitute employment are as follows:

(1) Services performed in 1939—Regulations 90; 26 CFR (1939) Part 400.

(2) Services performed after 1939 and before 1955—Regulations 107; 26 CFR (1939) Part 403.

§ 31.3306 (c)-2 *Employment; services performed after 1954*—(a) *In general.* Whether services performed after 1954 constitute employment is determined under section 3306 (c). This section, and §§ 31.3306 (c)-3 to 31.3306 (c) (17)-1, inclusive, apply with respect only to services performed after 1954. (For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see § 31.3306 (d)-1. For provisions relating to services performed before 1955, see § 31.3306 (c)-1.)

(b) *Services performed within the United States.* (1) Services performed after 1954 within the United States, that is, within any of the several States, the District of Columbia, or the Territory of Alaska or Hawaii, by an employee for the person employing him, unless specifically excepted by section 3306 (c), constitute employment. Services performed outside the United States, that is, outside the several States, the District of Columbia, and the Territories of Alaska and Hawaii (except certain services performed on or in connection with an American vessel—see paragraph (c) of this section), do not constitute employment.

(2) With respect to services performed within the United States, the place where the contract of service is entered into and the citizenship or residence of the employee or of the person employing him are immaterial. Thus, the employee and the person employing him may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there may be to that extent employement.

(c) *Services performed outside the United States.* (1) Services performed after 1954 by an employee for the person employing him "on or in connection with" an American vessel outside the United States constitute employment provided—

(i) The employee is also employed "on and in connection with" such vessel when outside the United States; and

(ii) The services are performed under a contract of service, between the employee and the person employing him, which is entered into within the United States, or during the performance of which the vessel touches at a port within the United States; and

(iii) The services are not excepted under section 3306 (c). (See particularly § 31.3306 (c) (17)-1, relating to fishing.)

(2) An employee performs services on and in connection with the vessel if he performs services on the vessel which are also in connection with the vessel. Services performed on the vessel as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(3) If services are performed by an employee "on and in connection with" an American vessel when outside the United States and the conditions in subparagraph (1) (ii) and (iii) of this paragraph are met, then the services of that employee performed on or in connection with the vessel constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(4) Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which the vessel does not touch at a port within the United States, do not constitute employment, notwithstanding services performed by other members of the crew or other employees on or in connection with the vessel may constitute employment.

(5) A vessel includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

(6) For definition of the term "American vessel", see § 31.3306 (m)-1.

(7) With respect to services performed outside the United States, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether a vessel is an American vessel.

§ 31.3306 (c)-3 *Employment; excepted services in general.* (a) Services performed after 1954 by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted by any of the numbered paragraphs of section 3306 (c). Services so excepted do not constitute employment for purposes of the tax even though they are performed within the United States or are performed outside the United States on or in connection with an American vessel. For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see § 31.3306 (d)-1.

(b) The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services rendered by the employee in an excepted class.

Example. A is an individual who is employed part time by B to perform services which constitute "agricultural labor" (see § 31.3306 (k)-1). A is also employed by C part time to perform services as a grocery clerk in a store owned by him. While A's services which constitute "agricultural labor" are excepted, the exception does not embrace the services performed by A as a grocery clerk in the employ of C and the latter services are not excepted from employment.

(c) This section, §§ 31.3306 (c) (1)-1 to 31.3306 (c) (17)-1, inclusive (relating to the several classes of excepted services), and § 31.3306 (d)-1 (relating to included and excluded services) apply with respect to services performed after 1954. For provisions relating to services performed before 1955, see § 31.3306 (c)-1.

§ 31.3306 (c) (1) *Statutory provisions; definitions; employment; agricultural labor.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

(1) Agricultural labor (as defined in subsection (k));

§ 31.3306 (c) (1)-1 *Agricultural labor.* Services performed by an employee for the person employing him which constitute "agricultural labor" as defined in section 3306 (k) are excepted from employment. For provisions relating to the definition of the term "agricultural labor", see § 31.3306 (k)-1.

§ 31.3306 (c) (2) *Statutory provisions; definitions; employment; domestic service.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

§ 31.3306 (c) (2)-1 *Domestic service*—(a) *In a private home.* (1) Services of a household nature performed by an employee in or about a private home of the person by whom he is employed are excepted from employment. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home and the services performed therein are not excepted.

(2) In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobile for family use.

(b) *In a local college club or local chapter of a college fraternity or sorority.* (1) Services of a household nature performed by an employee in or about the club rooms or house of a local college club or of a local chapter of a college fraternity or sorority by which he is employed are excepted for employment. A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed therein are not within the exception.

(2) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and housemothers.

(c) *Services not excepted.* Services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's private home or in a local college club or local chapter of a college fraternity or sorority, are not within the exception. Services of a household nature are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs, hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

§ 31.3306 (c) (3) *Statutory provisions; definitions; employment; services not in the course of the employer's trade or business.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(3) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) Such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter;

§ 31.3306 (c) (3)-1 *Services not in the course of employer's trade or business.* (a) Services not in the course of the employer's trade or business performed by an employee for an employer in a calendar quarter are excepted from employment unless—

(1) The cash remuneration paid for such services performed by the employee for the employer in the calendar quarter is $50 or more; and

(2) Such employee is regularly employed in the calendar quarter by such employer to perform such services.

Unless the tests set forth in both subparagraphs (1) and (2) of this paragraph are met, the services are excepted from employment.

(b) The term "services not in the course of the employer's trade or business" includes services that do not promote or advance the trade or business of the employer. Services performed for a corporation do not come within the exception.

(c) The test relating to cash remuneration of $50 or more is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. However, for purposes of determining whether the test is met, it is also required that the remuneration be paid, although it is immaterial when the remuneration is paid. Furthermore, in determining whether $50 or more has been paid for services not in the course of the employer's trade or business, only cash remuneration for such services shall be taken into account. The term "cash remuneration" includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met.

(d) For purposes of this exception, an individual is deemed to be regularly employed by an employer during a calendar quarter only if—

(1) Such individual performs services not in the course of the employer's trade or business for such employer for some portion of the day on at least 24 days (whether or not consecutive) during such calendar quarter; or

(2) Such individual was regularly employed (as determined under subparagraph (1) of this paragraph) by such employer in the performance of services not in the course of the employer's trade or business during the preceding calendar quarter (including the last calendar quarter of 1954).

(e) In determining whether an employee has performed services not in the course of the employer's trade or business on at least 24 days during a calendar quarter, there shall be counted as one day—

(1) Any day or portion thereof on which the employee actually performs such services; and

(2) Any day or portion thereof on which the employee does not perform services of the prescribed character but with respect to which cash remuneration is paid or payable to the employee for such services, such as a day on which the employee is sick or on vacation.

An employee who on a particular day reports for work and, at the direction of his employer, holds himself in readiness to perform services not in the course of the employer's trade or business shall be considered to be engaged in the actual performance of such services on that day. For purposes of this exception, a day is a period of 24 hours commencing at midnight and ending at midnight.

(f) For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, see § 31.3306 (b) (7)-1.

§ 31.3306 (c) (4) *Statutory provisions; definitions; employment; services on or in connection with a non-American vessel.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(4) Service performed on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States;

§ 31.3306 (c) (4)–1 *Services on or in connection with a non-American vessel.* (a) In order for services performed within the United States "on or in connection with" a vessel not an American vessel to be excepted from employment under section 3306 (c) (4), the services must be performed by an employee who is also employed "on and in connection with" the vessel when outside the United States.

(b) An employee performs services on and in connection with the vessel if he performs services on the vessel when outside the United States which are also in connection with the vessel. Services performed on the vessel outside the United States by employees as officers or members of the crew, or by employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(c) The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(d) The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exception, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether the vessel is an American vessel. For definitions of the terms "vessel" and "American vessel", see §§ 31.3306 (c)–2 (c) (5) and 31.3306 (m)–1, respectively.

(e) Since the only services performed outside the United States which constitute employment are those described in § 31.3306 (c)–2 (c) (relating to services performed outside the United States on or in connection with an American vessel), services performed outside the United States on or in connection with a vessel not an American vessel do not constitute employment in any event.

§ 31.3306 (c) (5) *Statutory provisions; definitions; employment; family employment.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

§ 31.3306 (c) (5)–1 *Family employment.* (a) Certain services are excepted from employment because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:

(1) Services performed by an individual in the employ of his or her spouse;

(2) Services performed by a father or mother in the employ of his or her son or daughter; and

(3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

(b) Under paragraph (a) (1) and (2) of this section, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under paragraph (a) (3) of this section, in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21, and the exception continues only during the time that such son or daughter is under the age of 21.

(c) Services performed in the employ of a corporation are not within the exception. Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

§ 31.3306 (c) (6) *Statutory provisions; definitions; employment; services in employ of United States Government or instrumentality thereof.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) Wholly owned by the United States, or

(B) Exempt from the tax imposed by section 3301 by virtue of any other provision of law;

§ 31.3306 (c) (6)–1 *Services in employ of United States or instrumentality thereof.* (a) Services performed in the employ of the United States Government, except as provided in section 3306 (n) (see § 31.3306 (n)–1), are excepted from employment. Services performed in the employ of an instrumentality of the United States are also excepted if the instrumentality is either wholly owned by the United States or exempt from the tax imposed by section 3301 by virtue of any other provision of law.

(b) Services performed in the employ of an instrumentality of the United States which is neither wholly owned by the United States nor exempt from the tax imposed by section 3301 by virtue of any other provision of law are not within the exception. For example, services performed in the employ of a national bank or a State member bank of the Federal Reserve System are not within the exception.

§ 31.3306 (c) (7) *Statutory provisions; definitions; employment; services in employ of States or their political subdivisions or instrumentalities.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

§ 31.3306 (c) (7)–1 *Services in employ of States or their political subdivisions or instrumentalities.* (a) Services performed in the employ of any State, or of any political subdivision thereof, are excepted from employment. Services performed in the employ of an instrumentality of one or more States or political subdivisions thereof are excepted if the instrumentality is wholly owned by one or more of the foregoing. Services performed in the employ of an instrumentality of one or more of the several States or political subdivisions thereof which is not wholly owned by one or more of the foregoing are excepted only to the extent that the instrumentality is with respect to such services immune under the Constitution of the United States from the tax imposed by section 3301.

(b) The term "State" includes the District of Columbia and the Territories of Alaska and Hawaii. (See § 31.3306 (j).)

§ 31.3306 (c) (8) *Statutory provisions; definitions; employment; services in employ of religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

§ 31.3306 (c) (8)–1 *Services in employ of religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety.* Services performed by an employee in the employ of an organization described in section 3306 (c) (8),

that is, a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, are excepted from employment. Any organization which is an organization of a type described in section 501 (c) (3) and which—

(a) Is exempt from income tax under section 501 (a), or

(b) Has been denied exemption from income tax under section 501 (a) by reason of the provisions of section 503 or 504, relating to prohibited transactions and to accumulations out of income, respectively,

is an organization of a type described in section 3306 (c) (8). An organization which would be an organization of a type described in section 501 (c) (3) except for those provisions of section 501 (c) (3) which are not contained in section 3306 (c) (8) (provisions relating to participation or intervention in a political campaign on behalf of a candidate for public office) is also an organization of a type described in section 3306 (c) (8). For provisions relating to organizations of the types described in section 501 (c) (3) and their status as exempt or nonexempt for income tax purposes, see the provisions of the Income Tax Regulations (Part 1 of this chapter) under sections 501 (a) and 501 (c) (3).

§ 31.3306 (c) (9) *Statutory provisions; definitions; employment; services performed by an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(9) Service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (52 Stat. 1094, 1095; 45 U. S. C. 351);

§ 31.3306 (c) (9)-1 *Railroad industry; services performed by an employee or an employee representative under the Railroad Unemployment Insurance Act.* (a) Services performed by an individual as an "employee" or as an "employee representative", as those terms are defined in section 1 of the Railroad Unemployment Insurance Act, as amended, are excepted from employment.

(b) Section 1 of the Railroad Unemployment Insurance Act, as amended, provides, in part, as follows:

For the purposes of this Act, except when used in amending the provisions of other Acts—

(a) The term "employer" means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

(c) The term "company" includes corporations, associations, and joint-stock companies.

(d) The term "employee" (except when used in phrases establishing a different meaning) means any individual who is or has been (i) in the service of one or more employers for compensation, or (ii) an employee representative. The term "employee" shall include an employee of a local lodge or division defined as an employer in section 1 (a) only if he was in the service of a carrier on or after August 29, 1935. The term "employee" includes an officer of an employer.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: *Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

(f) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term employer as defined in section 1 (a) who before or after August 29, 1935, was in the service of an employer as defined in section 1 (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

* * * * *

(i) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative: *Provided, however,* That in computing the compensation paid to any employee with respect to any calendar month before July 1, 1954, no part of any compensation in excess of $300 shall be recognized, and with respect to any calendar month after June 30, 1954, no part of any compensation in excess of $350 shall be recognized. A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment

is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned.

* * * * *

(r) The term "Board" means the Railroad Retirement Board.

(s) The term "United States", when used in a geographical sense, means the States, Alaska, Hawaii, and the District of Columbia.

* * * * *

[Sec. 1, Railroad Unemployment Insurance Act, as amended by secs. 1 and 2, Act of June 20, 1939, 53 Stat. 845; secs. 1 and 3, Act of Aug. 13, 1940, 54 Stat. 785, 786; sec. 15, Act of Apr. 8, 1942, 56 Stat. 210; secs. 1 and 2, Act of July 31, 1946, 60 Stat. 722; sec. 302, Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3306 (c) (10) (A) *Statutory provisions; definitions; employment; services in employ of certain organization exempt from income tax.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521, if—

(i) The remuneration for such service is less than $50, or

(ii) Such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) Such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

§ 31.3306 (c) (10) (A)-1 *Services in employ of certain organizations exempt from income tax*—(a) *In general.* (1) This section deals with the exception from employment of certain services performed in the employ of any organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521. (See the provisions of the Income Tax Regulations (Part 1 of this chapter) under sections 501 and 521.) If the services meet the tests set forth in paragraph (b), (c), or (d) of this section, such services are excepted.

(2) See also § 31.3306 (c) (8)-1 for provisions relating to the exception of services performed in the employ of a religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety; § 31.3306 (c) (10) (B)-1 for provisions relating to the exception of services performed in the employ of an agricultural or horticultural organization; § 31.3306 (c) (10) (C)-1 for provisions relating to the exception of services performed in the employ of a voluntary employees' beneficiary association; and § 31.3306 (c) (10) (D)-1 for provisions relating to the exception of services performed in the employ of a Federal employees' beneficiary association.

(b) *Remuneration less than $50 for calendar quarter.* Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521 are excepted from employment, if the remuneration for the services is less than $50. The test relating to remuneration of $50 is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

Example (1). X is a local lodge of a fraternal organization and is exempt from income tax under section 501 (a) as an organization of the character described in section 501 (c) (8). X has a number of paid employees, among them being A who serves exclusively as recording secretary for the lodge, and B who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1955 (that is, January 1, 1955, through March 31, 1955, both dates inclusive) A earns a total of $30. For services performed during the same calendar quarter, B earns $180. Since the remuneration for the services performed by A during such quarter is less than $50, all of such services are excepted. Thus, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer (see § 31.3306 (a)-1). Even though it is subsequently determined that X is an employer, A's remuneration of $30 for services performed during the first calendar quarter of such year is not subject to tax. B's services, however, are not excepted during such quarter since the remuneration therefor is not less than $50. Thus, B is counted as an employee in employment during all of such quarter for purposes of determining whether the X organization is an employer. If it is determined that the X organization is an employer, B's remuneration of $180 for services performed during the first calendar quarter is included in computing the tax.

Example (2). The facts are the same as in example (1), above, except that on April 1, 1955, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1955, through June 30, 1955, both dates inclusive), A earns $60. Although all of the services performed by A during the first quarter were excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services is not less than $50. A, therefore, is counted as an employee in employment during all of the second quarter for the purpose of determining whether the X organization is an employer. If it is determined that the X organization is an employer, A's remuneration of $60 for services performed during the second calendar quarter is included in computing the tax.

Example (3). The facts are the same as in example (1), above, except that A earns $120 for services performed during the year 1955, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the $120 attributable to services performed in that quarter is less than $50. In such case, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer. If, however, the portion of the $120 attributable to services performed in any calendar quarter during the year is not less than $50, the services during that quarter are not excepted. In the latter case, A is counted as an employee in employment during all of such quarter and, if the X organization is determined to be an employer, that portion of the $120 attributable to services performed in such quarter is included in computing the tax.

(c) *Collection of dues or premiums for fraternal beneficiary societies, and ritualistic services in connection with such societies.* The following services performed by an employee in the employ of a fraternal beneficiary society, order, or association exempt from income tax under section 501 (a) are excepted from employment:

(1) Services performed away from the home office of such a society, order, or association in connection with the collection of dues or premiums for such society, order, or association; and

(2) Ritualistic services (wherever performed) in connection with such a society, order, or association.

For purposes of this paragraph the amount of the remuneration for services performed by the employee in the calendar quarter is immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the type of services, and, in the case of collection of dues or premiums, the place where the services are performed.

(d) *Students employed by organizations exempt from income tax.* (1) Services performed in the employ of an organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521 by a student who is enrolled and is regularly attending classes at a school, college, or university, are excepted from employment. For purposes of this paragraph, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services, and the place where such services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the status of

the employee as a student enrolled and regularly attending classes at a school, college, or university.

(2) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense. For provisions relating to services performed by a student enrolled and regularly attending classes at a school, college, or university not exempt from income tax in the employ of such school, college, or university, see § 31.3306 (c) (10) (E)-1.

§ 31.3306 (c) (10) (B) *Statutory provisions; definitions; employment; services in employ of agricultural or horticultural organization exempt from income tax.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(10) (B) Service performed in the employ of an agricultural or horticultural organization described in section 501 (c) (5) which is exempt from tax under section 501 (a);

§ 31.3306 (c) (10) (B)-1 *Services in employ of agricultural or horticultural organization exempt from income tax.* (a) Services performed by an employee in the employ of an agricultural or horticultural organization which is described in section 501 (c) (5) and which is exempt from income tax under section 501 (a) are excepted from employment.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 31.3306 (c) (10) (C) *Statutory provisions; definitions; employment; services in employ of voluntary employees' beneficiary association.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(10) (C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if—

(i) No part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and

(ii) 85 percent or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

§ 31.3306 (c) (10) (C)-1 *Services in employ of voluntary employees' beneficiary association.* (a) Services performed by an employee in the employ of an organization of the character described in section 3306 (c) (10) (C) are excepted from employment.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 31.3306 (c) (10) (D) *Statutory provisions; definitions; employment; services in employ of Federal employees' beneficiary association.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(10) (D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if—

(i) Admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and

(ii) No part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

§ 31.3306 (c) (10) (D)-1 *Services in employ of Federal employees' beneficiary association.* (a) Services performed by an employee in the employ of an organization of the character described in section 3306 (c) (10) (D) are excepted from employment.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 31.3306 (c) (10) (E) *Statutory provisions; definitions; employment; services of student in employ of school, college, or university not exempt from income tax.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(10) (E) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 (a), if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

§ 31.3306 (c) (10) (E)-1. *Services of student in employ of school, college, or university not exempt from income tax.* (a) Services performed by a student in the employ of a school, college, or university not exempt from income tax under section 501 (a) are excepted from employment, if the student is enrolled and is regularly attending classes at such school, college, or university.

(b) For purposes of this section, the type of services performed by the employee, the place where the services are performed, and the amount of remuneration for services performed by the employee are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in the employ of which he performs the services.

(c) The status of the employee as a student performing the services shall be determined on the basis of the relationship of such employee with the organization for which the services are performed. An employee who performs services in the employ of a school, college, or university as an incident to and for the purpose of pursuing a course of study at such school, college, or university has the status of a student in the performance of such services.

(d) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(e) For provisions relating to services performed by a student in the employ of an organization exempt from income tax, see § 31.3306 (c) (10) (A)-1 (d).

§ 31.3306 (c) (11) *Statutory provisions; definitions; employment; services in employ of foreign government.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

§ 31.3306 (c) (11)-1 *Services in employ of foreign government.* (a) Services performed by an employee in the employ of a foreign government are excepted from employment. The exception includes not only services performed by ambassadors, ministers, and other diplomatic officers and employees but also services performed as a consular or other officer or employee of a foreign government, or as a nondiplomatic representative thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial. It is also immaterial whether the foreign government grants an equivalent exemption with respect to similar services performed in the foreign country by citizens of the United States.

§ 31.3306 (c) (12) *Statutory provisions; definitions; employment; services in employ of wholly owned instrumentality of foreign government.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by em-

ployees of the United States Government and of instrumentalities thereof;

§ 31.3306 (c) (12)-1 *Services in employ of wholly owned instrumentality of foreign government.* (a) Services performed by an employee in the employ of certain instrumentalities of a foreign government are excepted from employment. The exception includes all services performed in the employ of an instrumentality of the government of a foreign country, if—

(1) The instrumentality is wholly owned by the foreign government;

(2) The services are of a character similar to those performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(3) The Secretary of State certifies to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to services performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial.

§ 31.3306 (c) (13) *Statutory provisions; definitions; employment; services of student nurse or hospital intern.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

§ 31.3306 (c) (13)-1 *Services of student nurse or hospital intern.* (a) Services performed as a student nurse in the employ of a hospital or a nurses' training school are excepted from employment, if the student nurse is enrolled and regularly attending classes in a nurses' training school and such nurses' training school is chartered or approved pursuant to State law.

(b) Services performed as an intern (as distinguished from a resident doctor) in the employ of a hospital are excepted from employment, if the intern has completed a 4 years' course in a medical school chartered or approved pursuant to State law.

§ 31.3306 (c) (14) *Statutory provisions; definitions; employment; services of insurance agent or solicitor.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(14) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

§ 31.3306 (c) (14)-1 *Services of insurance agent or solicitor.* (a) Services performed for a person by an employee as an insurance agent or insurance solicitor are excepted from employment, if all such services performed for such person by such individual are performed for remuneration solely by way of commission.

(b) If all or any part of the remuneration of an employee for services performed as an insurance agent or insurance solicitor for a person is a salary, none of his services performed as an insurance agent or insurance solicitor for such person are excepted from employment, and his total remuneration (for example, salary, or salary and commissions) for such services is included for purposes of computing the tax.

§ 31.3306 (c) (15) *Statutory provisions; definitions; employment; services in delivery or distribution of newspapers, shopping news, or magazines.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(15) (A) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

§ 31.3306 (c) (15)-1 *Services in delivery or distribution of newspapers, shopping news, or magazines*—(a) *Services of individuals under age 18.* Services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution (as, for example, by a regional distributor) to any point for subsequent delivery or distribution, are excepted from employment. Thus, the services performed by an employee under the age of 18 in making house-to-house delivery or sale of newspapers or shopping news, including handbills and other similar types of advertising material, are excepted. The services are excepted irrespective of the form or method of compensation. Incidental services by the employee who makes the house-to-house delivery, such as services in assembling newspapers, are considered to be within the exception. The exception continues only during the time that the employee is under age of 18.

(b) *Services of individuals of any age.* Services performed by an employee in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, are excepted from employment. The services are excepted whether or not the employee is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back. Moreover, the services are excepted without regard to the age of the employee. Services performed other than at the time of sale to the ultimate consumer are not within the exception. Thus, the services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer are not within the exception. However, incidental services by the employee who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, are considered to be within the exception.

§ 31.3306 (c) (16) *Statutory provisions; definitions; employment; services in employ of international organization.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(16) Service performed in the employ of an international organization; or

§ 31.3306 (c) (16)-1 *Services in employ of international organization.* (a) Subject to the provisions of section 1 of the International Organizations Immunities Act, services performed in the employ of an international organization as defined in section 7701 (a) (18) are excepted from employment.

(b) (1) Section 7701 (a) (18) provides as follows:

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(18) *International organization.* The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U. S. C. 288-288f).

(2) Section 1 of the International Organizations Immunities Act provides as follows:

SEC. 1. [*International Organizations Immunities Act.*] For the purposes of this title [International Organizations Immunities Act], the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international

organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

§ 31.3306 (c) (17) *Statutory provisions; definitions; employment; fishing services.*

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * * *

(17) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) Service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States).

§ 31.3306 (c) (17)-1 *Fishing services*—(a) *In general.* Subject to the limitations prescribed in paragraphs (b) and (c) of this section, services described in this paragraph are excepted from employment. Services performed by an individual in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shell-fish (for example, oysters, clams, and mussels), crustacea (for example, lobsters, crabs, and shrimps), sponges, seaweeds, or other aquatic forms of animal and vegetable life are excepted. The exception extends to services performed as an officer or member of the crew of a vessel while the vessel is engaged in any such activity whether or not the officer or member of the crew is himself so engaged. In the case of an individual who is engaged in any such activity in the employ of any person, the services performed, by such individual in the employ of such person, as an ordinary incident to any such activity are also excepted. Similarly, for example, the shore services of an officer or member of the crew of a vessel engaged in any such activity are excepted if such services are an ordinary incident to any such activity. Services performed as an ordinary incident to any such activity may include, for example, services performed in such cleaning, icing, and packing of fish as are necessary for the immediate preservation of the catch.

(b) *Salmon and halibut fishing.* Services performed in connection with the catching or taking of salmon or halibut, for commercial purposes, are not within the exception. Thus, neither the services of an officer or member of the crew of a vessel (irrespective of its tonnage) which is engaged in the catching or taking of salmon or halibut, for commercial purposes, nor the services of any other individual in connection with such activity, are within the exception.

(c) *Vessels of more than 10 net tons.* Services described in paragraph (a) of this section performed on or in connection with a vessel of more than 10 net tons are not within the exception. For purposes of the exception, the tonnage of the vessel shall be determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.

§ 31.3306 (d) *Statutory provisions; definitions; included and excluded services.*

SEC. 3306. *Definitions.* * * *

(d) *Included and excluded service.* For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c) (9).

§ 31.3306 (d)-1 *Included and excluded services.* (a) If a portion of the services performed by an employee for the person employing him during a pay period constitutes employment, and the remainder does not constitute employment, all the services of the employee during the period shall for purposes of the tax be treated alike, that is, either all as included or all as excluded. The time during which the employee performs services which under section 3306 (c) constitute employment, and the time during which he performs services which under such section do not constitute employment, within the pay period, determine whether all the services during the pay period shall be deemed to be included or excluded.

(b) If one-half or more of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then all the services of that employee for that person in that pay period shall be deemed to be employment.

(c) If less than one-half of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then none of the services of that employee for that person in that pay period shall be deemed to be employment.

(d) The application of the provisions of paragraphs (a), (b), and (c) of this section may be illustrated by the following examples:

Example (1). Employer B, who operates a farm and a store, employs A to perform services in connection with both operations. A's services on the farm are such that they are excepted as agricultural labor and do not constitute employment, and his services in the store constitute employment. He is paid at the end of each month. During a particular month A works 120 hours on the farm and 80 hours in the store. None of A's services during the month are deemed to be employment, since less than one-half of his services during the month constitutes employment. During another month A works 75 hours on the farm and 120 hours in the store. All of A's services during the month are deemed to be employment, since one-half or more of his services during the month constitutes employment.

Example (2). Employee C is employed as a maid by D, a medical doctor, whose home and office are located in the same building. C's services in the home are excepted as domestic service and do not constitute employment, and her services in the office constitute employment. She is paid each week. During a particular week C works 20 hours in the home and 20 hours in the office. All of C's services during that week are deemed to be employment, since one-half or more of her services during the week constitutes employment. During another week C works 22 hours in the home and 15 hours in the office. None of C's services during that week are deemed to be employment, since less than one-half of her services during the week constitutes employment.

(e) For purposes of this section, a "pay period" is the period (of not more than 31 consecutive calendar days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. Thus, if the periods for which payments of remuneration are made to the employee by such person are of uniform duration, each such period constitutes a "pay period". If, however, the periods occasionally vary in duration, the "pay period" is the period for which a payment of remuneration is ordinarily made to the employee by such person, even though that period does not coincide with the actual period for which a particular payment of remuneration is made. For example, if a person ordinarily pays a particular employee for each calendar week at the end of the week, but the employee receives a payment in the middle of the week for the portion of the week already elapsed, and receives the remainder at the end of the week, the "pay period" is still the calendar week; or if, instead, that employee is sent on a trip by such person and receives at the end of the third week a single remuneration payment for 3 weeks' services, the "pay period" is still the calendar week.

(f) If there is only one period (and such period does not exceed 31 consecutive calendar days) for which a payment of remuneration is made to the employee by the person employing him, such period is deemed to be a "pay period" for purposes of this section.

(g) The rules set forth in this section do not apply (1) with respect to any services performed by the employee for the person employing him if the periods for which such person makes payments

of remuneration to the employee vary to the extent that there is no period "for which a payment of remuneration is ordinarily made to the employee", or (2) with respect to any services performed by the employee for the person employing him if the period for which a payment of remuneration is ordinarily made to the employee by such person exceeds 31 consecutive calendar days, or (3) with respect to any service performed by the employee for the person employing him during a pay period if any of such service is excepted by section 3306 (c) (9) (see § 31.3306 (c) (9)-1).

(h) If during any period for which a person makes a payment of remuneration to an employee only a portion of the employee's services constitutes employment, but the rules prescribed in this section are not applicable, the tax attaches with respect to such services as constitute employment as defined in section 3306 (c) (provided such person is an employer as defined in section 3306 (a) and § 31.3306 (a)-1).

§ 31.3306 (e) *Statutory provisions; definitions; State agency.*

SEC. 3306. *Definitions.* * * *

(e) *State agency.* For purposes of this chapter, the term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

§ 31.3306 (f) *Statutory provisions; definitions; unemployment fund.*

SEC. 3306. *Definitions.* * * *

(f) *Unemployment fund.* For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (49 Stat. 640; 52 Stat. 1104, 1105; 42 U. S. C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(1) An amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(2) The amounts specified by section 903 (c) (2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices.

§ 31.3306 (g) *Statutory provisions; definitions; contributions.*

SEC. 3306. *Definitions.* * * *

(g) *Contributions.* For purposes of this chapter, the term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

§ 31.3306 (h) *Statutory provisions; definitions; compensation.*

SEC. 3306. *Definitions.* * * *

(h) *Compensation.* For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

§ 31.3306 (i) *Statutory provisions; definitions; employee.*

SEC. 3306. *Definitions.* * * *

(i) *Employee.* For purposes of this chapter, the term "employee" includes an officer of a corporation, but such term does not include—

(1) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or

(2) Any individual (except an officer of a corporation) who is not an employee under such common law rules.

§ 31.3306 (i)-1 *Who are employees.* (a) Every individual is an employee if the relationship between him and the person for whom he performs services is the legal relationship of employer and employee. (The word "employer" as used in this section only, notwithstanding the provisions of § 31.3306 (a)-1, includes a person who employs one or more employees.)

(b) Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

(c) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(d) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(e) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is considered not to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(f) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, as not to constitute employment (see § 31.3306 (c)-2).

§ 31.3306 (j) *Statutory provisions; definitions; State.*

SEC. 3306. *Definitions.* * * *

(j) *State.* For purposes of this chapter, the term "State" includes Alaska, Hawaii, and the District of Columbia.

§ 31.3306 (k) *Statutory provisions; definitions; agricultural labor.*

SEC. 3306. *Definitions.* * * *

(k) *Agricultural labor.* For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, § 3; 12 U. S. C. 1141j), or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be appli-

cable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

SEC. 15. *Miscellaneous provisions* [*Agricultural Marketing Act*]. * * *

(g) As used in this Act, the term "agricultural commodity" includes * * * crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923 [42 Stat. 1435; 7 U. S. C. 92 (c), (h)].

SEC. 2. [The Naval Stores Act.] That, when used in this act—

* * * * * *

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.

* * * * * *

(h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.

§ 31.3306 (k)-1 *Agricultural labor*—(a) *In general.* (1) Services performed by an employee for the person employing him which constitute "agricultural labor" as defined in section 3306 (k) are excepted from employment by reason of section 3306 (c) (1). See § 31.3306 (c) (1)-1. The term "agricultural labor" as defined in section 3306 (k) includes services of the character described in paragraphs (b), (c), (d), and (e) of this section. In general, however, the term does not include services performed in connection with forestry, lumbering, or landscaping.

(2) The term "farm" as used in this subpart includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets) do not constitute "farms".

(b) *Services described in section 3306 (k) (1).* Services performed on a farm by an employee of any person in connection with any of the following activities constitute agricultural labor:

(1) The cultivation of the soil;

(2) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(3) The raising or harvesting of any other agricultural or horticultural commodity.

(c) *Services described in section 3306 (k) (2).* (1) The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms constitute agricultural labor, if the major part of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

(2) The services described in subparagraph (1) (i) of this paragraph may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

(3) Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties, do not constitute agricultural labor.

(d) *Services described in section 3306 (k) (3).* Services performed by an employee in the employ of any person in connection with any of the following operations constitute agricultural labor without regard to the place where such services are performed:

(1) The ginning of cotton;

(2) The hatching of poultry;

(3) The raising or harvesting of mushrooms;

(4) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes;

(5) The production or harvesting of maple sap or the processing of maple sap into maple sirup or maple sugar (but not the subsequent blending or other processing of such sirup or sugar with other products); or

(6) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(e) *Services described in section 3306 (k) (4).* (1) (i) Services performed by an employee in the employ of a farmer or a farmers' cooperative organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity, other than fruits and vegetables (see subparagraph (2) of this paragraph), produced by such farmer or farmer-members of such organization or group of farmers constitute agricultural labor, if such services are performed as an incident to ordinary farming operations.

(ii) Generally services are performed "as an incident to ordinary farming operations" within the meaning of this paragraph if they are services of the character ordinarily performed by the employees of a farmer or of a farmers' cooperative organization or group as a prerequisite to the marketing, in its unmanufactured state, of any agricultural or horticultural commodity produced by such farmer or by the members of such farmers' organization or group. Services performed by employees of such farmer or farmers' organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of commodities produced by persons other than such farmer or members of such farmers' organization or group are not performed "as an incident to ordinary farming operations".

(2) Services performed by an employee in the employ of any person in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of fruits and vegetables, whether or not of a perishable nature, constitute agricultural labor, if such services are performed as an incident to the preparation of such fruits and vegetables for market. For example, if services in the sorting, grading, or storing of fruits, or in the cleaning of beans, are performed as an incident to their preparation for market, such services may constitute agricultural labor, whether performed in the employ of a farmer, a farmers' cooperative, or a commercial handler of such commodities.

(3) The services described in subparagraphs (1) and (2) of this paragraph do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the services described in such subparagraphs must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (c) of this section.

§ 31.3306 (l) *Statutory provisions; definitions; certain employees of Bonneville Power Administrator.*

SEC. 3306. *Definitions.* * * *

(l) *Certain employees of Bonneville Power Administrator.*

[Repealed, effective with respect to services performed after 1954, by sec. 4 (c), Act of Sept. 1, 1954, 68 Stat. 1135]

§ 31.3306 (m) *Statutory provisions; definitions; American vessel.*

SEC. 3306. *Definitions.* * * *

(m) *American vessel.* For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or

numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

§ 31.3306 (m)–1 *American vessel.* The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii). For provisions relating to services performed outside the United States on or in connection with an American vessel, see § 31.3306 (c)–2 (c).

§ 31.3306 (n) *Statutory provisions; definitions; vessels operated by general agents of United States.*

SEC. 3306. *Definitions.* * * *

(n) *Vessels operated by general agents of United States.* Notwithstanding the provisions of subsection (c) (6), service performed on or after July 1, 1953, by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel—

(1) Owned by or bareboat chartered to the United States and

(2) Whose business is conducted by a general agent of the Secretary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection.

§ 31.3306 (n)–1 *Services on American vessel whose business is conducted by general agent of Secretary of Commerce.* (a) Section 3306 (n) and this section of the regulations apply with respect only to services performed by an officer or member of the crew of an American vessel (1) which is owned by or bareboat chartered to the United States, and (2) whose business is conducted by a general agent of the Secretary of Commerce. Whether services performed by such an officer or member of a crew under the above conditions constitute employment is determined under section 3306 (c) and (n), but without regard to section 3306 (c) (6). See § 31.3306 (c) (6)–1, relating to services performed in the employ of the United States and instrumentalities thereof. If, without regard to section 3306 (c) (6), such services constitute employment, they are not excepted from employment by reason of the fact that they are performed on or in connection with an American vessel which is owned by or bareboat chartered to the United States and whose business is conducted by a general agent of the Secretary of Commerce, that is, such services are not excepted from employment by section 3306 (c) (6). For provisions relating to services performed within the United States and services performed outside the United States which constitute employment, see § 31.3306 (c)–2.

(b) The expression "officer or member of the crew" includes the master or officer in charge of the vessel, however designated, and every individual, subject to his authority, serving on board and contributing in any way to the operation and welfare of the vessel. Thus, the expression includes, for example, the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, and deck hands.

(c) An employee of the United States who performs services as an officer or member of the crew of an American vessel which is owned by or bareboat chartered to the United States and whose business is conducted by a general agent of the Secretary of Commerce shall be deemed, under section 3306 (n), to be performing services for such general agent rather than for the United States. Any such general agent of the Secretary of Commerce is considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account. Each such general agent who in his capacity as such qualifies as an employer under section 3306 (a) is with respect to each calendar year for which he so qualifies subject to the tax imposed by section 3301, and to all the requirements imposed upon an employer as defined in section 3306 (a) by the regulations in this part, with respect to services which constitute employment by reason of section 3306 (n) and this section of the regulations.

§ 31.3307 *Statutory provisions; deductions as constructive payments.*

SEC. 3307. *Deductions as constructive payments.* Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

§ 31.3307–1 *Deductions by an employer from remuneration of an employee.* Any amount deducted by an employer from the remuneration of an employee is considered to be a part of the employee's remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made. It is immaterial that any act of Congress or the law of any State requires or permits such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

§ 31.3308 *Statutory provisions; short title.*

SEC. 3308. *Short title.* This chapter may be cited as the "Federal Unemployment Tax Act."

[F. R. Doc. 56–7028; Filed, Sept. 4, 1956; 8:45 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 51]

UNITED STATES STANDARDS FOR BEET GREENS [1]

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Department of Agriculture is considering the issuance of United States Standards for Beet Greens pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U. S. C. 1621 et seq.).

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D. C., not later than 30 days after publication hereof in the FEDERAL REGISTER.

The proposed standards are as follows:

GENERAL

Sec.
51.2860 General.

GRADES

51.2861 U. S. No. 1.

UNCLASSIFIED

51.2862 Unclassified.

APPLICATION OF TOLERANCES

51.2863 Application of tolerances.
51.2864 Basis for calculating percentages.

DEFINITIONS

51.2865 Similar varietal characteristics.
51.2866 Fresh.
51.2867 Fairly clean.

[1] Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

Sec.
51.2868 Fairly tender.
51.2869 Well trimmed.
51.2870 Damage.
51.2871 Diameter.
51.2872 Serious damage.

AUTHORITY: §§ 51.2860 to 51.2872 issued under sec. 205, 60 Stat. 1090, as amended; 7 U. S. C. 1624.

GENERAL

§ 51.2860 *General.* The standards contained in this subpart are applicable to beet greens consisting of either plants (with or without attached roots) or cut leaves, but they shall not be applicable to a mixture of plants and cut leaves in the same container. The standards apply only to the common red-rooted table varieties of beets (Beta vulgaris) but not to mangel wurzel varieties primarily grown for stock feed, or to sugar beets (Beta saccarifera).

GRADES

§ 51.2861 *U. S. No. 1.* "U. S. No. 1" consists of beet greens of similar varietal characteristics which are fresh, fairly clean, fairly tender, well trimmed and free from other kinds of leaves, weeds, grass or other foreign material, and decay and which are free from damage caused by discoloration, freezing, disease, insects or mechanical or other means.

(a) In the case of beet greens with roots attached, the roots shall be free from damage by any cause and the maximum diameter of the root shall not be larger than five-eighths inch.

(b) The leaf blades of beet greens shall not be longer than five and one-half inches.

(c) In order to allow for variations incident to proper grading and handling, the following tolerances shall be permitted (see §§ 51.2863 and 51.2864):

(1) *For over-size roots.* 5 percent for beet greens with roots in any lot which are larger than five-eights inch in diameter;

(2) *For over-size leaf blades.* 3 percent for beet leaves in any lot which are longer than five and one-half inches;

(3) *For mixtures of whole plants and leaves.* Not more than 3 percent of the beet greens may consist of cut leaves in a lot consisting of plants, or of plants in a lot consisting of cut leaves;

(4) *For leaves other than beet leaves, weeds, grass or other foreign material.* Not more than 3 pieces in a one-pound sample; and,

(5) *For other defects.* Not more than a total of 10 percent, but not more than one-half of this tolerance, or 5 percent, shall be allowed for defects causing serious damage, including therein not more than one percent for decay.

UNCLASSIFIED

§ 51.2862 *Unclassified.* "Unclassified" consists of beet greens which have not been classified in accordance with the foregoing grade. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

APPLICATION OF TOLERANCES

§ 51.2863 *Application of tolerances.* (a) The contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: *Provided,* That the averages for the entire lot are within the tolerances specified for the grade:

(1) For a tolerance of 10 percent or more, individual packages in any lot may contain not more than one and one-half times the tolerances specified; and,

(2) For a tolerance of less than 10 percent, individual packages in any lot may contain not more than double the tolerance specified.

§ 51.2864 *Basis for calculating percentages.* Percentages shall be calculated on the basis of weight or an equivalent basis, except that the amount of leaves other than beet leaves, blades of grass, weeds or parts of weeds or other foreign material shall be calculated on the basis of count, using one pound of beet greens as the sample. In inspecting the sample, the unit shall be the plant or leaf exactly as it occurs in the sample. A plant or portion of plant shall not be broken to remove the defective portion, but shall be considered as a unit.

DEFINITIONS

§ 51.2865 *Similar varietal characteristics.* "Similar varietal characteristics" means that the beet greens in any container are similar in color and type.

§ 51.2866 *Fresh.* "Fresh" means that the greens are not more than slightly wilted.

§ 51.2867 *Fairly clean.* "Fairly clean" means that the individual leaf or plant is reasonably free from dirt or other foreign material and that the general appearance of the beet greens in the container is not materially affected.

§ 51.2868 *Fairly tender.* "Fairly tender" means that the beet greens are not tough, or excessively fibrous.

§ 51.2869 *Well trimmed.* "Well trimmed" in the case of cut leaf beet greens means that the leaf stem or petiole is not more than the length of the leaf blade.

§ 51.2870 *Damage.* "Damage" means any defect which materially affects the appearance, or the edible or shipping quality of the individual leaf, or plant, or the general appearance of the beet greens in the container. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as a damage:

(a) Discoloration when the appearance of the individual leaf or plant is materially affected by yellowing, spotting, or any other type of discoloration, except that leaves showing a reddish color, often caused by cold weather, shall not be considered as damaged by discoloration. Plants which have small dried, withered, or slightly yellowed leaves at the base of the plant shall not be considered as damaged by discoloration unless the general appearance of the plant or of the plants in the container is materially affected; and,

(b) Mechanical damage when the individual leaf is badly crushed, torn or broken.

§ 51.2871 *Diameter.* "Diameter" means the greatest dimension of the root measured at right angles to a line from the center of the crown to the base of the root.

§ 51.2872 *Serious damage.* "Serious damage" means any defect which seriously affects the appearance, or the edible or shipping quality of the individual beet leaf, or plant, or the general appearance of the beet greens in the container. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(a) Discoloration when the individual leaf, or plant, is badly discolored;

(b) Insects when the individual leaf or plant is noticeably infested, or when it is seriously damaged by them; and,

(c) Decay.

Dated: August 30, 1956.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F. R. Doc. 56-7092; Filed, Sept. 4, 1956; 8:53 a. m.]

[7 CFR Part 51]

UNITED STATES STANDARDS FOR SPINACH PLANTS [1]

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the United States Department of Agriculture is considering the revision of United States Standards for Spinach Plants pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U. S. C. 1621 et seq.).

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed standards should file the same with the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D. C., not later than 30 days after publication hereof in the FEDERAL REGISTER.

The proposed standards are as follows:

GRADES

Sec.
51.2880 U. S. No. 1.
51.2881 U. S. Commercial.

UNCLASSIFIED

51.2882 Unclassified.

APPLICATION OF TOLERANCES

51.2883 Application of tolerances.

DEFINITIONS

51.2884 Similar varietal characteristics.
51.2885 Well grown.
51.2886 Fresh.
51.2887 Fairly clean.
51.2888 Well trimmed.
51.2889 Damage.
51.2890 Serious damage.

AUTHORITY: §§ 51.2880 to 51.2890 issued under sec. 205, 60 Stat. 1090, as amended; 7 U. S. C. 1624.

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[1] Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

GRADES

§ 51.2880 *U. S. No. 1.* "U. S. No. 1" consists of spinach plants of similar varietal characteristics which are well grown, fresh, fairly clean, well trimmed, and which are free from decay, and free from damage caused by coarse stalks or seed stems, discoloration, foreign material, second growth, freezing, disease, insects or mechanical or other means.

(a) In order to allow for variations incident to proper grading and handling, not more than a total of 10 percent, by weight, of the spinach plants in any lot may fail to meet the requirements of the grade: *Provided,* That not more than one-half of this amount, or 5 percent, shall be allowed for serious damage, including therein not more than 1 percent for decay.

§51.2881 *U. S. Commercial.* "U. S. Commercial" consists of spinach plants which meet all the requirements for U. S. No. 1 grade except that the spinach plants need only be free from damage by dirt and except for the increased tolerances specified in this section.

(a) In order to allow for variations incident to proper grading and handling, not more than a total of 20 percent, by weight, of the spinach plants in any lot may fail to meet the requirements of the grade: *Provided,* That not more than one-half of this amount, or 10 percent, shall be allowed for serious damage, including therein not more than 1 percent for decay.

UNCLASSIFIED

§ 51.2882 *Unclassified.* "Unclassified" consists of spinach plants which have not been classified in accordance with either of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

APPLICATION OF TOLERANCES

§ 51.2883. *Application of tolerances.* (a) The contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: *Provided,* That the averages for the entire lot are within the tolerances specified for the grades:

(1) For a tolerance of 10 percent or more, individual packages in any lot may contain not more than one and one-half times the tolerance specified; and,

(2) For a tolerance of less than 10 percent, individual packages in any lot may contain not more than double the tolerance specified.

DEFINITIONS

§ 51.2884 *Similar varietal characteristics.* "Similar varietal characteristics" means that the spinach shall be of one type, such as crinkly leaf type or flat leaf type. No mixture of types shall be permitted which materially affects the appearance of the spinach in the container.

§ 51.2885 *Well grown.* "Well grown" means that the plants are not stunted or poorly developed.

§ 51.2886 *Fresh.* "Fresh" means that the spinach is not more than slightly wilted.

§ 51.2887 *Fairly clean.* "Fairly clean" means that the individual spinach plant is reasonably free from dirt or other adhering foreign matter, and that the general appearance of the spinach plants in the container is not materially affected.

§ 51.2888 *Well trimmed.* "Well trimmed" means that the spinach plant is cut at the crown of the root, or cut so that the root is not longer than 1 inch.

§ 51.2889 *Damage.* "Damage" means any defect which materially affects the appearance, or the edible or shipping quality of the individual plant, or the general appearance of the spinach in the container. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(a) Coarse central stalks or seedstems when causing more than 10 percent waste of the individual plant; or when the flower buds are plainly visible;

(b) Discoloration when materially affecting the general appearance of the plant, except that heart leaves which are yellow or partially blanched shall not be considered as damaging the plant; and,

(c) Foreign material when materially affecting the edible quality, or the general appearance of the spinach in the container. Foreign material means weeds, grass, or any loose material other than spinach.

§ 51.2890 *Serious damage.* "Serious damage" means any defect which seriously affects the appearance, or the edible or shipping quality of the individual plant, or the general appearance of the spinach in the container. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(a) Discoloration when the plants are badly discolored;

(b) Insects when the plant is noticeably infested, or when it is seriously damaged by them;

(c) Mildew, white rust or similar diseases when seriously affecting the edible quality or appearance of the plant; and,

(d) Decay.

Dated: August 30, 1956.

[SEAL] ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F. R. Doc. 56-7093; Filed, Sept. 4, 1956; 8:53 a. m.]

[7 CFR Part 922]

VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

ORDER DIRECTING THAT A REFERENDUM BE CONDUCTED; DESIGNATION OF REFERENDUM AGENTS TO CONDUCT SUCH REFERENDUM; AND DETERMINATION OF REPRESENTATIVE PERIOD

Pursuant to the applicable provisions of Marketing Agreement No. 131 and Order No. 22, as amended (7 CFR Part 922; 21 F. R. 4392), and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), it is hereby directed that a referendum be conducted among the growers who, during the period February 1, 1955, through January 31, 1956, (which period is hereby determined to be a representative period for the purposes of such referendum), were engaged, in the State of Arizona and that part of the State of California, south of the 37th Parallel, in the production of Valencia oranges for market to determine whether such growers favor continuation of the said marketing agreement and order. Warren C. Noland and Edward H. Bixby of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, are hereby designated as agents of the Secretary of Agriculture to perform, jointly, or severally, the following functions in connection with the referendum:

(a) Conduct said referendum in the manner herein prescribed:

(1) By giving opportunity for each of the aforesaid growers to cast his ballot, in the manner herein authorized, relative to the aforesaid continuance of the marketing agreement and amended order, on a copy of the appropriate ballot form. A cooperative association of such growers, bona fide engaged in marketing Valencia oranges grown in the aforesaid production area or in rendering services for or advancing the interests of the growers of such Valencia oranges, may vote for the growers who are members of, stockholders in, or under contract with, such cooperative association (such vote to be cast on a copy of the appropriate ballot form), and the vote of such cooperative association shall be considered as the vote of such growers.

(2) By determining the time of commencement and termination of the period of the referendum and by giving public notice, as prescribed in (a) (3) hereof, (i) of the time during which the referendum will be conducted, (ii) that any ballot may be cast by mail, and (iii) that all ballots so cast must be addressed to Warren C. Noland, Field Representative, Fruit and Vegetable Division, Agricultural Marketing Service, 1031 South Broadway, Room 1005, Los Angeles 15, California, and the time such ballots must be received.

(3) By giving public notice (i) by utilizing available agencies of public information (without advertising expense), including both press and radio facilities in the State of Arizona and designated part of California; (ii) by mailing a notice thereof (including a copy of the appropriate ballot form) to each such cooperative association and to each grower whose name and address are known; and (iii) by such other means as said referendum agents or any of them may deem advisable.

(4) By conducting meetings of growers and arranging for balloting at the meeting places, if said referendum agents or any of them determine that voting shall be at meetings. At each such meeting, balloting shall continue until all of the growers who are present, and who desire

to do so, have had an opportunity to vote. Any grower may cast his ballot at any such meeting in lieu of voting by mail.

(5) By giving ballots to growers at the meetings, and receiving any ballots when they are cast.

(6) By securing the name and address of each person casting a ballot, and inquiring into the eligibility of such person to vote in the referendum.

(7) By giving public notice of the time and place of each meeting authorized hereunder by posting a notice thereof, at least two days in advance of each such meeting, at each such meeting place, and in two or more public places within the applicable area; and, so far as may be practicable, by giving additional notice in the manner prescribed in paragraph (a) (3) hereof.

(8) By appointing such person or persons as are deemed necessary or desirable to assist said agents in performing their functions hereunder. Each person so appointed shall serve without compensation and may be authorized, by said referendum agents or any of them, to perform any or all of the functions set forth in paragraphs (a) (5), (6), (7), and (8) hereof (which, in the absence of such appointment of subagents, shall be performed by said referendum agents) in accordance with the requirements set forth; and shall forward to Warren C. Noland, Field Representative, Fruit and Vegetable Division, Agricultural Marketing Service, 1031 South Broadway, Room 1005, Los Angeles 15, California, immediately after the close of the referendum; the following:

(i) A register containing the name and address of each grower to whom a ballot form was given;

(ii) A register containing the name and address of each grower from whom an executed ballot was received;

(iii) All of the ballots received by the respective referendum agent in connection with the referendum, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and which were received by the respective agent during the referendum period;

(iv) A statement showing when and where each notice of the referendum posted by said agent was posted and, if the notice was mailed to growers, the mailing list showing the names and addresses to which the notice was mailed and the time of such mailing, and

(v) A detailed statement reciting the method used in giving publicity to such referendum.

(b) Upon receipt by Warren C. Noland of all ballots cast in accordance with the provisions hereof, he shall canvass the ballots and prepare and submit to the Secretary a detailed report covering the results of the referendum, the manner in which the referendum was conducted, the extent and kind of public notice given, and all other information pertinent to the full analysis of the referendum and its results; and shall forward such report, together with the ballots and other information and data, to the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C.

(c) Each referendum agent and appointee pursuant hereto shall not refuse to accept a ballot submitted or cast; but should they, or any of them, deem that a ballot should be challenged for any reason, or if such ballot is challenged by any other person, said agent or appointee shall endorse above his signature, on the back of said ballot, a statement that such ballot was challenged, by whom challenged, and the reasons therefor; and the number of such challenged ballots shall be stated when they are forwarded as provided herein.

(d) All ballots shall be treated as confidential. The Director of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby authorized to prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the said referendum agents and appointees in conducting said referendum.

Copies of the text of the aforesaid marketing agreement and amended order may be examined in the Office of the Hearing Clerk, United States Department of Agriculture, Washington, D. C., and at the Western Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, 1031 South Broadway, Room 1005, Los Angeles 15, California.

Ballots to be cast in the referendum may be obtained from any referendum agent, and any appointee hereunder.

Dated: August 30, 1956.

[SEAL] EARL L. BUTZ,
Assistant Secretary.

[F. R. Doc. 56-7091; Filed, Sept. 4, 1956; 8:53 a. m.]

[7 CFR Parts 927, 990]

[Docket Nos. AO-71-A-32; AO-284]

HANDLING OF MILK IN NEW YORK METROPOLITAN MARKETING AREA AND IN NORTHERN NEW JERSEY

SUPPLEMENTAL NOTICE CONCERNING PROCEDURE

Notice of hearing was issued on May 18, 1956 (21 F. R. 3537) and a supplemental notice on May 29, 1956 (21 F. R. 3799) on proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the New York metropolitan milk marketing area and on a proposed marketing agreement and order regulating the handling of milk in the Northern New Jersey milk marketing area.

During the hearing thus far held pursuant to such notices, testimony has been submitted (1) regarding proposals for a separate new milk marketing order for Northern New Jersey (together with proposed coordinating amendments to the New York milk marketing order), and (2) with reference to proposals to expand the New York metropolitan milk marketing area to include additional territory within the State of New York as specified in the notices of hearing.

After considering the complexity of the issues and the progress made thereon since the beginning of the hearing on June 18, 1956, it is determined that it is in the interest of orderly and expeditious procedure to separate and give prior consideration to those proposals contained in the May 18 notice of hearing which concern expansion of the present New York metropolitan milk marketing area, together with the proposals in the supplemental notice of hearing, dated May 29, 1956, and such other proposals to amend the New York milk marketing order as may be appropriate or necessary to such proposed expansion of the Order No. 27 marketing area.

Accordingly, notice is hereby given that beginning September 10, 1956, at a hearing place to be designated by the presiding officer, and continuing until the presentation of evidence on these issues has been completed, the hearing will be confined to the reception of evidence on the proposals to expand the New York metropolitan marketing area and the related issues hereinbefore more fully described.

Upon the completion of the evidence relating to such issues the presiding officer will close and certify the record as to such issues and will fix and announce a time for filing briefs thereon. Thereafter, the hearing will continue with the reception of evidence upon the other issues presented by the notices of hearing, and the entire record as theretofore and thereafter made will be the record upon such remaining issues, including, but not limited to, any further amendment of the provisions of Order No. 27, as amended, as may be appropriate or necessary to coordinate Order No. 27 and any milk marketing order that may be issued for a Northern New Jersey milk marketing area.

It is hereby ordered that this notice be filed with the Hearing Clerk, United States Department of Agriculture, and published in the FEDERAL REGISTER.

Done at Washington, D. C., this 29th day of August, 1956.

[SEAL] EARL L. BUTZ,
Acting Secretary.

[F. R. Doc. 56-7075; Filed, Sept. 4, 1956; 8:49 a. m.]

Commodity Stabilization Service

[7 CFR Part 729]

PEANUTS

NOTICE OF INTENTION TO FORMULATE AND ISSUE REGULATIONS GOVERNING ACREAGE ALLOTMENTS AND MARKETING QUOTAS FOR PEANUTS AND OF RELATED MATTERS

Pursuant to authority contained in the applicable provisions of the Agricultural Adjustment Act of 1938, as amended, (7 U. S. C. 1301-1393) the Secretary of Agriculture is preparing to formulate and issue regulations governing the establishment of farm allotments and normal yields, the determination of farm peanut acreages, the issuance of marketing cards, the identification of peanuts, the collection and refund of penalties, the records and reports incident to administration of peanut allot-

ment and marketing quota programs, and related matters for the 1957 and subsequent crops of peanuts. It is proposed that the regulations will be substantially the same as the 1956 crop regulations (20 F. R. 6033, 7583; 21 F. R. 3867, 6057).

The Secretary will, as required by sections 358 (a) and (b) of said act (7 U. S. C. 1358 (a) and (b)), proclaim the national marketing quota for peanuts before December 1, 1956, for the crop to be produced in 1957 and will announce a date, which shall not be later than December 15, 1956, on which a referendum of farmers who were engaged in the production of the 1956 crop of peanuts will be held to determine whether such farmers are in favor of or opposed to peanut marketing quotas for the crop of peanuts produced in the calendar years 1957, 1958 and 1959.

Prior to the Secretary taking any such action, consideration will be given to any data, views, and recommendations relating thereto which are submitted in writing to the Director, Oils and Peanut Division, Commodity Stabilization Service, U. S. Department of Agriculture, Washington 25, D. C. All submissions must be postmarked not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Done at Washington, D. C., this 30th day of August 1956. Witness my hand and seal of the Department of Agriculture.

[SEAL] EARL L. BUTZ,
Assistant Secretary of Agriculture.

[F. R. Doc. 56-7094; Filed, Sept. 4, 1956; 8:53 a. m.]

FEDERAL TRADE COMMISSION

[16 CFR Part 117]

[File No. 21-267]

SCHOOL SUPPLY AND EQUIPMENT INDUSTRY

NOTICE OF HEARING AND OF OPPORTUNITY TO PRESENT VIEWS, SUGGESTIONS, OR OBJECTIONS

Opportunity is hereby extended by the Federal Trade Commission to any and all persons, firms, corporations, organizations, or other parties, including farm, labor, and consumer groups, affected by or having an interest in the proposed trade practice rules for the School Supply and Equipment Industry (which constitute a proposed revision and extension of the rules for the School Supplies and Equipment Distributing Industry as promulgated by the Commission on November 12, 1936), to present to the Commission their views concerning said rules, including such pertinent information, suggestions, or objections as they may desire to submit, and to be heard in the premises. For this purpose they may obtain copies of the proposed rules upon request to the Commission. Such views, information, suggestions, or objections may be submitted by letter, memorandum, brief, or other communication, to be filed with the Commission not later than September 26, 1956. Opportunity to be heard orally will be afforded at the hearing beginning at 10 a. m., d. s. t., September 26, 1956, in Room 332, Federal Trade Commission Building, Pennsylvania Avenue at Sixth Street NW., Washington, D. C., to any such persons, firms, corporations, organizations, or other parties, who desire to appear and be heard. After due consideration of all matters presented in writing or orally, the Commission will proceed to final action on the proposed rules.

The industry is composed of persons, firms, corporations, and organizations engaged in the manufacture, sale, or distribution of equipment and supplies (except text books) sold for use by educational institutions and organizations for educational, administrative, recreational, maintenance, or other purposes, or of parts or accessories for such products.

These proceedings were instituted pursuant to an industry application and are directed to the elimination and prevention of such acts and practices as are deemed violative of statutes administered by the Federal Trade Commission.

Issued: September 4, 1956.

By direction of the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 56-7175; Filed, Sept. 4, 1956; 10:59 a.m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Classification No. 120]

NEVADA

SMALL TRACT CLASSIFICATION

1. Pursuant to authority delegated to me by Bureau Order No. 541, dated April 21, 1954 (19 F. R. 2473), I hereby classify the following described public lands, totaling 480 acres in Washoe County, Nevada, as suitable for lease and sale for residence purposes under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U. S. C. 682a), as amended:

MOUNT DIABLO MERIDIAN

T. 19 N., R. 20 E.,
Sec. 34, E½, E½NW¼, NW¼NW¼, NE¼SW¼.

2. The classification of the above described lands by this order segregates them from all appropriations, including locations under the mining laws, except as to applications under the mineral leasing laws.

3. The lands classified by this order shall not become subject to lease or application under the Small Tract Act of June 1, 1938 (52 Stat. 609; U. S. C. 682a), as amended, until it is so provided by an order to be issued by an authorized officer, opening the lands to application or bid with a preference right to veterans of World War II and of the Korean conflict and other qualified persons entitled to preference under the act of September 27, 1944 (58 Stat. 497; 43 U. S. C. 279-284), as amended.

E. R. GREENSLET,
State Supervisor.

AUGUST 27, 1956.

[F. R. Doc. 56-7064; Filed, Sept. 4, 1956; 8:46 a. m.]

Office of the Secretary

[69356]

MONTANA

RESTORING LANDS TO TRIBAL OWNERSHIP OF CONFEDERATED SALISH & KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION

Whereas pursuant to authority contained in the Act of Congress approved June 21, 1906 (34 Stat. L., 354), certain townsites and villa sites were established within the Flathead Indian Reservation, Montana, and

Whereas there are a number of undisposed of lots within the townsites and villa sites referred to which are desired by the Indians and for which there appears to be no public demand, and

Whereas the Tribal Council, the Superintendent of the Flathead Agency, and the Commissioner of Indian Affairs, have recommended restoration of the lands involved to tribal ownership.

Now, therefore, by virtue of the authority vested in the Secretary of the Interior by sections 3 and 7 of the act of June 18, 1934 (48 Stat. L., 984), I hereby find that restoration to tribal ownership of the lands included in the townsite and villa-site lots listed below will be in the public interest and the said lands are hereby restored to tribal ownership for the use and benefit of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, Montana, and are added to and made a part of the existing reservation, subject to any valid existing rights:

CAMAS TOWN SITE

Block 1, lot 1;
Block 2, lots 1 and 2;
Block 3, lots 1 and 2;
Block 4, lots 1 and 2;
Block 5, lots 1 to 16, inclusive;
Block 7, lots 1 to 16, inclusive;
Block 8, lots 1 to 8, inclusive;
Block 9, lots 1 to 8, inclusive;
Block 10, lots 7 to 16, inclusive;
Block 11, lots 1 to 16, inclusive;
Block 12, lots 1 to 16, inclusive;
Block 13, lots 1, 2, 3, and 6;
Block 14, lots 1 to 6, inclusive;
Block 19, lots 1, 5, and 6;
Block 20, lots 1 to 6, inclusive, and lots 12 to 16, inclusive;
Block 21, lots 1 to 4, inclusive, and lots 12 to 16, inclusive;
Block 23, lots 1 to 6, inclusive;
Block 26, lot 8;
Block 29, lot 5 and lots 13 to 16, inclusive;
Block 33, lot 14;
Block 34, lots 3 to 5, inclusive, and lots 10 to 16, inclusive.

BIG ARM TOWN SITE

Block 1, lot 9;
Block 6, lot 8;
Block 7, lots 5 to 14, inclusive;
Block 8, lots 5 to 14, inclusive;
Block 9, lots 5 to 12, inclusive;
Block 10, lots 1 to 16, inclusive;

Block 11, lots 1 to 8, inclusive, and lots 11 to 16, inclusive;
Block 12, lots 1 to 16, inclusive;
Block 13, lots 1 to 3, inclusive, and 6 to 8, inclusive and lot 10;
Block 14, lots 13 and 14;
Block 15, lots 1 to 14, inclusive;
Block 16, lots 2 to 15, inclusive;
Block 18, lots 1 to 16, inclusive;
Block 19, lots 2 to 7, inclusive, and lots 10 to 15, inclusive;
Block 20, lots 1 to 7, inclusive, and lots 12 to 15, inclusive;
Block 21, lots 1 to 16, inclusive;
Block 22, lots 5 to 8, inclusive;
Block 25, lots 1 to 15, inclusive;
Black 26, lots 1 to 10, inclusive, and lots 14 to 16, inclusive;
Block 27, lots 1 to 13, inclusive;
Block 28, lots 3 to 16, inclusive;
Block 29, lots 1 to 16, inclusive;
Block 20, lots 1 to 16, inclusive.

ALSON VILLA SITE

Block 2, lot 1.

ARMO VILLA SITE

Block 1, lot 6.

BIG ARM VILLA SITE

Block 10, lots 1 and 2.

BLUE GRADE VILLA SITE

Block 1, lot 4;
Block 2, lot 4;
Block 3, lots 1 to 4, inclusive;
Block 4, lots 1 to 5, inclusive;
Block 5, lots 1 to 4, inclusive;
Block 7, lots 3 and 4;
Block 8, lots 1 to 5, inclusive.

FESTOU VILLA SITE

Block 9, lot 6.

MATTERHORN VILLA SITE

Block 4, lot 5.

ORCHARD VILLA SITE

Block 1, lots 5 and 6;
Block 2, lots 2 to 4, inclusive, and lots 6 to 8, inclusive.

POLLARD VILLA SITE

Block 2, lot 4.

SAFETY BAY VILLA SITE

Block 4, lot 24.

WHITE SWAN VILLA SITE

Block 2, lot 1;
Block 3, lot 8;
Block 4, lots 8 and 10;
Block 5, lots 3 and 12.

FRED G. AANDAHL,
Acting Secretary of the Interior.

AUGUST 29, 1956.

[F. R. Doc. 56-7063; Filed, Sept. 4, 1956; 8:46 a. m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

KANSAS, NEW MEXICO, OKLAHOMA, AND TEXAS

DISASTER ASSISTANCE; DELINEATION OF DROUGHT AREAS

Pursuant to Public Law 875, 81st Congress, the President determined on August 26, 1954, that a major disaster occasioned by drought existed in the State of Kansas; the President determined on February 27, 1956, that major disasters occasioned by drought existed in the States of New Mexico and Oklahoma; and the President also determined on July 21, 1954, that a major disaster occasioned by drought existed in the State of Texas and extended that determination on September 19, 1955.

Pursuant to the authority delegated to me by the Administrator, Federal Civil Defense Administration (18 F. R. 4609; 19 F. R. 2148, 5364; 20 F. R. 4664), and for the purposes of section 2 (d) of Public Law 38, 81st Congress, as amended by Public Law 115, 83d Congress, and section 301 of Public Law 480, 83d Congress, the following counties and parts of counties were determined on the dates indicated to be affected by the above-mentioned major disasters.

KANSAS

Determined on July 18, 1956: Finney, Grant, Gray, Haskell, Seward, Stanton, Stevens.

Determined on August 16, 1956: Cloud, Decatur, Edwards, Lane, Lincoln, Mitchell, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Republic, Russell, Rush, Sheridan.

NEW MEXICO

Determined on July 31, 1956: West half of Rio Arriba: San Juan, Taos.

OKLAHOMA

Determined on August 13, 1956: Atoka, Bryan, Carter, Garvin, Love, McClain, Marshall, Murray, Roger Mills, Woodward.

Determined on August 16, 1956: Alfalfa, Grant, Kay, Noble, Osage, Pawnee, Payne.

TEXAS

Determined on July 1, 1956: Goliad.

Determined on July 31, 1956: Collin, Cooke, Dallas, Deaf Smith, Denton.

Determined on August 3, 1956: Brooks, Colorado, Jackson; Jim Wells, Victoria.

Determined on August 13, 1956: Grayson.

Determined on August 16, 1956: Castro, El Paso, Kaufman, Rockwall, Swisher.

Done at Washington, D. C., this 29th day of August 1956.

[SEAL] EARL L. BUTZ,
Acting Secretary.

[F. R. Doc. 56-7079; Filed, Sept. 4, 1956; 8:51 a. m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

TRANSFER OF ALASKA ROAD COMMISSION TO BUREAU OF PUBLIC ROADS

Pursuant to the authority vested in me by Reorganization Plan No. 5 of 1950 and section 107 (e) of the Federal-Aid Highway Act of 1956 (Public Law 627, 84th Congress, approved June 29, 1956), the Commissioner of Public Roads is hereby authorized to perform and exercise the authority of the Secretary of Commerce under section 107 (a) thereof, and, effective on the transfer of the functions prescribed in section 107 (b) thereof, to exercise and perform the functions, duties, and authority pertaining to the construction, repair, and maintenance of roads, tramways, ferries, bridges, trails and other works in Alaska transferred to the Department of Commerce from the Department of the Interior by section 107 (b) of the Federal-Aid Highway Act of 1956, supra. The authority delegated herein shall remain in effect, unless otherwise amended or revoked, pending the appointment of the Federal Highway Administrator under Public Law 966, 84th Congress, approved August 3, 1956, and thereafter subject to the direction of the Federal Highway Administrator, until such time as the functions and authorities of the Administrator and Commissioner are prescribed as provided by law.

The authority delegated herein may be redelegated by the Commissioner of Public Roads to be exercised subject to the same conditions set forth above.

Dated: August 17, 1956.

L. S. ROTHSCHILD,
Acting Secretary of Commerce.

[F. R. Doc. 56-7062; Filed, Sept. 4, 1956; 8:46 a. m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ORGANIZATION AND FUNCTIONS

The following description of the organization, functions and procedures, etc. of the Food and Drug Administration is published pursuant to section 3 (a) of the Administrative Procedure Act (60 Stat. 237, as amended; 5 U. S. C. 1002) and § 1.45 (a) of the Federal Register Regulations (1 CFR 1.45 (a)), revoking the description of this agency published in the FEDERAL REGISTER of March 16, 1956 (21 F. R. 1680).

I. Organization.
II. Functions and procedures.
III. Delegations of authority.
IV. Availability of information.

I. *Organization*—A. *Creation and authority.* The name Food and Drug Administration was first provided by the Agricultural Appropriation Act of 1931, approved May 27, 1930 (46 Stat. 392), although the law-enforcement functions had been carried on under different organizational titles since January 1, 1907, when the Food and Drugs Act of 1906 (34 Stat. 3915; 21 U. S. C. 1, secs. 1-15) became effective. The Food and Drug Administration and its functions necessary for the enforcement of the five acts named in II were transferred from the Department of Agriculture to the Federal Security Agency, effective June 30, 1940, in accordance with the provisions of the President's Reorganization Plan IV. With the enactment of Reorganization Plan I of 1953 (67 Stat. 18; note under 5 U. S. C. 623), the Federal Security Agency became the Department of Health, Education, and Welfare.

B. *Washington headquarters.* The central organization of the Food and Drug Administration consists of the Offices of the Commissioner and Deputy Commissioner, the Divisions of Administrative Management and Federal-State Relations, and the following bureaus:

Bureau of Biological and Physical Sciences.
Bureau of Enforcement.
Bureau of Field Administration.
Bureau of Medicine.
Bureau of Program Planning and Appraisal.

The Offices of the Commissioner and Deputy Commissioner, the Divisions of

Administrative Management and Federal-State Relations, and the Bureaus of Enforcement, Field Administration, Medicine, and Program Planning and Appraisal are in the Department of Health, Education, and Welfare Building, Fourth Street and Independence Avenue SW., Washington 25, D. C. The Bureau of Biological and Physical Sciences and the Divisions functioning under that Bureau are in the South Agriculture Building, Twelfth and C Streets SW., Washington 25, D. C.

C. *Field service.* The field organization of the Food and Drug Administration consists of sixteen inspection districts. The district headquarters and inspection stations are as follows:

Atlanta District: Room 416, Federal Annex, Atlanta 3, Ga.

Inspection stations: Room 231, U. S. Post Office and Courthouse Building, Charlotte 1, N. C. (P. O. Box 1516). Room 447, U. S. Post Office and Customhouse Building, 311 W. Monroe Street, Jacksonville 1, Fla. (P. O. Box 4937). Room 117, U. S. Appraiser's Stores, Platt and Water Streets, Tampa 1, Fla. (P. O. Box 1166).

Baltimore District: Room 800, U. S. Appraiser's Stores, 103 South Gay Street, Baltimore 2, Md.

Inspection stations: Room 319, Federal Building, Capitol Street, Charleston 23, W. Va. (P. O. Box 641). Room 415-B, U. S. Post Office and Courthouse Building, Norfolk 10, Va. (P. O. Box 1222). Room 211, Post Office and Courthouse Building, Roanoke 3, Va. (P. O. Box 437). Room S-127, South Agriculture Building, Food and Drug Administration, Washington 25, D. C.

Boston District: Room 805, 408 Atlantic Avenue, Boston 10, Mass.

Inspection stations: Room 201, U. S. Post Office Building, 135 High Street, Hartford 1, Conn. (P. O. Box 396). Room 401, Main Post Office Building, Providence 3, R. I.

Buffalo District: Room 415, Post Office Building, Buffalo 3, N. Y.

Inspection stations: Room 342, Post Office Building, Albany, N. Y. Room 303, Old Post Office Building, Fourth and Smithfield Streets, Pittsburgh 19, Pa. Room 417, Federal Building, Rochester, N. Y.

Chicago District: Room 1222, Post Office Building, Van Buren and Canal Streets, Chicago 7, Ill.

Inspection stations: Room 908, Federal Building, 231 West Lafayette Boulevard, Detroit 26, Mich., Room 305, U. S. Customhouse, 628 East Michigan Street, Milwaukee 2, Wis. (P. O. Box 850).

Cincinnati District: Room 501, U. S. Post Office and Courthouse Building, Cincinnati 2, Ohio.

Inspection stations: Room 428-A, Federal Building, Louisville, Ky. Room 2, New Post Office Building, Cleveland 13, Ohio. Room 305, Old Post Office Building, Columbus 15, Ohio. Room 241, State Board of Health Building, 1330 West Michigan Street, Indianapolis 7, Ind. Room 502, U. S. Courthouse, Broad and 8th Streets, Nashville 3, Tenn.

Denver District: Room 531, New Customhouse, Denver 2, Colo.

Inspection station: Room 206, Federal Building, Salt Lake City 10, Utah.

Kansas City District: Room 323, U. S. Courthouse, Kansas City 6, Mo.

Inspection stations: Room 104, Municipal Building, Oklahoma City, Okla. Room 413, Federal Office Building, Omaha 2, Nebr.

Los Angeles District: Room 514, 1401 South Hope Street, Los Angeles 15, Calif.

Inspection stations: Pier A, Berth 5, Long Beach, Calif. Room 305, Federal Courthouse Building, Phoenix, Ariz.

Minneapolis District: Room 201, Federal Building, Washington and Third Avenue South, Minneapolis 1, Minn.

Inspection station: Room 220, Old Federal Building, Des Moines 9, Iowa.

New Orleans District: Room 224, Customhouse, 423 Canal Street, New Orleans 16, La.

Inspection stations: Room 241, Federal Building, Fifth Avenue and 19th Street, North, Birmingham 1, Ala. (P. O. Box 1649). Room 945; 1114 Commerce Street, Dallas 22, Tex. (P. O. Box 5449). Room 314, Federal Office Building, Franklin and Fannin Streets, Houston 14, Tex. (P. O. Box 4240).

New York District: Room 1200, 201 Varick Street, New York 14, N. Y.

Inspection station: Room B-96, Post Office Building, Newark 1, N. J. (P. O. Box 201).

Philadelphia District: Room 1204, Customhouse, Second and Chestnut Streets, Philadelphia 6, Pa.

Inspection station: Room 4, Studebaker Building, 201 State Street, Harrisburg, Pa. (P. O. Box 527).

St. Louis District: Room 1007, New Federal Building, 1114 Market Street, St. Louis 1, Mo.

Inspection stations: Room 541, Post Office Building, Little Rock, Ark. (P. O. Box 1658). Room 320, U. S. Customhouse, Memphis 1, Tenn. (P. O. Box 1161). Room 31, Post Office Building, 100 North Munroe Street, Peoria, Ill. (P. O. Box 217). Room 225, Post Office Building, Springfield, Mo. (P. O. Box 267).

San Francisco District: Room 508, Federal Office Building, San Francisco 2, Calif.

Seattle District: Room 501, Federal Office Building, Seattle 4, Wash.

Inspection stations: Room 406, U. S. Customhouse, Portland, Oreg. Room 321, Federal Building, Spokane 8, Wash.

II. *Functions and procedures*—A. *Law enforcement.* The Food and Drug Administration, acting under the supervision of the Secretary of Health, Education, and Welfare, administers the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 301 et seq.), the Tea Importation Act (21 U. S. C. 41 et seq.), the Federal Caustic Poison Act (15 U. S. C. 401 et seq.), the Federal Import Milk Act (21 U. S. C. 141 et seq.), and the Federal Filled Milk Act (21 U. S. C. 61 et seq.). In the enforcement of these acts and related duties, the following procedures have been established:

1. Evidence acquired through examinations and investigations by the Food and Drug Administration of violations of any of the acts listed above, on which criminal, libel for condemnation, or injunction proceedings are contemplated under the authority of such act, is referred by the Secretary of Health, Education, and Welfare to the Department of Justice with recommendation for the institution of such proceedings.

2. Any interested person may propose to the Secretary of Health, Education, and Welfare the issuance, amendment, or repeal of any regulation authorized by any law listed above. The request should describe the representative capacity, if any, of the applicant and set forth the proposal in general terms, and should state reasonable grounds therefor. Reasonable grounds include a description of what the person proposing the action will prove if a hearing is held. Failure to state with reasonable precision the grounds relied upon to support a proposal for the issuance, amendment, or repeal of a regulation will result in denial of the proposal. Denial of the proposal will also result if the grounds relied upon by the person proposing the action would not support the proposed action even if proved at a hearing. Proceedings on proposals with respect to regulations under sections 408 (d) and (e), 507 (f), and 701 (e) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 346a (d) and (e), 357 (f) and 371 (e)) are prescribed in those sections and in the rules of practice for hearings under section 701 (e) which appear in Title 21 of the Code of Federal Regulations (21 CFR 1.701). Proposals with respect to regulations on which no hearing is required are announced for informal public hearings or for the submission of written comments, unless such proposals are clearly noncontroversial, relate solely to the internal management of the Department, or involve interpretative rules, statements of policy, procedure, or practice.

3. Procedure governing imports under the Federal Food, Drug, and Cosmetic Act is prescribed in the Code of Federal Regulations (21 CFR 1.315 et seq.); procedure governing imports under the Federal Caustic Poison Act is prescribed by 21 CFR Part 285. Appeals from decisions under either act of officers of districts are informal and may be made by letter or in person by the importer or his representative.

4. Procedure governing the filing of applications with respect to new drugs pursuant to section 505 (b) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 355 (b)) is prescribed by Part 130 of the Code of Federal Regulations. Copies of the form to be followed in preparing applications may be obtained from the Commissioner of Food and Drugs, the Bureau of Medicine, and the districts. A procedure for hearings in relation to removing the prescription limitation from drugs limited to prescription by effective new-drug applications is contained in § 130.101 (b) of the Code of Federal Regulations (21 CFR 130.101 (b)).

5. Procedure governing the importation of merchandise subject to the Tea Importation Act is prescribed in 21 CFR Part 281. Forms may be obtained from the Commissioner of Food and Drugs, the New York and San Francisco Districts and from any Collector of Customs.

6. Procedure governing the importation of milk and cream under the Federal Import Milk Act is prescribed by 21 CFR Part 290. Forms may be obtained from the Commissioner of Food and Drugs and from the Veterinary Director General, Health of Animals Division, Department of Agriculture, Ottawa, Canada. Canadian shippers may obtain from the Veterinary Director General information as to the Canadian officials who are available to supervise tests and examinations.

7. Procedure governing the certification of coal-tar colors under the Federal Food, Drug, and Cosmetic Act is prescribed in 21 CFR Part 9. Specimen forms for use as guides in preparing requests for certification of batches of straight colors, color mixtures, and repacked colors may be obtained from the Commissioner of Food and Drugs, the Division of Cosmetics, Bureau of Biological and Physical Sciences, and the districts.

8. Procedure for the certification under the Federal Food, Drug, and Cos-

metic Act of drugs composed wholly or partly of insulin is prescribed by 21 CFR Part 164. Specimen forms for use as guides in preparing requests for certification of insulin-containing drugs may be obtained from the Commissioner of Food and Drugs and the Division of Pharmacology, Bureau of Biological and Physical Sciences.

9. Procedure for the certification under the Federal Food, Drug, and Cosmetic Act of drugs composed wholly or partly of penicillin, streptomycin, dihydrostreptomycin, chlortetracycline, tetracycline, bacitracin, or chloramphenicol is prescribed in 21 CFR Parts 146, 146a, 146b, 146c, 146d, and 146e. Specimen forms for use as guides in preparing the applications and requests for certification or exemption from certification may be obtained from the Commissioner of Food and Drugs and the Division of Antibiotics, Bureau of Biological and Physical Sciences.

10. Procedure governing the service of inspection of establishments packing seafood under the Federal Food, Drug, and Cosmetic Act and applications therefor is prescribed in the case of processed shrimp and canned oysters by 21 CFR Part 85. Forms for application for such service, its renewal or extension may be obtained from the Commissioner of Food and Drugs and the Atlanta or New Orleans District.

11. Informal conferences may be arranged for discussion of any subject pertaining to the functions of the Food and Drug Administration, although the scope of discussion of pending court cases is necessarily limited. Such conferences are particularly encouraged in connection with the formulation of proposals to issue, amend, or repeal regulations. The Food Standards Committee usually holds informal public hearings, after appropriate notice, on proposals to formulate definitions and standards of identity for food.

12. Procedures governing the establishment of tolerances and exemptions from tolerances for pesticide chemicals in or on raw agricultural commodities under the Federal Food, Drug, and Cosmetic Act are prescribed in 21 CFR Part 120. Copies of these regulations, including § 120.7, which outlines the data required to be submitted in petitions, may be obtained from the Commissioner of Food and Drugs, and the Director of the Bureau of Biological and Physical Sciences.

13. Procedures governing the issuance of temporary permits for interstate shipment of experimental packs of food varying from the requirements of applicable definitions and standards of identity established pursuant to the authority of the Federal Food, Drug, and Cosmetic Act are prescribed in 21 CFR 3.12. Copies of these regulations, in which are outlined the information to be contained in applications for such permits may be obtained from the Commissioner of Food and Drugs.

III. *Delegations of authority.* A. Final authority vested in the Secretary of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act, the Federal Caustic Poison Act, the Federal Import Milk Act, the Federal Filled Milk Act, and the Tea Importation Act was delegated to the Commissioner of Food and Drugs by the Secretary in section 10.20 of the Statement of Organization and Delegations of Authority of the Department of Health, Education, and Welfare, published in the FEDERAL REGISTER of March 30, 1955 (20 F. R. 1996), except the reservations of authority contained in sections 2.50 (Part 2) and 10.30 (Part 10) of the above-referenced statement.

B. Pursuant to section 10.40 of Part 10 of the Statement of Organization and Delegations of Authority promulgated by the Secretary of Health, Education, and Welfare in the FEDERAL REGISTER of March 30, 1955 (20 F. R. 1996), final authority of the Commissioner of Food and Drugs is delegated as set forth below. Unless otherwise specified, the authority contained in section 10.20 of the above-referenced Statement of Organization and Delegations of Authority is retained by the Commissioner of Food and Drugs.

1. *General delegation of authority.* The Deputy Commissioner of Food and Drugs is authorized to perform all the functions of the Commissioner of Food and Drugs.

2. *Designations to hold hearings.* The Director of the Bureau of Field Administration is authorized to designate officers and employees to hold hearings prior to criminal proceedings pursuant to sections 305 and 701 (c) of the Federal Food, Drug, and Cosmetic Act.

3. *Authorization of officials to request samples of imports.* The Director of the Bureau of Field Administration may authorize officials to request, pursuant to section 801 (a) of the Federal Food, Drug, and Cosmetic Act, from the Secretary of the Treasury samples of foods, drugs, devices, and cosmetics imported or offered for import, in order to determine whether such articles are in compliance with the act, and to conduct hearings at the request of the owner or consignee.

4. *Certification of true copies and use of Department seal.* The Director of the Bureau of Enforcement may certify true copies of documents and cause the seal of the Department of Health, Education, and Welfare to be affixed to such copies.

5. *Delegation regarding disclosure of official records.* The Director of the Bureau of Enforcement and the Director of the Division of Regulatory Management of that Bureau are authorized to make determination to disclose official records and information in accordance with § 4.1 of Title 21 of the Code of Federal Regulations (21 CFR 4.1; 20 F. R. 9554).

6. *Delegation regarding certification of coal-tar colors.* The Director of the Bureau of Biological and Physical Sciences, the Director of the Division of Cosmetics and the Chiefs of the Color Certification Branch and the Special Investigations Branch of that Division are authorized to certify batches of coal-tar colors for use in food, drugs, or cosmetics, pursuant to sections 406 (b), 504, and 604 of the Federal Food, Drug, and Cosmetic Act.

7. *Delegation regarding pesticides.* The Director of the Bureau of Biological and Physical Sciences is authorized to publish notices of the filing of pesticide petitions, pursuant to section 408 (d) (1) of the Federal Food, Drug, and Cosmetic Act.

8. *Delegation regarding certification of insulin.* The Director of the Bureau of Biological and Physical Sciences and the Director of the Division of Pharmacology and the Chief of the Insulin Branch of that Division are authorized to certify batches of drugs containing insulin, pursuant to section 506 (a) of the Federal Food, Drug, and Cosmetic Act.

9. *Delegation regarding certification of antibiotic drugs.* The Director of the Bureau of Biological and Physical Sciences and the Director and Assistant Directors of the Division of Antibiotics are authorized to certify or reject batches of drugs containing penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin, or any derivative of these drugs, pursuant to section 507 (a) of the Federal Food, Drug, and Cosmetic Act.

10. *Delegations regarding acceptance of process and reporting violations to the Department of Justice.* The Assistant General Counsel in charge of the Food and Drug Division is authorized to accept services of process pursuant to sections 505 (h) and 701 (f) (1) of the Federal Food, Drug, and Cosmetic Act, and to report apparent violations to the Department of Justice for the institution of criminal proceedings, pursuant to section 305 of the Federal Food, Drug, and Cosmetic Act and section 9 (b) of the Federal Caustic Poison Act.

IV. *Availability of information*—A. *Public records.* Public records pertaining to the functions of the Food and Drug Administration, including records of formal and informal public hearings on proposals to issue, amend, or repeal regulations, are available for inspection at the office of the Hearing Clerk, Room 5440, Health, Education, and Welfare Building, 330 Independence Avenue SW., Washington, D. C.

B. *Official records.* Disclosure of official records and information on investigations by the Food and Drug Administration pursuant to its law-enforcement program is subject to the procedure described in 21 CFR 4.1.

C. *Making submittals and requests.* 1. The following should be directed to the Secretary of Health, Education, and Welfare and mailed to the Commissioner of Food and Drugs:

a. Applications for the issuance, amendment, or repeal of any regulation authorized by law.

b. Applications with respect to new drugs submitted pursuant to section 505 (b) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 355 (b)).

c. Applications for permits under the Federal Import Milk Act.

2. Requests for certification of batches of coal-tar colors, drugs composed wholly or partly of insulin, and drugs composed wholly or partly of penicillin, streptomycin, dihydrostreptomycin, chloramphenicol, chlortetracycline, tetracycline, or bacitracin should be directed to the Commissioner of Food and Drugs or the

Bureau of Biological and Physical Sciences.

3. Applications for the granting of seafood inspection service at establishments packing processed shrimp or canned oysters should be directed to the Atlanta District or the New Orleans District.

D. *Inspection of orders and opinions.* 1. Final orders and opinions involving detention of importations under the Federal Food, Drug, and Cosmetic Act, the Federal Caustic Poison Act, and the Tea Importation Act are available for inspection at the offices of the Food and Drug Administration where issued, except those that are designated for good cause to be confidential and not cited as precedents.

2. Final orders and opinions of the Secretary issued under section 505 (d), (e), and (f) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 355 (d), (e), and (f)) involving new-drug matters are available for inspection at the Office of the Commissioner of Food and Drugs, except those that are designated for good cause to be confidential and not cited as precedents.

E. *General information.* General information pertaining to the functions of the Food and Drug Administration may be obtained from any of the offices listed in I-C. Responses to letters directed to inspection stations are likely to be delayed, since inspectors assigned to such stations are frequently absent on official travel. Earlier responses to inquiries concerning the legality of new products or processes or to suggestions involving change in policy are ordinarily obtained by directing such requests and suggestions to the Commissioner of Food and Drugs.

Dated: August 24, 1956.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F. R. Doc. 56-7081; Filed, Sept. 4, 1956; 8:51 a. m.]

STATEMENT OF ORGANIZATION AND DELEGATIONS OF AUTHORITY

This document supplements the Statement of Organization and Delegations of Authority (20 F. R. 1996) by adding to Part 10 thereof delegations of authority by the Commissioner of Food and Drugs. The amendments published under this heading in the FEDERAL REGISTER of March 16, 1956 (21 F. R. 1683) are revoked, and these amendments are made in place thereof.

SEC. 10-1.10 *Authority.* These delegations are issued pursuant to the provisions of section 10.40 of the Statement of Organization and Delegations of Authority. Unless otherwise specified the authority contained in section 10.20 is retained by the Commissioner.

Sec. 10-1.20 *Terms used.*

Act. Unless otherwise indicated the term "act" refers to the Federal Food, Drug, and Cosmetic Act, as amended.

Section number. Unless otherwise indicated the section numbers used refer to those sections contained in the Federal Food, Drug, and Cosmetic Act, as amended.

Department. Means the Department of Health, Education, and Welfare.

Administration. Means the Food and Drug Administration.

SEC. 10-1.30 *General delegation of authority.* The Deputy Commissioner is authorized to perform all of the functions of the Commissioner.

SEC. 10-1.40 *Designations to hold hearings.* The Director, Bureau of Field Administration, is authorized to designate officers and employees to hold hearings prior to criminal proceedings pursuant to sections 305 and 701 (c) of the act.

SEC. 10-1.50 *Authorization of officials to request samples of imports.* The Director, Bureau of Field Administration, may authorize officials to request, pursuant to section 801 (a) of the act, from the Secretary of the Treasury samples of food, drugs, devices and cosmetics imported or offered for import to determine whether such articles are in compliance with the act and to conduct hearings at the request of the owner or consignee.

SEC. 10-1.60 *Certification of true copies and use of Department seal.* The Director, Bureau of Enforcement, may certify true copies of documents and cause the Seal of the Department to be affixed to such copies.

SEC 10-1.70 *Delegation regarding disclosure of official records.* The officials designated below are authorized to make determinations to disclose official records and information in accordance with 21 CFR 4.1:

Director, Bureau of Enforcement.
Director, Division of Regulatory Management.

SEC. 10-1.80 *Delegation regarding coal-tar colors.* The officials designated below are authorized to certify batches of coal-tar colors for use in food, drugs or cosmetics pursuant to sections 406 (b), 504 and 604 of the act:

Director, Bureau of Biological and Physical Sciences.
Director, Division of Cosmetics.
Chief, Color Certification Branch.
Chief, Special Investigations Branch.

SEC. 10-1.90 *Delegation regarding pesticides.* The Director, Bureau of Biological and Physical Sciences, is authorized to publish notice of filing of pesticide petitions pursuant to section 408 (d) (1) of the act.

SEC. 10-1.100 *Delegation regarding certification of insulin.* The Director, Bureau of Biological and Physical Sciences, the Director, Division of Pharmacology and the Chief, Insulin Branch are authorized to certify batches of drugs containing insulin pursuant to section 506 (a) of the act.

SEC. 10-1.110 *Delegation regarding certification of antibiotics.* The Director, Bureau of Biological and Physical Sciences, the Director, Division of Antibiotics and the Assistant Directors of that Division are authorized to certify or reject batches of drugs containing penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin, or any derivatives of these drugs, pursuant to section 507 (a) of the act.

SEC. 10-1.120 *Delegation regarding acceptance of process and reporting violations to the Department of Justice.* The Assistant General Counsel in Charge of the Food and Drug Division is authorized to accept services of process pursuant to sections 505 (h) and 701 (f) (1) of the act and to report apparent violations to the Department of Justice for the institution of criminal proceedings pursuant to section 305 of the act and section 9 (b) of the Federal Caustic Poison Act.

Dated: August 24, 1956.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

Concurrence as to section 10-1.120.

PARKE M. BANTA,
General Counsel.

[F. R. Doc. 56-7080; Filed, Sept. 4, 1956; 8:51 a. m.]

Public Health Service

PROMULGATION OF STATE ALLOTMENT PERCENTAGES UNDER TITLE VI OF THE PUBLIC HEALTH SERVICE ACT

Pursuant to sections 631 (a) and (b) of Title VI of the Public Health Service Act, as amended, (60 Stat. 1041, 42 U. S. C. 291 i (a) and (b)),

And having found that the three most recent consecutive years for which satisfactory data are available from the Department of Commerce, as to the per capita incomes of States and of the Continental United States, are the years 1953, 1954, and 1955,

The following allotment percentages for the several States, Alaska, Hawaii, Puerto Rico, the District of Columbia, Guam, and the Virgin Islands, as determined pursuant to said act and on the basis of said income data, are hereby promulgated for two fiscal years in the period beginning July 1, 1957:

Alabama	69.31	New Hampshire	54.39
Arizona	55.71	New Jersey	37.41
Arkansas	71.90	New Mexico	60.89
California	38.57	New York	39.17
Colorado	51.99	North Carolina	66.92
Connecticut	33.33	North Dakota	64.87
Delaware	33.33	Ohio	44.09
District of Columbia	37.45	Oklahoma	59.18
Florida	55.70	Oregon	49.95
Georgia	64.87	Pennsylvania	48.13
Idaho	59.38	Rhode Island	46.91
Illinois	38.87	South Carolina	69.50
Indiana	48.07	South Dakota	63.76
Iowa	55.65	Tennessee	65.93
Kansas	53.96	Texas	56.16
Kentucky	66.11	Utah	57.56
Louisiana	63.67	Vermont	59.19
Maine	58.40	Virginia	58.36
Maryland	45.15	Washington	45.19
Massachusetts	44.31	West Virginia	65.00
Michigan	42.09	Wisconsin	51.36
Minnesota	53.83	Wyoming	49.90
Mississippi	75.00	Alaska	50.00
Missouri	51.55	Hawaii	50.00
Montana	50.34	Puerto Rico	75.00
Nebraska	55.91	Virgin Islands	75.00
Nevada	33.56	Guam	75.00

Dated: August 28, 1956.

[SEAL] W. PALMER DEARING,
Acting Surgeon General.

Approved: August 30, 1956.

HEROLD C. HUNT,
Acting Secretary of Health, Education, and Welfare.

[F. R. Doc. 56-7102; Filed, Sept. 4, 1956; 8:55 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 7382]

FORT WORTH INVESTIGATION

NOTICE OF HEARING

In the matter of the petition of the City and Chamber of Commerce of Fort Worth, Texas, for institution of an investigation under sections 404 (a) and 1002 of the Civil Aeronautics Act of 1938, as amended.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 404 (a) and 1002 thereof, that a hearing in the above-entitled proceeding will be held on September 17, 1956, at 10:00 a. m. (local time) in Parlor R of the Hotel Texas, Fort Worth, Texas, before Examiner Leslie G. Donahue.

Without limiting the scope of the issues to be considered, particular attention will be directed to the following matters:

1. Whether any air carrier has failed to provide adequate service, equipment and facilities in connection with air transportation authorized to be furnished Fort Worth, Texas, by the carrier's certificate of public convenience and necessity

2. Whether the Board should issue an appropriate order to compel any such air carrier to comply with the provisions of section 404 (a) of the act.

For further details of the issues involved in this proceeding, interested persons are referred to the application, the Order of Investigation, No. E-10003, dated February 14, 1956, and the Prehearing and Supplemental Prehearing Conference Reports, all of which are on file with the Civil Aeronautics Board.

Notice is further given that any person, other than a party of record, desiring to be heard in this proceeding must file with the Board on or before September 17, 1956, a statement setting forth the issues of fact or law upon which he desires to be heard. Such person may then appear and participate in the proceeding in accordance with Rule 14 of the Board's rules of practice.

Dated at Washington, D. C., August 30, 1956.

[SEAL] THOMAS L. WRENN,
Acting Chief Examiner.

[F. R. Doc. 56-7095; Filed, Sept. 4, 1956; 8:54 a. m.]

[Docket No. 8178]

LOS ANGELES AIRWAYS, INC.

NOTICE OF PREHEARING CONFERENCE

In the matter of the application of Los Angeles Airways, Inc. under section 401 of the Civil Aeronautics Act of 1938, as amended for the renewal of its temporary certificate of public convenience and necessity for Route No. 84, for the amendment of its certificate so as to make its duration permanent rather than temporary, and for exemption authority.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on September 25, 1956, at 10:00 a. m., e. d. s. t., in room 1512, Temporary Building No. 4, Sixteenth and Constitution Avenue NW., Washington, D. C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D. C., August 30, 1956.

[SEAL] THOMAS L. WRENN,
Acting Chief Examiner.

[F. R. Doc. 56-7096; Filed, Sept. 4, 1956; 8:54 a. m.]

[Docket No. 6124]

AERO FINANCE CORP. AND PENINSULAR AIR TRANSPORT; COMPLIANCE CASE

NOTICE OF POSTPONEMENT OF ORAL ARGUMENT

In the matter of a complaint against Aero Finance Corporation and Peninsular Air Transport under the provisions of the Board's rules of practice in Economic Proceedings.

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that the oral argument in the above-entitled proceeding now assigned for September 5 is postponed to September 6, 1956, at 10:00 a. m., e. d. s. t., Room 5042, Commerce Building, Constitution Avenue, between Fourteenth and Fifteenth Streets NW., Washington, D. C., before the Board.

Dated at Washington, D. C., August 30, 1956.

[SEAL] THOMAS L. WRENN,
Acting Chief Examiner.

[F. R. Doc. 56-7097; Filed, Sept. 4, 1956; 8:54 a. m.]

[Docket No. 7173]

FOREIGN AIR CARRIER OFF-ROUTE CHARTER SERVICE INVESTIGATION

NOTICE OF POSTPONEMENT OF ORAL ARGUMENT

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended that the oral argument in the above-entitled proceeding now assigned to be held on September 12 is postponed to September 18, 1956, 10:00 a. m., e. d. s. t., Room 5042, Commerce Building, Constitution Avenue, between Fourteenth and Fifteenth Streets NW., Washington, D. C., before the Board.

Dated at Washington, D. C., August 30, 1956.

[SEAL] THOMAS L. WRENN,
Acting Chief Examiner.

[F. R. Doc. 56-7098; Filed, Sept. 4, 1956; 8:54 a. m.]

OFFICE OF DEFENSE MOBILIZATION

[ODM (DPA) Request 53A-DPAV-56]

ARABIAN AMERICAN OIL CO. ET AL.

REQUEST TO PARTICIPATE IN PLAN OF ACTION UNDER VOLUNTARY AGREEMENT RELATING TO FOREIGN PETROLEUM SUPPLY

Pursuant to section 708 of the Defense Production Act of 1950, as amended, the request set forth below to participate in a plan of action entitled, "Plan of Action Under Voluntary Agreement Relating to Foreign Petroleum Supply," dated August 19, 1956, was approved by the Attorney General after consultation with respect thereto between the Attorney General, the Chairman of the Federal Trade Commission and the Director of the Office of Defense Mobilization, and was accepted by the companies listed below.

This Plan of Action authorizes the creation of a Middle-East Emergency Committee to help formulate and carry out measures to meet petroleum shortages and dislocations in the event of any substantial Middle-East petroleum transport stoppage. The Plan of Action has been approved by the Director of the Office of Defense Mobilization and has been found to be in the public interest as contributing to the national defense.

Contents of request. You are requested to participate in the enclosed Plan of Action which was prepared in accordance with the provisions of section 6 of the previously approved voluntary agreement entitled, "Voluntary Agreement Relating to Foreign Petroleum Supply, as amended." In my opinion, your participation will greatly assist in the accomplishment of our national defense program.

The Attorney General has approved this request after consultation with respect thereto between his representatives, representatives of the Chairman of the Federal Trade Commission and my representatives, pursuant to section 708 of the Defense Production Act of 1950, as amended.

I approve the Plan of Action under the Voluntary Agreement Relating to Foreign Petroleum Supply and find it to be in the public interest as contributing to the national defense. You will become a participant therein upon advising me in writing of your acceptance of this request. Will you kindly also send a copy of your acceptance to the Director, Office of Oil and Gas, Department of the Interior, Washington 25, D. C. Immunity from prosecution under the Federal antitrust laws and the Federal Trade Commission Act, as provided in the Defense Production Act of 1950, as amended, will be given upon such acceptance, provided that your acts relative to such participation are within the scope of this Plan.

Your cooperation in this matter will be appreciated.

Sincerely yours,

ARTHUR S. FLEMMING,
Director.

ACCEPTANCES

Arabian American Oil Company, 505 Park Avenue, New York, N. Y.

Caltex Oil Products Company, 380 Madison Avenue, New York, N. Y.

Cities Service Company, 70 Pine Street, New York, N. Y.

Creole Petroleum Corporation 1230 Avenue of the Americas, New York, N. Y.

Getty Oil Company, Pennsylvania Building, Wilmington, Del.

Gulf Oil Corporation, Gulf Building, Pittsburgh, Pa.

Sinclair Oil Corporation, 600 Fifth Avenue, New York, N. Y.

Socony Mobil Oil Company, Inc., 26 Broadway, New York, N. Y.

Standard Oil Company of California, 225 Bush Street, San Francisco, Calif.

Standard Oil Company (New Jersey), 30 Rockefeller Plaza, New York, N. Y.

Standard-Vacuum Oil Company, P. O. Box 1000, White Plains, N. Y.

The Texas Company, 135 East 42d Street, New York, N. Y.

Venezuelan Petroleum Company, 600 Fifth Avenue, New York, N. Y.

(Sec. 708, 64 Stat. 818, as amended; 50 U. S. C. App. Sup. 2158; E. O. 10480, Aug. 14, 1953, 18 F. R. 4939)

Dated: August 30, 1956.

ARTHUR S. FLEMMING,
Director.

[F. R. Doc. 56-7082; Filed, Sept. 4, 1956; 8:52 a. m.]

[ODM (DPA) Request No. 53-DPAV 46 (e)]

CITIES SERVICE CO.

ADDITION TO LIST OF COMPANIES ACCEPTING REQUEST TO PARTICIPATE IN THE VOLUNTARY AGREEMENT RELATING TO FOREIGN PETROLEUM SUPPLY, AS AMENDED

Pursuant to section 708 of the Defense Production Act of 1950, as amended, there is published the name of the following company which has accepted the request to participate in the voluntary agreement entitled, "Voluntary Agreement Relating to Foreign Petroleum Supply, as Amended," dated May 8, 1956. The request and original list of acceptances were published in 21 F. R. 5703, July 28, 1956.

Cities Service Company, 70 Pine Street, New York, N. Y.

(Secs. 708, 64 Stat. 818, as amended; 50 U. S. C. App. Sup. 2158; E. O. 10480, Aug. 14, 1953, 18 F. R. 4939)

Dated: August 30, 1956.

ARTHUR S. FLEMMING,
Director.

[F. R. Doc. 56-7083; Filed, Sept. 4, 1956; 8:52 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24W-1811]

ALLIED FINANCE CORP.

ORDER VACATING ORDER OF SUSPENSION

AUGUST 29, 1956.

I. Allied Finance Corporation, a Maryland corporation, with principal offices located at 8025 Georgia Avenue, Silver Spring, Maryland, filed with the Commission on July 8, 1955, a Notification on Form 1-A and an Offering Circular, and subsequently filed an amendment thereto, relating to a proposed offering of 22,000 shares of $2 par 6 percent cumulative convertible preferred stock; 36,668 shares of 25 cent par Class A common; and 628 shares of $100 par 7 percent cumulative non-convertible preferred stock, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder.

II. The Commission on June 8, 1956, ordered, pursuant to Rule 223 (a) of the general rules and regulations under said act, that the conditional exemption under Regulation A be temporarily suspended on the grounds that said issuer had failed to file reports of sales on Form 2-A as required by Rule 224 of Regulation A and had ignored requests by the Commission's staff for such reports.

III. The issuer, having, subsequent to the action temporarily suspending the exemption under Regulation A, filed reports as required by Rule 224, and having amended the filing to reduce the offering by the amount of the unsold portion of securities under said filing; and

IV. It appearing to the Commission that a hearing is not necessary or appropriate in the public interest or for the protection of investors and that the basis for said temporary order for suspension, as aforesaid, no longer exists;

V. *It is ordered,* Pursuant to Rule 223 (b) of the general rules and regulations under the Securities Act of 1933, as amended, that said temporary order for suspension be, and it hereby is, vacated.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 56-7070; Filed, Sept. 4, 1956; 8:48 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

[Vesting Order 13935, Amdt.]

JEANNE DULTIGEN-VAN VORSTENBERG

In re: Debts owing to Jeanne Dultigen-van Vorstenberg also known as Jeanne Dultgen von Vorstenberg, as J. W. E. Dultgen-van Vorstenberg, as J. W. E. Dultigen-van Vorstenberg, as J. W. E. Rietveld-van Vorstenberg and as Jeanne Dultgen von Vorstenbert; F-28-28597-D-1.

Vesting Order 13935, dated October 11, 1949, is hereby amended as follows and not otherwise:

By deleting subparagraph 2 of said Vesting Order 13935, and substituting therefor the following:

2. That the property described as follows: Those certain debts or other obligations, matured or unmatured, evidenced by those certain bonds described in Exhibit A, attached hereto and by reference made a part hereof, and evidenced by coupons attached to or detached from said bonds and due on or after June 14, 1941, and any and all rights to demand, enforce and collect the aforesaid debts, together with any and all rights in, to and under the said bonds and coupons.

All other provisions of said Vesting Order 13935 and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C. on August 29, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 56-7086; Filed, Sept. 4, 1956; 8:52 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 30, 1956.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 32578: *Liquefied petroleum gas—Eddins, Ala., to Southern Territory.* Filed by O. W. South, Jr., Agent, for interested rail carriers. Rates on liquefied petroleum gas, carloads from Eddins, Ala., to specified points in Alabama, Florida, Georgia, North Carolina, and South Carolina named in exhibit A of the application.

Grounds for relief: Circuitous routes.

Tariff: Supplement 280 to Agent Spaninger's I. C. C. 1253.

FSA No. 32579: *Grain and products—Colorado and Kansas to Oklahoma and Texas.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on grain, grain products, and related articles, including seeds, carloads from specified points in Colorado and Kansas to specified points in Oklahoma and Texas.

Grounds for relief: Circuitous routes via transit points.

Tariff: Supplement 135 to Agent Kratzmeir's I. C. C. 3941.

FSA No. 32580: *Lumber—Alabama and Mississippi to Illinois territory.* Filed by The Southern Railway Company, Agent, for interested rail carriers. Rates on lumber and related articles, carloads from Birmingham, Ala., and other stations in Alabama and Mississippi, on the Alabama Great Southern Railroad to destinations in Illinois territory on the Southern Railway and connections.

Grounds for relief: Circuitous routes.

FSA No. 32581: *Substituted service—Motor-rail-motor—Pennsylvania and N. & W. Railways.* Filed by Middle Atlantic Conference, Agent, for interested rail and motor carriers. Rates on freight, loaded in highway trailers, and transported on railroad flat cars between tween Bristol, Va.-Tenn., and Roanoke, Va., on the one hand, and Kearny, N. J., or Philadelphia, Pa., on the other.

Grounds for relief: Truck competition.

FSA No. 32582: *Coke and products—Milwaukee, Wis., to Michigan.* Filed by Roy S. Kern, Agent, for The Chesapeake and Ohio Railway Company. Rates on coke, coke breeze, coke dust, and coke screenings, straight or mixed carloads

from Milwaukee, Wis., to Grand Rapids, Grand Haven, North Muskegon, Muskegon, Muskegon Heights, Mich., and other destinations in the lower peninsula of Michigan named in exhibit B of the application.

Grounds for relief: Destination group rate relations and circuitous routes.

Tariff: Supplement 7 to Chesapeake and Ohio Railway tariff I. C. C. 13270.

FSA No. 32583: *Substituted service—Motor-rail-motor—P. R. R. and N. & W. Ry.* Filed by Southern Motor Carriers Rate Conference, Agent, for interested rail and motor carriers. Rates on freight loaded in highway trailers and transported on railroad flat cars between Winston-Salem, N. C., on one hand, and Kearny, N. J., or Philadelphia, Pa., on the other.

Grounds for relief: Truck competition.

Tariff: Southern Motor Carriers Rate Conference, Agent, I. C. C. No. 30.

FSA No. 32584: *Fertilizer—Medicine Hat, Alberta, to western trunk line territory.* Filed by W. J. Prueter, Agent, for interested rail carriers. Rates on dry fertilizer and fertilizer materials, carloads from Medicine Hat, Alberta, Canada, to points in Colorado, Iowa, Kansas, Michigan (upper peninsula), Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

Grounds for relief: Short-line distance formula, market competition and circuitous routes.

Tariff: Supplement 17 to Canadian Pacific Railway Company tariff I. C. C. No. W-1045.

FSA No. 32585: *Superphosphate—Southwest to western points.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on superphosphate (acid phosphate), other than ammoniated or defluorinated, in bulk, carloads from specified points in southwestern territory to specified points in Colorado, Iowa, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin.

Grounds for relief—Short-line distance formula and circuitous routes.

Tariff: Supplement 162 to Agent Kratzmeir's I. C. C. 4112.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F. R. Doc. 56-7068; Filed, Sept. 4, 1956; 8:48 a. m.]