less than 30 days. Interested persons may submit written comments regarding these amendments. Communications should be addressed to the Office of the General Counsel, Pay Board, Washington, D.C. 20508.

(Economic Stabilization Act of 1970, as amended, Public Law 92-210, 85 Stat. 743, Executive Order No. 11640, 37 F.R. 1213 (1972), as amended by Executive Order No. 11660, 37 F.R. 6175 (1972), and Cost of Living Council Order No. 3, 36 F.R. 2020, (1971), as amended)

Effective date. These amendments are effective on November 10, 1972.

GEORGE H. BOLDT,
Chairman.

Section 201.11(a)(5) is amended by revising subdivisions (i) and (iii) to read as follows:

§ 201.11 Criteria for exceptions.

(a) *In general.* * * *

(5) *Merit increases*—(i) *Exception for qualified merit plans contained in successor employment contracts or successor pay practices.* Wage and salary increases granted pursuant to a qualified merit plan (as defined in subdivision (ii) of this subparagraph), provided for in an employment contract or pay practice previously set forth which existed prior to November 14, 1971, and which is continued in a successor employment contract or successor pay practice effective after November 13, 1971, without any changes of terms or administrative practice may (subject to the provisions of paragraphs (b) and (c) of this section) be permitted as an exception to the general wage and salary standard: *Provided, however,* That such exception shall apply only with respect to a control year beginning prior to November 14, 1972. For purposes of the preceding sentence, a change in the maximum or minimum terminal points of a pay rate range in a qualified merit plan shall not be deemed a change of terms if the ratio of such maximum to such minimum terminal point is not increased. For purposes of this subparagraph, a qualified merit plan provided for in a pay practice which meets all of the criteria set forth in the first sentence of this subdivision, except that such pay practice is not "previously set forth" within the meaning of § 201.14(b) because the aggregate amount to be expended cannot be documented as being finally and formally decided prior to November 14, 1971, shall be treated as a successor pay practice otherwise eligible for the exception provided in this subparagraph.

* * * * *

(iii) *Special rules.* Wage and salary increases granted pursuant to a merit plan provided for in an employment contract existing prior to November 14, 1971, and continued in a successor employment contract entered into prior to April 19, 1972, shall be excluded from the computation of the annual aggregate increase in the base-compensation rate in any control year beginning prior to November 14, 1972. Such merit plan may continue to operate according to the following rules: Any increases applied to a rate range under such merit pay plan shall be considered a general increase in wages and salaries under the regulations in this chapter. However, individual increases within the rate range under such plans shall not be considered a wage and salary increase under such regulations in any control year beginning prior to November 14, 1972.

* * * * *

[FR Doc.72-19502 Filed 11-9-72;11:05 am]

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

Delegation of Authority to District Directors of Internal Revenue, Dallas, Tex., and Austin, Tex.

The purpose of this amendment is to delegate authority to the District Directors of Internal Revenue, Dallas, Tex., and Austin, Tex., to make decisions and issue orders in price cases, consider and grant or deny exceptions to this part, review and determine the correctness of reported price increases, issue orders in connection therewith, and order and supervise investigations and make findings and determinations with respect thereto.

Section 300.507 currently limits the delegated authority of District Directors to cases involving exceptions for providers of health services and price Category III firms other than public utilities. Similarly, § 301.108(e) of the rent regulations delegates exception authority with respect to rents to District Directors.

It has been determined by the Commission that the Dallas and Austin District Offices should have the delegated authority, on a pilot basis, to handle the broad range of price and exceptions cases at places convenient to persons whose legal residence, principal place of business, or principal office or agency is located within their respective areas. Because of the Price Commission's desire to provide more convenient and expeditious service on price and exception matters, the delegation provides for the broad exercise of functions and duties respecting those matters for persons located in the Dallas and Austin Districts. The delegation will, unless extended, expire at the close of February 10, 1973.

This amendment has been approved by the Secretary of the Treasury pursuant to § 300.511.

Because the purpose of this amendment is to provide immediate guidance and information as to economic stabilization program matters, and procedures with respect thereto, it is hereby found that notice and public procedure thereon is impracticable and unnecessary and that good cause exists for making it effective less than 30 days after publication.

(Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799, Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Economic Stabilization Act Amendments of 1971, Public Law 92-210; Executive Order No. 11640, 37 F.R. 1213, Jan. 27, 1972; Cost of Living Council Order No. 4, 36 F.R. 20202, Oct. 16, 1971)

In consideration of the foregoing, Part 300 of Title 6 of the Code of Federal Regulations is amended by adding the following new section after § 300.507, effective November 13, 1972:

§ 300.509 Authority of District Directors of Internal Revenue, Dallas, Tex., and Austin, Tex.

(a) There is hereby delegated to the District Directors of Internal Revenue, Dallas, Tex., and Austin, Tex., the authority to perform the following functions and duties with respect to firms whose legal residence, principal place of business, or principal office or agency is located within their respective districts:

(1) Make decisions and issue orders with respect to individual requests for price increases or adjustments.

(2) Consider, and grant or deny, in whole or in part, any request for an exception to any provision of this part.

(3) Review and determine the correctness of reported price increases or adjustments and issue appropriate orders with respect thereto.

(4) Order and supervise investigations to determine whether persons are in compliance with the regulations, decisions, and orders issued under this chapter, and make findings and determinations with respect thereto.

(b) This section expires at the close of February 10, 1973.

Issued in Washington, D.C., on November 7, 1972.

[SEAL] C. JACKSON GRAYSON, Jr.,
Chairman, Price Commission.

Delegation approved: October 31, 1972.

GEORGE P. SHULTZ,
Secretary of the Treasury.

[FR Doc.72-19440 Filed 11-9-72;8:52 am]

PART 305—PROCEDURAL REGULATIONS

Appeals From Actions of District Directors of Internal Revenue, Dallas, Tex., and Austin, Tex.

The purpose of this amendment to § 305.21 of the regulations of the Price Commission is to provide that, during the period November 13, 1972, through February 10, 1973, appeals to the Price Commission from adverse actions, other than interpretations, by the District Directors of Internal Revenue, Dallas, Tex., and Austin, Tex., will not be permitted. Such appeals will, however, be authorized to the extent provided in Part 401 of Title 6 of the Code of Federal Regulations.

Effective November 13, 1972, the Commission has delegated authority to the District Directors of Internal Revenue, Dallas, Tex., and Austin, Tex., on a pilot basis, to make decisions and issue orders in price cases, consider and grant or deny exceptions to Part 300 of the Price Commission regulations, review and determine the correctness of reported price increases, issue orders in connection therewith, and order and supervise investigations and make findings and determinations with respect thereto. The purpose of the delegation, which, unless extended, will expire at the close of February 10, 1973, is to determine the feasibility of providing expeditious service on price and exceptions matters to persons at a place convenient to their legal residences, principal place of business, or principal office or agency.

The amendment to § 305.21, proscribing appeal to the Commission from actions, other than interpretations, of the Texas District Directors, will insure that this pilot project is a realistic one and is in accordance with the Commission's intent that the Dallas, Tex., and Austin, Tex., District Directors, and other offices of the Internal Revenue Service, have full and final authority over the matters delegated.

Because the purpose of this amendment is to provide immediate guidance and information as to the procedures of the economic stabilization program, it is hereby found that notice and public procedure thereon is impracticable and unnecessary and that good cause exists for making it effective less than 30 days after publication.

(Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558; 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Economic Stabilization Act Amendments of 1971, Public Law 92-210; Executive Order No. 11640, 37 F.R. 1213, Jan. 27, 1972; Cost of Living Council Order No. 4, 36 F.R. 20202, Oct. 16, 1971)

In consideration of the foregoing, § 305.21 of Part 305 of Title 6 of the Code of Federal Regulations is amended to read as follows, effective November 13, 1972:

§ 305.21 Who may appeal.

(a) Except as provided in paragraph (b) of this section, any person aggrieved by an adverse action by IRS or the Chief Counsel's Office for IRS, issued pursuant to Part 401 of this title, other than a person who seeks to appeal from a notice of violation or apparent liability issued by IRS under Part 401 of this title, may file an appeal with the Commission.

(b) No person aggrieved by an adverse action, other than an interpretation, by the District Directors of Internal Revenue, Dallas, Tex., or Austin, Tex., during the period beginning on November 13, 1972, and ending at the close of February 10, 1973, may file an appeal with the Commission.

Issued in Washington, D.C., on November 1, 1972.

JAMES B. MINOR,
General Counsel,
Price Commission.

[FR Doc.72-19441 Filed 11-9-72;8:52 am]

Chapter IV—Internal Revenue Service

PART 411—TEMPORARY PROCEDURAL RULES RELATING TO CERTAIN INTERNAL REVENUE DISTRICTS

Establishment of new part. Part 411—Temporary Procedural Rules Relating to Certain Internal Revenue Districts is added to Chapter IV, Title 6, Code of Federal Regulations. The purpose of this new part is to prescribe the procedures to be used by the Internal Revenue Service in exercising the delegation of authority granted by new Price Commission Reg. § 300.509, 37 F.R. 23914 (1972).

Because the purpose of these regulations is to provide immediate guidance as to procedures applicable after November 12, 1972, it is hereby found impracticable to issue this regulation with notice and public procedure thereon under 5 U.S.C., section 553(b), or subject to the effective date limitation of 5 U.S.C., section 553(d).

These regulations shall become effective on November 13, 1972.

JOHNNIE M. WALTERS,
Commissioner of
Internal Revenue.

AUTHORITY: The provisions of this Part 411 are issued pursuant to Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Public Law 92-210, 85 Stat. 743; Executive Order No. 11640, 37 F.R. 1213 (1972); Cost of Living Council Order No. 8, 37 F.R. 2727 (1972); Price Commission Order No. 2, 37 F.R. 3212 (1972).

§ 411.1 General rules.

(a) *In general.* Notwithstanding any other provision of this chapter, the provisions of this part shall apply, with respect to the matters mentioned or described in the context, to those persons whose legal residence, principal place of business, or principal office or agency is located within the district of a designated district director. Thus, with respect to such matters a designated district director shall perform functions such as (but not limited to) receiving and acting upon requests, forms, reports, and other documents.

(b) *Designated district directors.* For purposes of this part, the term "designated district director" means the district director for one of the following districts:

Austin, Tex.
Dallas, Tex.

(c) *Application of Part 401.* Except to the extent that they are contrary to a provision of this part, the provisions of Part 401 of this chapter shall be applied to the provisions of this part.

§ 411.11 Requests for increases and adjustments.

(a) *In general.* Pursuant to § 300.509 of this title, a designated district director shall make decisions and issue orders with respect to individual requests for price increases or adjustments under Part 300 of this title. With respect to such requests, a designated district director or his delegate shall perform the functions mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) as being performed by the Price Commission. With respect to such performance, the procedures mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) shall pertain.

(b) *Review of decisions under paragraph (a).* A person whose request under paragraph (a) of this section is denied in whole or in part may request a reconsideration under part 305G of this title. With respect to such request for reconsideration, a designated district director or his delegate shall perform the functions mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) as being performed by the Price Commission. With respect to such performance, the procedures mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) shall pertain.

§ 411.12 Requests for exceptions.

(a) *In general.* Pursuant to § 300.509 of this title, a district director may grant a request for an exception under Parts 300D and 305C of this title. With respect to such requests, a designated district director or his delegate shall perform the functions mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) as being performed by the Price Commission. With respect to such performance, the procedures mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) shall pertain.

(b) *Review of decisions under paragraph (a) of this section.* A person whose request under paragraph (a) of this section is denied in whole or in part may request a reconsideration under Part 305C of this title. With respect to such requests for reconsideration, a designated district director or his delegate shall perform the functions mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) as being performed by the Price Commission. With respect to such performance, the procedures mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) shall pertain.

§ 411.13 Remedial orders.

(a) *In general.* Pursuant to § 300.509 of this title, a designated district director may issue remedial orders under Part 305H of this title. With respect to such orders, a designated district director or his delegate shall perform the functions mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) as being performed by the Price Commission. With respect to such performance, the procedures mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) shall pertain.

(b) *Review of orders under paragraph (a).* A person to whom an order is issued under paragraph (a) of this section may request a modification or rescission under Part 305H of this title. With respect to such requests for modification or rescission, a designated district director or his delegate shall perform the functions mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) as being performed by the Price Commission. With respect to such performance, the procedures mentioned or described in such part (and in the other provisions of Chapter III of this title therein referenced) shall pertain.

[FR Doc. 72-19501 Filed 11-9-72;11:00 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7217]

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

Deductibility of Treble Damage Payments Under the Antitrust Laws

On May 27, 1971, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under sections 162, 212, and 471 of the Internal Revenue Code of 1954 to conform the regulations to section 902 of the Tax Reform Act of 1969 (Public Law 91-172, 83 Stat. 710) was published in the FEDERAL REGISTER (36 F.R. 9637). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed under section 162(g) of such code, the amendments of the regulations as set forth in paragraphs 1 and 4 of the appendix to the notice of proposed rule making are hereby adopted subject to the changes set forth below:

PARAGRAPH 1. Section 1.162-21, as set forth in paragraph 4 of the appendix to the notice of proposed rule making, is revised as set forth below.

PAR. 2. Section 1.162-22, as set forth in paragraph 4 of the appendix to the notice of proposed rule making, is amended by revising paragraph (a) as set forth below.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: November 6, 1972.

FREDRIC W. HICKMAN,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) under section 162 of the Internal Revenue Code of 1954 to section 902 of the Tax Reform Act of 1969 (Public Law 91-172, 83 Stat. 710), such regulations are amended as follows:

PARAGRAPH 1. Section 1.162 is amended by revising section 162(c), by redesignating section 162(f) as section 162(h), by inserting after section 162(e) new section 162 (f) and (g), and by revising the historical note. These amended and added provisions read as follows:

§ 1.162 Statutory provisions; trade or business expenses.

SEC. 162. *Trade or business expenses.* * * *

(c) *Bribes and illegal kickbacks*—(1) *Illegal payments to government officials or employees.* No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment would be unlawful under the laws of the United States if such laws were applicable to such payment and to such official or employee. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or would be unlawful under the laws of the United States) shall be upon the Secretary or his delegate to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(2) *Other bribes or kickbacks.* If in a criminal proceeding a taxpayer is convicted of making a payment (other than a payment described in paragraph (1)) which is an illegal bribe or kickback, or his plea of guilty or nolo contendere to an indictment or information charging the making of such a payment is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) on account of such payment or any related payment made prior to the date of the final judgment in such proceeding.

(3) *Statute of limitations.* If a taxpayer claimed a deduction for a payment described in paragraph (2) which is disallowed because of a final judgment entered after the close of the taxable year for which the deduction was claimed, and if the proceeding was based on an indictment returned or an information filed prior to the expiration of the period for the assessment of any deficiency for such taxable year, the period for the assessment of any deficiency attributable to the deduction of such payment shall not expire prior to the expiration of one year from the date of such final judgment, and such deficiency may be assessed prior to the expiration of such one-year period notwithstanding the provision of any other law or rule of law which would otherwise prevent such assessment.

* * * * *

(f) *Fines and penalties.* No deduction shall be allowed under subsection (a) for any fine or similar penalty paid to a government for the violation of any law.

(g) *Treble damage payments under the antitrust laws.* If in a criminal proceeding a taxpayer is convicted of a violation of the antitrust laws, or his plea of guilty or nolo contendere to an indictment or information charging such a violation is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) for two-thirds of any amount paid or incurred—

(1) On any judgment for damages entered against the taxpayer under section 4 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (commonly known as the Clayton Act), on account of such violation or any related violation of the antitrust laws which occurred prior to the date of the final judgment of such conviction, or

(2) In settlement of any action brought under section 4 on account of such violation or related violation.

The preceding sentence shall not apply with respect to any conviction or plea before January 1, 1970, or to any conviction or plea on or after such date in a new trial following an appeal of a conviction before such date.

(h) *Cross reference.* * * *

[Sec. 162 as amended by sec. 5. Technical Amendments Act 1958 (72 Stat. 1608); secs. 7(b) and 8, Act of Sept. 14, 1960 (Public Law 86-779, 74 Stat. 1002, 1003); sec. 3(a), Revenue Act 1962 (76 Stat. 973); sec. 902, Tax Reform Act 1969 (83 Stat. 710)]

§ 1.162-21 [Reserved]

§ 1.162-22 Treble damage payments under the antitrust laws.

(a) *In general.* In the case of a taxpayer who after December 31, 1969, either is convicted in a criminal action of a violation of the Federal antitrust laws or enters a plea of guilty or *nolo contendere* to an indictment or information charging such a violation, and whose conviction or plea does not occur in a new trial following an appeal of a conviction on or before such date, no deduction shall be allowed under section 162(a) for two-thirds of any amount paid or incurred after December 31, 1969, with respect to—

(1) Any judgment for damages entered against the taxpayer under section 4 of the Clayton Act (15 U.S.C. 15), as amended, on account of such violation or any related violation of the Federal antitrust laws, provided such related violation occurred prior to the date of the final judgment of such conviction, or

(2) Settlement of any action brought under such section 4 on account of such violation or related violation.

For the purposes of this section, where a civil judgment has been entered or a settlement made with respect to a violation of the antitrust laws and a criminal proceeding is based upon the same violation, the criminal proceeding need not have been brought prior to the civil judgment or settlement. If, in his return for any taxable year, a taxpayer claims a deduction for an amount paid or incurred with respect to a judgment or settlement described in the first sentence of this paragraph and is subsequently convicted of a violation of the antitrust laws which makes a portion of such amount unallowable, then the taxpayer shall file an amended return for such taxable year on which the amount of the deduction is appropriately reduced. Attorney's fees, court costs, and other amounts paid or incurred in connection with a controversy under such section 4 which meet the requirements of section 162 are deductible under that section. For purposes of subparagraph (2) of this paragraph, the amount paid or incurred in settlement shall not include amounts attributable to the plaintiff's costs of suit and attorney's fees, to the extent that such costs or fees have actually been paid.

(b) *Conviction.* For purposes of paragraph (a) of this section, a taxpayer is convicted of a violation of the antitrust laws if a judgment of conviction (whether or not a final judgment) with respect to such violation has been entered against him, provided a subsequent final judgment of acquittal has not been entered or criminal prosecution with respect to such violation terminated without a final judgment of conviction. During the pendency of an appeal or other action directly contesting a judgment of conviction, the taxpayer should file a protective claim for credit or refund to avoid being barred by the period of limitations on credit or refund under section 6511.

(c) *Related violation.* For purposes of this section, a violation of the Federal antitrust laws is related to a subsequent violation if (1) with respect to the subsequent violation the United States obtains both a judgment in a criminal proceeding and an injunction against the taxpayer, and (2) the taxpayer's actions which constituted the prior violation would have contravened such injunction if such injunction were applicable at the time of the prior violation.

(d) *Settlement following a dismissal of an action or amendment of the complaint.* For purposes of paragraph (a) (2) of this section, an amount may be considered as paid in settlement of an action even though the action is dismissed or otherwise disposed of prior to such settlement or the complaint is amended to eliminate the claim with respect to the violation or related violation.

(e) *Antitrust laws.* The term "antitrust laws" as used in section 162(g) and this section shall include the Federal acts enumerated in paragraph (1) of section 1 of the Clayton Act (15 U.S.C. 12), as amended.

(f) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). In 1970, the United States instituted a criminal prosecution against X Co., Y Co., A, the president of X Co., and B, the president of Y Co., under section 1 of the Sherman Anti-Trust Act, 15 U.S.C. 1. In the indictment, the defendants were charged with conspiring to fix and maintain prices of electrical transformers from 1965 to 1970. All defendants entered pleas of nolo contendere to these charges. These pleas were accepted and judgments of conviction entered. In a companion civil suit, the United States obtained an injunction prohibiting the defendants from conspiring to fix and maintain prices in the electrical transformer market. Thereafter, Z Co. sued X Co. and Y Co. for $300,000 in treble damages under section 4 of the Clayton Act. Z Co.'s complaint alleged that the criminal conspiracy between X Co. and Y Co. forced Z Co. to pay excessive prices for electrical transformers. X Co. and Y Co. each paid Z Co. $85,000 in full settlement of Z Co's action. Of each $85,000 paid, $10,000 was attributable to court costs and attorney's fees actually paid by Z Co. Under section 162(g), X Co. and Y Co. are each precluded from deducting as a trade or business expense more than $35,000 of the $85,000 paid to Z Co. in settlement

$$\left(\$10{,}000 + \frac{\$85{,}000 - \$10{,}000}{3}\right)$$

Example (2). Assume the same facts as in example (1) except that Z Co.'s claim for treble damages was based on a conspiracy to fix and maintain prices in the sale of electrical transformers during 1963. Although the criminal prosecution of the defendants did not involve 1963 (a year barred by the applicable criminal statute of limitations when the prosecution was instituted), Z Co.'s pleadings alleged that the civil statute of limitations had been tolled by the defendants' fraudulent concealment of their conspiracy. Since the United States has obtained both a judgment in a criminal proceeding and an injunction against the defendants in connection with their activities from 1965 to 1970, and the alleged actions of the defendants in 1963 would have contravened such injunction if it were applicable in 1963, the alleged violation in 1963 is related to the violation from 1965 to 1970. Accordingly, the tax consequences to X Co. and Y Co. of the payments of $85,000 in settlement of Z Co.'s claim against X Co. and Y Co. are the same as in example (1).

Example (3). Assume the same facts as in example (1) except that Z Co.'s claim for treble damages was based on a conspiracy to fix and maintain prices with respect to electrical insulators for high-tension power poles. Since the civil action was not based on the same violation of the Federal antitrust laws as the criminal action, or on a related violation (a violation which would have contravened the injunction if it were applicable), X Co. and Y Co. are not precluded by section 162(g) from deducting as a trade or business expense the entire $85,000 paid by each in settlement of the civil action.

[FR Doc.72-19376 Filed 11-9-72;8:51 am]

[T.D. 7219]

PART 3—CAPITAL CONSTRUCTION FUND

Deposits

The following regulations relate to the application of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177) as amended by section 21(a) of the Merchant Marine Act of 1970 (84 Stat. 1026) and to the requirement thereof with respect to deposits in capital construction funds for taxable years beginning after December 31, 1970, and before January 1, 1972. The regulations set forth herein are temporary and are designed to provide transitional rules with respect to deposits in capital construction funds for such years. The regulations are effective until the issuance of final regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary or his delegate and prescribed by the Secretary of Commerce or his delegate. These regulations have been issued jointly by the Secretary of the Treasury and the Secretary of Commerce and also appear under 46 CFR Part 390.

In order to extend the time within which deposits may be made in capital construction funds with respect to income reported on certain taxpayer's 1971 Federal income tax returns, § 3.1 of chapter I of 26 CFR is amended by redesignating paragraph (c) thereof as paragraph (c) (1) and by adding a new subparagraph (2) to such paragraph (c), to read as follows:

§ 3.1 Capital construction fund.

* * * * *

(c) (1) * * *

(2) Notwithstanding subparagraph (1) of this paragraph, for taxable years beginning after December 31, 1970, and ending prior to January 1, 1972, deposits made later than the last date permitted under subpararaph (1) of this paragraph but on or before January 9, 1973, in a capital construction fund pursuant to an agreement with the Secretary of Commerce, acting by and through the Administrator of the National Oceanic and Atmospheric Administration, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever is earlier.

* * * * *

Because this Treasury decision merely extends the time within which certain deposits into a capital construction fund may be made it is found unnecessary to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d).

(Sec. 607, Merchant Marine Act, 1936, 46 U.S.C. 1177, as amended by sec. 21(a), Merchant Marine Act of 1970, 84 Stat. 1026; sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: November 6, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

ROBERT W. WHITE,
Administrator, National Oceanic and Atmospheric Administration.

HOWARD F. CASEY,
Acting Assistant Secretary of Commerce for Maritime Affairs.

[FR Doc.72-19375 Filed 11-9-72;8:51 am]

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7215]

PART 53—FOUNDATION EXCISE TAXES

Taxes on Taxable Expenditures

Correction

In F.R. Doc. 72-18555 appearing at page 23161 of the issue for Tuesday, October 31, 1972, the following changes should be made:

1. In § 53.4945-2(d)(2)(iii), the words "such as discussions of alternative scholarships" should be inserted in the eighth line of example (3), between the words "program," and "programs".

2. In § 53.4945-3(b)(3)(i), the words "four taxable years. However, the support" should be inserted in the seventh line between the words "preceding" and "received".

3. In § 53.4945-5(e)(1)(iv), the words "the grantor foundation determines that any part of a" should be inserted in the third line between the words "and" and "grant".

[T.D. 7218]

PART 53—FOUNDATION EXCISE TAXES

Foreign Private Foundations

On April 13, 1971, notice of proposed rule making with respect to the amendment of the Miscellaneous Excise Taxes Regulations (26 CFR Part 53) under section 4948 of the Internal Revenue Code of 1954, as enacted by section 101(b) of the Tax Reform Act of 1969 (83 Stat. 498) (relating to tax on investment income of and denial of exemption to certain foreign organizations) to provide rules under that section was published in the FEDERAL REGISTER (36 F.R. 7014). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below:

Paragraph (a) of § 53.4948-1, as set forth in the notice of proposed rule making, is changed by revising subparagraphs (1) and (3) thereof. These revised provisions read as set forth below.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: November 6, 1972.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

Subpart I—Tax on Investment Income of and Denial of Exemption to Certain Foreign Organizations

§ 53.4948 Statutory provisions; tax on investment income and denial of exemption.

SEC. 4948. *Application of taxes and denial of exemption with respect to certain foreign organizations*—(a) *Tax on income of certain foreign organizations.* In lieu of the tax imposed by section 4940, there is hereby imposed for each taxable year on the gross investment income (within the meaning of section 4940(c)(2)) derived from sources within the United States (within the meaning of section 861) by every foreign organization which is a private foundation for the taxable year a tax equal to 4 percent of such income.

(b) *Certain sections inapplicable.* Section 507 (relating to termination of private foundation status), section 508 (relating to special rules with respect to section 501(c)(3) organizations), and this chapter (other than this section) shall not apply to any foreign organization which has received substantially all of its support (other than gross investment income) from sources outside the United States.

(c) *Denial of exemption to foreign organizations engaged in prohibited transactions*—(1) *General rule.* A foreign organization described in subsection (b) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction after December 31, 1969.

(2) *Prohibited transactions.* For purposes of this subsection, the term "prohibited transactions" means any act or failure to act (other than with respect to section 4942(e)) which would subject a foreign organization described in subsection (b), or a disqualified person (as defined in section 4946) with respect thereto, to liability for a penalty under section 6684 or a tax under section 507 if such foreign organization were a domestic organization.

(3) *Taxable years affected.*

(A) Except as provided in subparagraph (B), a foreign organization described in subsection (b) shall be denied exemption from taxation under section 501(a) by reason of paragraph (1) for all taxable years beginning with the taxable year during which it is notified by the Secretary or his delegate that it has engaged in a prohibited transaction. The Secretary or his delegate shall publish such notice in the Federal Register on the day on which he so notifies such foreign organization.

(B) Under regulations prescribed by the Secretary or his delegate, any foreign organization described in subsection (b) which is denied exemption from taxation under section 501(a) by reason of paragraph (1) may, with respect to the second taxable year following the taxable year in which notice is given under subparagraph (A) (or any taxable year thereafter), file claim for exemption from taxation under section 501(a). If the Secretary or his delegate is satisfied that such organization will not knowingly again engage in a prohibited transaction, such organization shall not, with respect to taxable years beginning with the taxable year with respect to which such claim is filed, be denied exemption from taxation under section 501(a) by reason of any prohibited transaction which was engaged in before the date on which such notice was given under subparagraph (A).

(4) *Disallowance of certain charitable deductions.* No gift or bequest shall be allowed as a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if made—

(A) to a foreign organization described in subsection (b) after the date on which the Secretary or his delegate publishes notice under paragraph (3)(A) that he has notified such organization that it has engaged in a prohibited transaction, and

(B) in a taxable year of such organization for which it is not exempt from taxation under section 501(a) by reason of paragraph (1).

[Sec. 4948 as added by sec. 101(b), Tax Reform Act 1969 (83 Stat. 518)]

§ 53.4948-1 Application of taxes and denial of exemption with respect to certain foreign organizations.

(a) *Tax on income of certain foreign organizations.* (1) In lieu of the tax imposed by section 4940 and the regulations thereunder, there is hereby imposed for each taxable year beginning after December 31, 1969, on the gross investment income (within the meaning of section 4940(c)(2) and the regulations thereunder) derived from sources within the United States (within the meaning of section 861 and the regulations thereunder) by every foreign organization which is a private foundation (within the meaning of section 509 and the regulations thereunder) and exempt from taxation under section 501(a) for the taxable year a tax equal to 4 percent of such income, except as provided in subparagraph (3) of this paragraph. The tax (if any) will be reported on the form the foundation is required to file under section 6033 for the taxable year, at the time prescribed for filing such annual return (determined without regard to any extension of time for filing). For purposes of this section, the term "foreign organization" means any organization which is not described in section 170(c)(2)(A).

(2) With respect to the deduction and withholding of tax imposed by section 4948(a), see section 1443(b) and the regulations thereunder.

(3) Whenever there exists a tax treaty between the United States and a foreign country, and a foreign private foundation subject to section 4948(a) is a resident of such country or is otherwise entitled to the benefits of such treaty (whether or not such benefits are available to all residents), if the treaty provides that any item or items (or all items with respect to an organization exempt from income taxation) of gross investment income (within the meaning of section 4940(c)(2)) shall be exempt from income tax, such item or items shall not be taken into account by such foundation in computing the tax to be imposed under section 4943(a) for any taxable year for which the treaty is effective.

(b) *Certain sections inapplicable.* Section 507 (relating to termination of private foundation status), section 508 (relating to special rules with respect to section 501(c)(3) organizations), and chapter 42 (other than section 4948) of the Code shall not apply to any foreign organization which from the date of its creation has received at least 85 percent of its support (as defined in section 509(d), other than section 509(d)(4)) from sources outside the United States. For purposes of this paragraph, gifts, grants, contributions, or membership fees directly or indirectly from a United States person (as defined in section 7701(a)(30)) are from sources within the United States.

(c) *Denial of exemption to foreign organizations engaged in prohibited transactions*—(1) *In general.* A foreign private foundation described in section 4948(b) and paragraph (b) of this section shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction (within the meaning of subparagraph (2) of this paragraph) after December 31, 1969.

(2) *Prohibited transactions.* (i) For purposes of this section, the term "prohibited transaction" means any act or failure to act (other than with respect to section 4942(e), relating to minimum investment return) which would subject a foreign private foundation described in paragraph (b) of this section, or a disqualified person (as defined in section 4946) with respect thereto, to liability for a penalty under section 6684 (relating to assessable penalties with respect to liability for tax under chapter 42) or a tax under section 507 (relating to termination of private foundation status) if such foreign private foundation were a domestic private foundation.

(ii) For purposes of subdivision (i) of this subparagraph—

(*a*) Approval by an appropriate foreign government of grants by the foreign private foundation to individuals is sufficient to satisfy the requirements of section 4945(g) and the regulations thereunder.

(*b*) In determining whether a grantee of the foreign organization is a private foundation which is not an operating foundation for purposes of section 4942(g)(1)(A)(ii) or is an organization which is not described in section 509(a)(1), (2), or (3) for purposes of section 4945(d)(4) and (h), a determination made by such foreign organization will be accepted if such determination is made in good faith after a reasonable effort to identify the status of its grantee.

(iii) For purposes of subparagraph, in order for an act or failure to act (without regard to section 4942(e)) to be treated as a prohibited transaction under section 4948(c)(2) by reason of the application of section 6684(1), there must have been a prior act or failure to act (without regard to section 4942(e)), which—

(*a*) Would have resulted in liability for tax under chapter 42 (other than section 4940 or 4948(a)) if the foreign private foundation had been a domestic private foundation, and

(*b*) Had been the subject of a warning from the Commissioner that a second act or failure to act (without regard to section 4942(e)) would result in a prohibited transaction.

The second act or failure to act (with respect to which a warning described in subparagraph (3)(i) of this paragraph is given) need not be related to the prior act or failure to act with respect to which a warning from the Commissioner was given under (*b*) of this subdivision.

(3) *Taxable years affected.* (i) Except as provided in subdivision (ii) of this subparagraph, a foreign private foundation described in paragraph (b) of this section shall be denied exemption from taxation under section 501(a) by reason of subparagraph (1) of this paragraph for all taxable years beginning with the taxable year during which it is notified by the Commissioner that it has engaged in a prohibited transaction. The Commissioner shall publish such notice in the FEDERAL REGISTER on the day on which he so notifies such foreign private foundation. In the case of an act or failure to act (without regard to section 4942(e)) which would result in a penalty under section 6684(1) if the foreign private foundation were a domestic private foundation, before giving notice under this subdivision the Commissioner shall warn such foreign private foundation that such act or failure to act may be treated as a prohibited transaction. However, such act or failure to act will not be treated as a prohibited transaction if it is corrected (within the meaning of chapter 42 and the regulations thereunder) within 90 days after the making of such warning.

(ii) (*a*) Any foreign private foundation described in paragraph (b) of this section which is denied exemption from taxation under section 501(a) by reason of subparagraph (1) of this paragraph may, with respect to the second taxable year following the taxable year in which notice is given under subdivision (i) of this subparagraph (or any taxable year subsequent to such second taxable year), file a request for exemption from taxation under section 501(a) on Form 1023. In addition to the information generally required of an organization requesting exemption as an organization described in section 501(a), a request under this subdivision must contain or have attached to it a written declaration, made under the penalties of perjury, by a principal officer of such organization authorized to make such declaration, that the organization will not knowingly again engage in a prohibited transaction.

(*b*) If the Commissioner is satisfied that such organization will not knowingly again engage in a prohibited transaction and that the organization has satisfied all other requirements under section 501, the organization will be so notified in writing. In such case the organization shall not, with respect to taxable years beginning with the taxable year with respect to which a request under this subdivision is filed, be denied exemption from taxation under section 501(a) by reason of any prohibited transaction which was engaged in before the date on which notice was given under subdivision (i) of this subparagraph. Section 4948(c) provides that an organization denied exemption under such section will not be exempt from taxation under section 501(a) for the taxable year in which notice of loss of exemption is given and at least one immediately subsequent taxable year.

(d) *Disallowance of certain charitable deductions.* No gift, bequest, legacy, devise, or transfer shall be allowed as a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if made:

(1) To a foreign private foundation described in paragraph (b) of this section after the date on which the Commissioner publishes notice under paragraph (c)(3)(i) of this section that he has notified such organization that it has engaged in a prohibited transaction, and

(2) In a taxable year of such organization for which it is not exempt from taxation under section 501(a) by reason of paragraph (c)(1) of this section.

For purposes of this paragraph, a bequest, legacy, devise, or transfer under section 2055 or 2106(a)(2) shall be treated as made on the date of death of the decedent. For example, assume that an individual gives money to a foreign private foundation described in section 4948(b) in January 1970, January 1971, and January 1972. The organization has a taxable year from June 1 through May 31. In February 1970, notice is duly published that the foreign organization has engaged in a prohibited transaction. In December 1970, the organization duly submits a request for exemption under paragraph (c)(3)(ii)(*a*) of this section which is granted for the taxable year ending May 31, 1972. The January 1970 gift is allowable as a deduction under section 2522 since it was made before the notice (February 1970). The January 1971 gift is not allowable as a deduction because the taxable year ending May 31, 1971, is a nonexempt year (the first taxable year subsequent to the taxable year of the notice) for the foreign organization. The January 1972 gift is allowable as a deduction under section 2522 because the taxable year ending May 31, 1972, is an exempt year for the organization.

[FR Doc.72-19374 Filed 11-9-72;8:51 am]

Title 45—PUBLIC WELFARE

Chapter XII—Action

PART 1202—DECLASSIFICATION

Title 45 is hereby amended by the addition of a new *Part 1202, Declassification,* to establish review procedures for declassification requests relating to classified ACTION materials.

AUTHORITY: The provisions of this Part 1202 issued under Executive Order 11652.

§ 1202.1 Introduction.

The following guidance is provided for members of the public desiring a classification review of a document of ACTION pursuant to sections 5(c) and 5(f) of Executive Order 11652 and section III.B. of the National Security Council Directive covering the Classification, Downgrading, Declassification and Safeguarding of National Security Information.

§ 1202.2 Request for classification review of documents.

(a) Any person desiring a classification review of an ACTION document containing information classified as National Security information by reason of Executive Order 11652 (or any predecessor Executive order) and which is more than 10 years old, should address such request to the General Counsel, ACTION, Washington, D.C. 20525.

(b) Requests need not be made on any special form but shall, as specified in Executive Order 11652, describe the document with sufficient particularity to enable ACTION personnel to identify and obtain the document from ACTION records without expending more than a reasonable amount of effort.

(c) Charges for locating and reproducing copies of records will be made when deemed applicable in accordance with title 5 of the Independent Offices Appropriations Act, 1952 (65 Stat. 290; 31 U.S.C. 483a).

§ 1202.3 Action on requests for classification review.

(a) The General Counsel shall assign each request to the ACTION Classification Review Committee which will consist of the Associate Director of International Operations, the Director of Public Affairs, and the General Counsel and will be chaired by the Associate Director of International Operations.

(b) Every effort will be made to complete action on each request within 30 days of receipt of the request. If action cannot be completed within 30 days, the requester will be so advised by the General Counsel along with reasons for the need for additional time. If the requester does not receive a decision on his request within 60 days from the date of receipt of his request by ACTION, or from the date of the most recent receipt of his response to an ACTION request for more particulars, he may appeal to the Interagency Classification Review Committee as provided in paragraph (c) of this section.

(c) In the event the ACTION Classification Review Committee determines that requested information must remain classified by reason of the provisions of Executive Order 11652, the requester shall be given prompt notification of that decision and whenever possible shall be provided with a brief statement as to why the information or material cannot be declassified. He shall also be advised that if he desires he may appeal that determination to the Interagency Classification Review Committee established under section 7A of Executive Order 11652. Such appeals should be in writing and addressed to the Interagency Classification Review Committee, Executive Office Building, Washington, D.C. 20500.

(d) For purposes of administrative determinations under this section, the burden of proof is on ACTION to show that continued classification is required under the terms of Executive Order 11652.

JOSEPH H. BLATCHFORD,
Director.

[FR Doc.72-19362 Filed 11-9-72;8:50 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1, 13]

FOREIGN PRIVATE FOUNDATIONS

Withholding of Tax

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by December 12, 1972. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by December 12, 1972. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

In order to provide rules for the withholding of the tax imposed by section 4948(a) of the Code, the Income Tax Regulations (26 CFR Part 1) under section 1443(b) of the Internal Revenue Code of 1954, as amended by section 101 (j)(22)(B) of the Tax Reform Act of 1969 (83 Stat. 528), relating to income subject to section 4948, are hereby amended. Temporary Treasury Regulation 13.14, 35 F.R. 17331 (T.D. 7067, 1970) is repealed.

Section 1.1443–1 is amended by adding thereto a new paragraph (b). This added provision reads as follows:

§ 1.1443–1 Foreign tax-exempt organizations.

* * * * *

(b) *Income subject to section 4948*—(1) *In general*—(i) *Application of withholding provisions.* Except as provided in subdivision (ii) of this subparagraph, in the case of a foreign private foundation which is subject to the tax imposed by section 4948(a) and the regulations thereunder, the withholding provisions of Chapter 3 of the Code and the regulations thereunder shall apply with respect to the gross investment income (as defined in section 4940(c)(2)) of such foundation from sources within the United States (within the meaning of section 861 and the regulations thereunder) as if the excise tax imposed by section 4948(a) were a tax imposed by Chapter 3 of the Code, except that the deduction and withholding shall be at the rate of 4 percent. The withholding requirements imposed by this paragraph are in addition to the requirements otherwise applicable to a withholding agent, such as the depositary requirements of section 6302 and the regulations thereunder. Similarly, the requirements of this paragraph do not obviate a private foundation's obligation to file any return required by law with respect to such an organization, such as the form the foundation is required to file under section 6033 for the taxable year.

(ii) *Special rule with respect to certain tax treaties.* Whenever there exists a tax treaty between the United States and a foreign country, and a foreign private foundation which is subject to the tax imposed by section 4948(a) and the regulations thereunder is a resident of such country or is otherwise entitled to the benefits of such treaty (whether or not such benefits are available to all residents), if the treaty provides that any item or items (or all items with respect to an organization exempt from income taxation) of gross investment income (within the meaning of section 4940(c)(2)) shall be exempt from income tax, the withholding provisions of Chapter 3 of the Code and the regulations thereunder shall not apply to such item or items.

(2) *Return on Form 1042.* Every withholding agent required to deduct and withhold any amount by virtue of the provisions of this paragraph shall make a return of the amount required to be deducted and withheld by completing and filing a Form 1042 with the Internal Revenue Service in accordance with the instructions accompanying that form and submitting the balance due (if any). In addition, in any case in which any amount is so withheld, the withholding agent shall prepare and submit to the foreign private foundation one of the copies of the Form 1042S showing the tax withheld under this paragraph in addition to any tax otherwise shown on such form.

(3) *Claims for refund and credits.* Claims for refund of or credit for amounts overpaid shall be made on a Form 843 or 1042 or other appropriate form, which shall be filed with the Mid-Atlantic Service Center on or after January 1, 1973. Claims filed prior to January 1, 1973, shall be filed with the Director of International Operations. In determining whether a claim for refund is appropriate and, if appropriate, who should make the claim, the provisions of section 1464 and the regulations thereunder shall apply.

(4) *Identification of foregin private foundations; general rule.* (i) Except as provided in subparagraph (6) of this paragraph, where a foreign organization does not have a ruling or determination letter that it is an organization described in section 509(a) (1), (2), (3), or (4), any person required under section 1443(b) and this paragraph to deduct and withhold any tax imposed by section 4948(a) on such foreign organization (if it were a private foundation) shall not be liable for such tax if prior to the day on which the person deposits or pays to the Internal Revenue Service any amount required to be withheld, such person has made a good faith determination that the foreign organization is an organization described in section 509 (a) (1), (2), (3), or (4). For purposes of this subdivision, such a "good faith determination" ordinarily will be considered as made where the determination is based on an affidavit of the foreign organization or an opinion of counsel (of the withholding agent or the foreign organization) that the foreign organization is an organization described in section 509(a) (1), (2), (3), or (4). Such an affidavit or opinion must set forth sufficient facts concerning the operations and support of the foreign organization for the Internal Revenue Service to determine that such organization would be likely to qualify as an organization described in section 509(a) (1), (2), (3), or (4).

(ii) For special transitional rules relating to the identification of foreign private foundations, see subparagraph (5) of this paragraph.

(iii) Nothing in this paragraph relieves any foreign private foundation of the liability for the tax (including interest and penalties) imposed by section 4948(a).

(5) *Special transitional rules relating to identification of foreign private foundations.* (i) Any person required under section 1443(b) and this paragraph to deduct and withhold any tax imposed by section 4948(a) on any foreign organization for any period after December 31, 1969, and before the 90th day after publication of final regulations under section 508 in the FEDERAL REGISTER shall not be liable for such tax if such person receives a certified statement from the foreign

organization prior to the day on which the person deposits or pays to the Internal Revenue Service any amount required to be withheld stating that either—

(*a*) Such foreign organization has properly filed the notice described in section 508(b) and the regulations thereunder and has not been notified by the Commissioner or his delegate by the 30th day after the day on which the notice is filed that such notice has failed to establish that such foreign organization is not a private foundation, or

(*b*) The presumption contained in section 508(b) does not apply to such foreign organization by reason of section 508(c) and the regulations thereunder.

(ii) If a certified statement described in subdivision (i) of this subparagraph is not received prior to the day on which a deposit or payment of any amount withheld in accordance with the provisions of this paragraph must be made by any person required to deduct and withhold any tax imposed by section 4948(a) with respect to any foreign organization, except as provided in subparagraph (4) of this paragraph such person shall be liable for all such tax imposed (including interest and penalties) for the period being returned by such person on Form 1042, to the extent that such person incurs liability to the foreign organization for gross investment income, as defined in section 4940(c)(2).

(iii) Any foreign organization to which section 508 by reason of section 4948(b) does not apply because such organization has received substantially all of its support (other than gross investment income, as defined in section 4940 (c)(2)) from sources outside the United States may nevertheless receive the benefits of subdivision (i) of this subparagraph by following the procedure set forth in such subdivision.

(6) *Effect of notice by Internal Revenue Service concerning organization's statement.* Subparagraphs (4) and (5) of this paragraph shall have no effect with respect to a withholding agent as to a particular foreign organization on or after the earlier (i) the date on which such agent acquires knowledge that the Internal Revenue Service has given notice to such foreign organization that its notice or statement has failed to establish that it is not a private foundation, (ii) the date on which the Internal Revenue Service makes notice to the public that such foreign organization has failed to establish that it is not a private foundation, or (iii) the date on which the Internal Revenue Service makes notice to the public that such foreign organization is a private foundation.

[FR Doc.72-19371 Filed 11-9-72;8:51 am]

[26 CFR Parts 1, 148]

REVOCATION OR SUSPENSION OF REGISTRATIONS

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by December 12, 1972. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by December 12, 1972. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in sections 4222(c) and 7805 of the Internal Revenue Code of 1954 (72 Stat. 1285, 68A Stat. 917; 26 U.S.C. 4222(c) and 7805).

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

In order to prescribe temporary rules relating to the revocation or suspension of the registration of any person to sell or purchase articles free of any tax imposed under Chapter 32 of the Internal Revenue Code of 1954, § 148.1-3 of the temporary regulations under the Excise Tax Technical Changes Act of 1958 (26 CFR Part 148) is amended by adding at the end thereof a new paragraph (j) which reads as follows:

§ 148.1-3 Temporary procedures for tax-free sales and purchases.

* * * * *

(j) *Revocation or suspension of registration*—(1) *Revocation or suspension by district director or Director of International Operations.* Except as provided in subparagraph (2) of this paragraph, the district director or the Director of International Operations, as the case may be, is authorized to revoke or temporarily suspend the registration of any person and the right of such person to sell or purchase articles tax free under section 4221 of the Code (or under any section specified in section 4222(d) to which the provisions of section 4222 have been extended) in any case in which he finds that—

(i) The registrant is not a bona fide manufacturer, or a purchaser reselling direct to manufacturers or exporters;

(ii) The registrant is for some other reason (including a change in the law relating to an exemption to which section 4222 applies) not eligible to retain a certificate of registry;

(iii) The registrant has unlawfully used his registration to avoid the payment of any tax imposed by Chapter 32 of the Code, or to postpone or interfere in any manner with the collection of such tax;

(iv) Such revocation or suspension is necessary to protect the revenue; or

(v) The registrant failed to comply with the requirements of paragraph (f) of this section, relating to evidence required in support of a tax-free sale.

Written notice of such revocation or suspension shall be sent by mail to the registrant's last known address. Such notice shall specify the grounds for the revocation or suspension and state the effective date of revocation or suspension. Notwithstanding the provisions of paragraph (e) (1) or (2) of this section, any person whose registration is revoked or suspended must reregister in accordance with the provisions of paragraph (e)(3) of this section before selling or purchasing articles tax free on or after the effective date of revocation or suspension. The revocation or suspension of registration is in addition to any penalty which may apply under the law for any act or failure to act.

(2) *Blanket revocation and reregistration.* The Commissioner is authorized to revoke the registration of every person and the right of every person to sell or purchase articles tax free under section 4221 of the Code (or under any section specified in section 4222(d) to which the provisions of section 4222 have been extended) when he finds that a blanket revocation is necessary to protect the revenue. Notice of blanket revocation shall be given by publication of such notice in the Internal Revenue Bulletin at least 60 days prior to the effective date of revocation. Notwithstanding the first sentence of this paragraph, the published notice may specify that the blanket revocation is to apply only to registrations made prior to a particular date provided in such notice, and may limit application of the blanket revocation to a defined group or classification of persons who are registered to sell or purchase tax free under any exemption provision to which section 4222 applies. In any case, persons registering during the period beginning with the date of publication of notice of revocation and ending with the effective date shall be excluded from the blanket revocation. Notwithstanding the provisions of paragraph (e) (1) or (2) of this section, persons who are affected by the blanket revocation shall be required to reregister in accordance with the provisions of paragraph (e)(3) of this section before selling or purchasing articles tax free on or after the effective date of revocation.

[FR Doc.72-19373 Filed 11-9-72;8:51 am]

[26 CFR Parts 1, 301]

PROCEDURE AND ADMINISTRATION

Extension of Time for Corporations To Pay Tax

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the

Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by December 12, 1972. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by December 12, 1972. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their request for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

In order to provide that an automatic extension of time to file a corporation income tax return does not operate to extend the time for payment of tax due on such return and to specify that reasonable cause for any underpayment of such tax will be presumed if certain conditions are satisfied, the Income Tax Regulations (26 CFR Part 1) under sections 6081 and 6161 of the Internal Revenue Code of 1954 and the Procedure and Administration Regulations (26 CFR Part 301) under section 6651 of such code are hereby amended as follows, effective for returns with respect to taxable years ending on or after December 31, 1972:

PARAGRAPH 1. Section 1.6081–1 is amended by revising paragraph (a) to read as follows:

§ 1.6081–1 Extension of time for filing returns.

(a) *In general.* District directors and directors of service centers are authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document which relates to any tax imposed by Subtitle A of the code and which is required under the provisions of Subtitle A or F of the code or the regulations thereunder. However, other than in the case of taxpayers who are abroad, such extensions of time shall not be granted for more than 6 months. Except in the case of an extension of time pursuant to § 1.6081–2, an extension of time for filing an income-tax return shall not operate to extend the time for the payment of the tax or any installment thereof unless specified to the contrary in the extension. In the case of an extension of time pursuant to § 1.6081–2, an extension of time for filing an income-tax return shall operate to extend the time for the payment of the tax or any installment thereof unless specified to the contrary in the extension. For extension of time for filing of declarations of estimated tax, see § 1.6073–4. For rules relating to extension of time for paying tax, see § 1.6161–1.

* * * * *

PAR. 2. Section 1.6081–3 is amended by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) reading as follows:

§ 1.6081–3 Automatic extension of time for filing corporation income tax returns.

* * * * *

(c) *Special rule for the extension of time for the payment of tax.* Notwithstanding the application of § 1.6081–1(a), any automatic extension of time for filing a corporation income tax return granted under paragraph (a) or (b) of this section shall not operate to extend the time for payment of any tax due on such return.

* * * * *

§ 1.6161–1 [Amended]

PAR. 3. Section 1.6161–1 is amended by deleting paragraph (a)(3).

PAR. 4. Section 301.6651–1 is amended by revising subparagraph (1) of paragraph (c) and by adding a new subparagraph (4) to such paragraph, to read as follows:

§ 301.6651–1 Failure to file tax return or to pay tax.

* * * * *

(c) *Showing of reasonable cause.* (1) Except as provided in subparagraphs (3) and (4) of this paragraph, a taxpayer who wishes to avoid the addition to the tax for failure to file a tax return or pay tax must make an affirmative showing of all facts alleged as a reasonable cause for his failure to file such return or pay such tax on time in the form of a written statement containing a declaration that it is made under penalties of perjury. Such statement should be filed with the district director or the director of the service center with whom the return is required to be filed; *Provided,* That where special tax returns of liquor dealers are delivered to an alcohol, tobacco and firearms officer working under the supervision of the Regional Director, Bureau of Alcohol, Tobacco and Firearms, such statement may be delivered with the return. If the district director, the director of the service center, or, where applicable, the Regional Director, Bureau of Alcohol, Tobacco and Firearms, determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship (as described in § 1.6161–1(b) of this chapter) if he paid on the due date. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of his tax liability, consideration will be given to all the facts and circumstances of the taxpayer's financial situation, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) he could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. Thus, for example, a taxpayer who incurs lavish or extravagant living expenses in an amount such that the remainder of his assets and anticipated income will be insufficient to pay his tax, has not exercised ordinary business care and prudence in providing for the payment of his tax liability. Further, a taxpayer who invests funds in speculative or illiquid assets has not exercised ordinary business care and prudence in providing for the payment of his tax liability unless, at the time of the investment, the remainder of the taxpayer's assets and estimated income will be sufficient to pay his tax or it can be reasonably foreseen that the speculative or illiquid investment made by the taxpayer can be utilized (by sale or as security for a loan) to realize sufficient funds to satisfy the tax liability. A taxpayer will be considered to have exercised ordinary business care and prudence if he made reasonable efforts to conserve sufficient assets in marketable form to satisfy his tax liability and nevertheless was unable to pay all or a portion of the tax when it became due.

* * * * *

(4) If, for a taxable year ending on or after December 31, 1972, a corporate taxpayer satisfies the requirements of § 1.6081–3 (a) or (b) (relating to an automatic extension of time for filing a corporation income tax return), reasonable cause shall be presumed, for the period of the extension of time to file, with respect to any underpayment of tax if—

(i) Not less than the amount of tax that would be required as the first installment under section 6152(a)(1), if the taxpayer elected to pay the tax in installments, is paid on or before the regular due date of the return and the second installment is paid on or before 3 months after such date,

(ii) The amount of tax (determined without regard to any prepayment thereof) shown on Form 7004, or the amount of tax paid on or before the regular due date of the return, is at least 90 percent of the amount of tax shown on the taxpayer's Form 1120, and

(iii) Any balance due shown on the Form 1120 is paid on, or before the due date of the return, including any extensions of time for filing.

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[FR Doc.72-19372 Filed 11-9-72;8:51 am]

[21 CFR Part 191]

HAZARDOUS SUBSTANCES FOR HOUSEHOLD USE MARKETED IN CONTAINERS IDENTIFIABLE AS FOOD, DRUG, OR COSMETIC CONTAINERS

Notice of Proposed Rule Making

Investigations by the Food and Drug Administration reveal that hazardous substances for household use, particularly cleaners, waxes, and polishes, are being introduced into interstate commerce with labels bearing pictorial equivalents or references to food products. In some instances, the product also has a scent corresponding with a food. Such hazardous substances are also being marketed in containers associated with food contents, such as gable-top containers and pull-ring cans commonly used for milk, fruit juice beverages, beer, soft drinks, etc. Such products present the obvious hazard of nonfood contents being mistaken by a child or inattentive adult as food contents. Small children in particular, reacting to picture, scent, and/or container shape and unaware of printed labeling, are subject to injury by such products.

Section 4(f) of the Federal Hazardous Substances Act prohibits the introduction or delivery for introduction into interstate commerce, or the receipt and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a container identifiable as a food, drug, or cosmetic container by its labeling or by other identification. Section 5(a) of the act prescribes penalties for violators of section 4.

In view of the above, the Commissioner of Food and Drugs concludes that to promote consumer protection and safety a regulation regarding said provision of section 4(f) of the act should be established as proposed below.

Therefore, pursuant to provisions of the Federal Hazardous Substances Act (secs. 4(f), 5(a), 10(a), 74 Stat. 375, 376, 378; 15 U.S.C. 1263(f), 1264(a), 1269(a)) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes that a new section be added to Part 191, as follows:

§ 191.5a Hazardous substances marketed in containers identifiable as food, drug, or cosmetic containers.

(a) Section 4(f) of the Federal Hazardous Substances Act prohibits the introduction or delivery for introduction into interstate commerce, or the receipt and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a container identifiable as a food, drug, or cosmetic container by its labeling or by other identification. Section 5(a) of the act prescribes penalties for violators of any provision of section 4 of the act.

(b) Investigations by the Food and Drug Administration reveal that hazardous substances for household use, such as cleaners, waxes, and polishes, have been introduced or delivered for introduction into interstate commerce in containers that may be mistakenly identified as food containers by their labeling or other identifying characteristics. The container label may bear a pictorial equivalent of a food product, or the contents may have a scent associated with food, or the product may be in a type of container usually associated with food contents (such as a gable-top container or pull-ring can commonly used for beverages). Such products present the obvious hazard of nonfood contents being mistaken by a child or inattentive adult as food contents. Small children in particular, reacting to picture, scent, and/or container shape and unaware of printed labeling, are subject to injury by such products.

(c) To reduce reasonably foreseeable injuries deriving from accidental misuse of misleading packaged hazardous substances, no container that resembles a food, drug, or cosmetic container by virtue of its shape, size, color, label vignette, label design, illustration, content appearance (if visible), content fragrance, closure design, or any combination of these, may be used for a hazardous substance. In applying this regulation, consideration shall be given to such factors as the impression an article will make on a child or casual adult, historical package usage in the home environment, and market ratios, particularly where the container has been used predominantly as a food container.

(d) Examples of household articles subject to this regulation are:

(1) Containers of hazardous substances with labeling that bears pictorial equivalents, vignettes, or illustrations of any food, drug, or cosmetic substance.

(2) Hazardous substances in metal cans with the "pull-ring" throwaway tab openings commonly used on soft drink, beer, and fruit juice cans.

(3) Hazardous substances in gable-top type containers commonly used for milk and other beverages.

Interested persons may, within 60 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: November 1, 1972.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[FR Doc.72-19091 Filed 11-9-72;8:49 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-GL-57]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Detroit, Mich.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

A review of the transition area in the Detroit, Mich. area indicated a requirement for additional 700-foot transition area to protect instrument approach procedures at Ann Arbor Airport. The review also indicated that the transition area in this location has been built up in individual airspace actions and was covered under six citations. The chart showing these transition areas is difficult for both the pilot and controller to read and to determine when the aircraft is in, or out of the controlled airspace. It would be advantageous to the public and air traffic controllers to combine these into one citation and eliminate the small areas not covered by the transition area. This would also make charting much easier.