FEDERAL REGISTER

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PART 6—EXCEPTIONS FROM COMPETITIVE SERVICE

FEDERAL MEDIATION AND CONCILIATION SERVICE

Effective upon publication in the FEDERAL REGISTER, paragraph (d) of § 6.346 is revoked and paragraph (c) is amended as set out below.

§ 6.346 *Federal Mediation and Conciliation Service.* * * *

(c) One Private Secretary to each of the following: The Associate Director, the Assistant Director, and the General Counsel.

(R. S. 1753, sec. 2, 22 Stat. 403, 5 U. S. C. 631, 633; E. O. 10440, March 31, 1953, 18 F. R. 1823, 3 CFR 1953 Supp.)

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

[F. R. Doc. 56-1012; Filed, Feb. 8, 1956; 8:48 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

Subchapter A—Civil Air Regulations

[Supp. 5]

PART 20—PILOT CERTIFICATES

MISCELLANEOUS AMENDMENTS

Civil Aeronautics Manual 20 is amended to include CAA policies pertaining to the following:

(1) The issuance of and the procedures for obtaining a waiver of physical standards for a private or commercial pilot certificate (§ 20.23-4 and § 20.33-4).

(2) The retention of existing ratings upon the issuance of a pilot certificate of a higher rating; and the obtaining of additional flight instructor category ratings (§ 20.40-2 and § 20.41-8).

(3) The issuance of and the procedures for obtaining a new pilot certificate in the case of change of name or request for lower grade pilot certificate; and for a duplicate pilot or medical certificate in the case of loss or destruction (§ 20.50-2 through § 20.50-4).

(4) The reissuance of cancelled or voluntarily surrendered pilot certificates or ratings (§ 20.51-2 and § 20.51-3).

(5) The procedure for obtaining a replacement for a lost Report of Written Examination, Form ACA-578A (§ 20.60-4).

The following revisions are made to existing material:

(1) Section 20.42–2 is amended to read that the applicant for the instrument written examination show (a) that he meets the experience requirements and has at least 30 hours of instrument time; or (b) if enrolled in an instrument flight course, the written recommendation of the chief flight instructor of that school.

(2) Section 20.60–3 is changed to specify the applicants from whom reports of oral or written examinations will be acceptable until May 31, 1956, as evidence of successful completion of examinations and tests; and

(3) Section 20.61–1 (c) is amended to correct an erroneous reference.

The following material is hereby adopted:

1. A new § 20.23–4 is added to read:

§ 20.23–4 *Waivers for private pilot applicants who fail to meet physical standards (CAA policies which apply to § 20.23).* Applicants who do not meet the physical standards of Part 29 of this subchapter should apply to the Chief, Medical Division, Civil Aeronautics Administration, Washington 25, D. C., for a waiver of these standards as authorized under § 29.5 of this subchapter. Waivers of physical standards are issued by the CAA on the basis of a study of the applicant's flight operation record, ability, judgment, and/or the results of a special medical flight test authorized under § 20.26.[1] In order to take a medical flight test, the applicant must meet all experience requirements for a private pilot certificate and present written authorization from the CAA Medical Division for such a test.

2. A new § 20.33–4 is added to read:

§ 20.33–4 *Waiver for commercial pilot applicants who fail to meet physical standards (CAA policies which apply to § 20.33 (a)).* Applicants who do not meet the physical standards of Part 29 of this subchapter should apply to the Chief, Medical Division, Civil Aeronautics Administration, Washington 25, D. C., for a waiver of these standards as authorized under § 29.5 of this subchapter. Waivers of physical standards are issued by the CAA on the basis of a study of the applicant's flight operation record, ability, judgment, and/or the results of a special medical flight test authorized under § 20.26.[1] In order to take a medical flight test, the applicant must meet all experience requirements for a commercial pilot certificate and present written authorization from the CAA Medical Division for such a test.

3. A new § 20.40–2 is added to read:

§ 20.40–2 *Retention of existing ratings upon the issuance of a pilot certificate of a higher rating (CAA policies which apply to § 20.40)*—(a) *Private pilot.* The holder of a private pilot certificate may retain without further flight test all of his valid airplane class ratings, and his flight instructor, or instrument rating on a commercial pilot certificate for which he qualifies, regardless of the airplane used for the commercial flight test. He may retain aircraft category and type ratings without a flight test with only private pilot privileges.

(b) *Commercial pilot.* The holder of a commercial pilot certificate who qualifies for an airline transport pilot certificate may retain all of the aircraft, flight instructor, and instrument ratings entered upon his commercial pilot certificate without further tests. However, when such ratings are endorsed upon his airline transport pilot certificate, he may exercise only the privileges of a commercial pilot in respect to these ratings.

4. A new § 20.41–8 is added to read:

§ 20.41–8 *Additional flight instructor privileges (CAA policies which apply to § 20.41).* The holder of a flight instructor rating who wishes to qualify under § 43.64 (d) of this subchapter to give dual instruction in a category of aircraft in which he has not demonstrated his instructional competence, will be required to pass Section Two of the flight instructor written examination (see § 20.41–1 (b)) and the practical test pertinent to the category of aircraft in which he wishes to instruct.

5. Section 20.42–2 is amended to read:

§ 20.42–2 *Prerequisites for taking the instrument written examination (CAA policies which apply to § 20.42 (a)).* The applicant for the instrument rating written examination will be required to show (a) that he meets the experience requirements of § 20.42 (b) (1) of this subchapter, and in addition has at least 30 hours of instrument time under actual or simulated instrument flight conditions; or (b) if enrolled in an instrument flight course in a certificated instrument flying school, the written recommendation of the chief flight instructor of that school.

6. A new § 20.50–2 is added to read:

§ 20.50–2 *Application to change a name on a pilot certificate (CAA policies which apply to § 20.50).* Application to change a name on a pilot certificate should be made on Form ACA–342, and submitted to an Aviation Safety Agent. The application should be accompanied by the applicant's current pilot certificate and the marriage license, court order, or other document verifying the name change. These documents will be returned to the applicant after examination by the agent.

7. A new § 20.50–3 is added to read:

§ 20.50–3 *Application to replace a lost or destroyed pilot or medical certificate (CAA policies which apply to § 20.50)*—(a) *Pilot certificate.* Application to replace a lost or destroyed pilot certificate should be made in a letter addressed to the Chief, Airman Records Branch, W–253, Civil Aeronautics Administration, Washington 25, D. C. The letter should contain the following: (1) A brief statement of the circumstances surrounding the loss or destruction of the certificate; (2) all available information regarding the certificate, such as grade, number, exact name in which it was issued, ratings, and date of issuance; and (3) be accompanied by a check or money order for $2.00, payable to the Civil Aeronautics Administration, Department of Commerce.

(b) *Medical certificate.* Application to replace a lost or destroyed medical certificate should be made in the form of a letter addressed to the Chief, Medical Division, W–265, Civil Aeronautics Administration, Washington 25, D. C., and accompanied by a check or money order for $2.00, payable to the Civil Aeronautics Administration, Department of Commerce.

(c) *Telegraphic evidence of lost pilot or medical certificate.* (1) The person to whom a pilot or medical certificate was issued may, upon loss of that certificate, obtain from the CAA an official telegram confirming its issuance. This telegram may be carried in the pilot's personal possession as a pilot certificate, medical certificate, or both pending the receipt of duplicate certificates issued in accordance with paragraphs (a) and (b) of this section: *Provided,* That he has not been notified of the suspension or revocation of the certificate concerned.

(2) The request for such a telegram may be made by prepaid telegram stating the date on which a duplicate certificate or certificates were requested, or including the request for such duplicate(s) and a money order for the necessary fee or fees.

(3) A request for a telegram for temporary use in lieu of a lost pilot or medical certificate should be addressed to the appropriate division shown in paragraph (a) or (b) of this section. A request for a telegram for temporary use in lieu of both pilot and medical certificates should be addressed to the Chief, Airman Records Branch, W–253, Civil Aeronautics Administration, Washington 25, D. C.

8. A new § 20.50–4 is added to read:

§ 20.50–4 *Application for a pilot certificate with lower rating (CAA policies which apply to § 20.50)*—(a) *Permanent surrender.* A pilot may make application for a pilot certificate with a lower rating. The application should be made on Form ACA–335 and include the following statement or its equivalent: "This request for a lower rating is made for my own reasons, with full knowledge that such rating may not be re-issued to me unless I again pass the examinations and tests prescribed for original issuance." Form ACA–335 and the applicant's current certificate should be forwarded to the CAA regional office.

(b) *Temporary surrender.* A pilot may make application for a pilot certificate with a lower rating with the privilege of having his current higher rating reinstated within two years if he, within this two-year period, passes the appropriate medical examination for such higher rating. This application should be made on Form ACA–335 and include the following statement or its equivalent: "This request for lower rating is made for my own reasons. I request the privilege of having my higher

[1] A pilot certificate issued on the basis of a special medical flight test will bear special aircraft, equipment, or operating limitations appropriate to the deficiency involved; or the notation "Issued on the basis of special medical test" to indicate that no limitation was found necessary.

rating reinstated within two years without requiring me to pass the examinations and tests prescribed for original issuance, providing that, before the expiration of two years, I pass the appropriate medical examination prescribed for such higher rating." The applicant should forward Form ACA-335 and his current pilot certificate to the CAA District Aviation Safety Office. The applicant should request from the agent a form which he can present as evidence of his having held the higher rating.

9. A new § 20.51–2 is added to read:

§ 20.51–2 *Cancellation of pilot certificates (CAA policies which apply to § 20.51 (b)).* A pilot certificate revoked by the CAB will not be reissued or reinstated. To obtain another certificate, the pilot must requalify and complete all applicable examinations and tests.

10. A new § 20.51–3 is added to read:

§ 20.51–3 *Voluntary surrender of certificate or rating (CAA policies which apply to § 20.51 (b)).* The holder of a pilot certificate who wishes to surrender the certificate or ratings thereon should forward the certificate with the request that it be accepted by the Administrator for surrender. The request should be addressed to the Chief, Airman Records Branch, W–253, Washington 25, D. C. Voluntary surrender of a certificate will not be accepted by the CAA for the purpose of avoiding civil penalty, revocation, suspension, or other sanction. When a certificate has been accepted for surrender, the pilot must requalify and pass all applicable examinations and tests if he wishes to obtain another pilot certificate.

11. Section 20.60–3 is amended by changing the last sentence to read as follows: "Reports issued to applicants for commercial pilot certificates or for any additional ratings on or before May 31, 1954, and acceptable under policies existing on that date, will continue to be acceptable until May 31, 1956."

12. A new § 20.60–4 is added to read:

§ 20.60–4 *Replacement of written examination report (CAA policies which apply to § 20.60).* Duplicates of lost Forms ACA–578A, Report of Written Examination, may be obtained from the Airman Records Branch, W–253, Civil Aeronautics Administration, Washington 25, D. C., for a fee of $1.00 each. Such requests should be accompanied by a check or money order made payable to the Civil Aeronautics Administration, Department of Commerce.

13. Section 20.61–1 (c) is amended by changing the words "this section" to read "§ 43.41 of this subchapter."

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601, 602, 52 Stat. 1007, 1008, as amended; 49 U. S. C. 551, 552)

This supplement shall become effective March 15, 1956.

[SEAL] C. J. LOWEN,
Administrator of Civil Aeronautics.

[F. R. Doc. 56–1010; Filed, Feb. 8, 1956; 8:48 a. m.]

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter A—Income Tax

[T. D. 6162]

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

MITIGATION OF EFFECT OF LIMITATIONS AND OTHER PROVISIONS

On July 12, 1955, notice of proposed rule making with respect to regulations under subchapter Q, part II (relating to mitigation of effect of limitations and other provisions), of the Internal Revenue Code of 1954, was published in the FEDERAL REGISTER (20 F. R. 4947). After consideration of such relevant suggestions as were presented by interested persons regarding the proposals, and subject to the changes as set forth below, the regulations as so published are hereby adopted:

PARAGRAPH 1. Section 1.1311 (a)–1 is revised by striking the last sentence of paragraph (c) and inserting in lieu thereof the following: "In the second situation, if the taxpayer claims that a deduction should be allowed for a particular year and it is ultimately determined that the deduction was not allowable in that year, then the taxpayer may take the deduction in the proper year if that year was not closed at the time the taxpayer first claimed a deduction."

PAR. 2. Section 1.1311 (a)–2 is revised as follows:

(A) By inserting a comma after each of the words "law" and "limitations" in the fifth line of paragraph (a).

(B) By striking the first sentence of paragraph (b) and inserting in lieu thereof the following: "The determination (including a determination under section 1313 (a) (4)) may be with respect to any of the taxes imposed by subtitle A of the Internal Revenue Code of 1954, by chapter 1 and subchapters A, B, D, and E of chapter 2 of the Internal Revenue Code of 1939, or by the corresponding provisions of any prior revenue act, or by more than one of such provisions."

(C) By striking the last sentence in paragraph (e) and inserting in lieu thereof the following: "See section 1314 (d)."

PAR. 3. Section 1.1311 (b)–1 is revised by striking the example in paragraph (b) (1) and inserting in lieu thereof the following:

Example. A taxpayer who keeps his books on the cash method erroneously included as income on his return for 1954 an item of accrued interest. After the period of limitations on refunds for 1954 had expired, the district director, on behalf of the Commissioner, proposed an adjustment for the year 1955 on the ground that the item of interest was received in 1955 and, therefore, was properly includible in gross income for that year. The taxpayer and the district director entered into an agreement which meets all of the requirements of § 1.1313 (a)–4 and which determines that the interest item was includible in gross income for 1955. The Commissioner has maintained a position inconsistent with the inclusion of the interest item for 1954. As the determination (the agreement pursuant to § 1.1313 (a)–4) adopted such inconsistent position, an adjustment is authorized for the year 1954.

PAR. 4. Section 1.1311 (b)–2 is revised by striking paragraph (a) and inserting in lieu thereof the following:

(a) An adjustment under the circumstances stated in paragraph (b) of § 1.1312–3 (relating to the double exclusion of an item of gross income) which would result in an additional assessment, is authorized only if assessment of a deficiency against the taxpayer or related taxpayer for the taxable year in which the item is includible was not barred by any law or rule of law at the time the Commissioner first maintained, in a notice of deficiency sent pursuant to section 6212 (or section 272 (a) of the Internal Revenue Code of 1939) or before the Tax Court of the United States, that the item described in paragraph (b) of § 1.1312–3 should be included in the gross income of the taxpayer in the taxable year to which the determination relates.

PAR. 5. Section 1.1311 (b)–3 is revised by striking the first sentence of paragraph (a) and inserting in lieu thereof the following:

(a) Except for cases described in § 1.1312–3 (b), no adjustment by way of a deficiency assessment shall be made, with respect to a related taxpayer, unless the relationship existed both at some time during the taxable year with respect to which the error was made and at the time the taxpayer with respect to whom the determination is made first maintained the inconsistent position with respect to the taxable year to which the determination relates.

PAR. 6. Section 1.1312–3 is revised by striking the third sentence of example (1) (i) of paragraph (a) and inserting in lieu thereof the following: "A final decision of the Tax Court was rendered in 1955 excluding the payments from 1951 income."

PAR. 7. Section 1.1312–4 is revised by striking the sixth sentence of example (1) of paragraph (b) and inserting in lieu thereof the following: "However, if such liability should have been accrued for the taxable year 1946 instead of 1950, A would not be entitled to an adjustment, if a credit or refund with respect to 1946 was already barred when he deducted such expense for the taxable year 1951."

PAR. 8. Section 1.1313 (a)–4 is revised by striking the third sentence of paragraph (c) and inserting in lieu thereof the following: "It may be signed on behalf of the Commissioner by the district director, or such other person as is authorized by the Commissioner."

PAR. 9. Section 1.1314 (a)–1 is revised by striking the third sentence of paragraph (c) and inserting in lieu thereof the following: "If the treatment of any item upon which the tax previously determined was based, or if the application of any provisions of the internal revenue

laws with respect to such tax, depends upon the amount of income (e. g., charitable contributions, foreign tax credit, dividends received credit, medical expenses, and percentage depletion), readjustment in these particulars will be necessary as part of the recomputation in conformity with the change in the amount of the income which results from the correct treatment of the item or items in respect of which the error was made."

(Sec. 7805, 68A Stat. 917; 26 U. S. C. 7805. Interpret or apply sec. 1313, 68A Stat. 339; 26 U. S. C. 1313)

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

Approved: February 3, 1956.

G. M. HUMPHREY,
Secretary of the Treasury.

The following regulations are hereby prescribed under subchapter Q, part II, of the Internal Revenue Code of 1954:

MITIGATION OF EFFECT OF LIMITATIONS AND OTHER PROVISIONS

§ 1.1311 (a) *Statutory provisions; correction of error; general rule.*

SEC. 1311. *Correction of error*—(a) *General rule.* If a determination (as defined in section 1313) is described in one or more of the paragraphs of section 1312 and, on the date of the determination, correction of the effect of the error referred to in the applicable paragraph of section 1312 is prevented by the operation of any law or rule of law, other than this part and other than section 7122 (relating to compromises), then the effect of the error shall be corrected by an adjustment made in the amount and in the manner specified in section 1314.

§ 1.1311 (a)–1 *Introduction.* (a) Part II of subchapter Q provides certain rules for the correction of the effect of an erroneous treatment of an item in a taxable year which is closed by the statute of limitations or otherwise, in cases where, in connection with the ascertainment of the tax for another taxable year, it has been determined that there was an erroneous treatment of such item in the closed year.

(b) In most situations falling within this part the correction of the effect of the error on a closed year can be made only if either the Commissioner or the taxpayer has taken a position in another taxable year which is inconsistent with the erroneous treatment of the item in the closed year. If a refund or credit would result from the correction of the error in the closed year, then the Commissioner must be the one maintaining the inconsistent position. For example, if the taxpayer erroneously included an item of income on his return for an earlier year which is now closed and the Commissioner successfully requires it to be included in a later year, then the correction of the effect of the erroneous inclusion of that item in the closed year may be made since the Commissioner has maintained a position inconsistent with the treatment of such item in such closed year. On the other hand, if an additional assessment would result from the correction of the error in the closed year, then the taxpayer must be the one maintaining the inconsistent position. For example, if the taxpayer deducted an item in an earlier year which is now closed and he successfully contends that the item should be deducted in a later year, then the correction of the effect of the erroneous deduction of that item in the closed year may be made since the taxpayer has taken a position inconsistent with the treatment of such item in such earlier year.

(c) There are two special circumstances which fall within this part but which do not require an inconsistent position be maintained. One of these circumstances relates to the inclusion of an item of income in the correct year and the other relates to the allowance of a deduction in the correct year. In the first situation, if the Commissioner takes the position by a deficiency notice or before the Tax Court that an item of income should be included in the gross income of a taxpayer for a particular year and it is ultimately determined that such item was not so includible, then such item can be included in the income of the proper year if that year was not closed at the time the Commissioner took his position. In the second situation, if the taxpayer claims that a deduction should be allowed for a particular year and it is ultimately determined that the deduction was not allowable in that year, then the taxpayer may take the deduction in the proper year if that year was not closed at the time the taxpayer first claimed a deduction.

§ 1.1311 (a)–2 *Purpose and scope of section 1311.* (a) Section 1311 provides for the correction of the effect of certain errors under circumstances specified in section 1312 when one or more provisions of law, such as the statute of limitations, would otherwise prevent such correction. Section 1311 may be applied to correct the effect of certain errors if, on the date of a determination (as defined in section 1313 (a) and the regulations thereunder), correction is prevented by the operation of any provision of law other than sections 1311 through 1315 and section 7122 (relating to compromises) and the corresponding provisions of prior revenue laws. Examples of provisions preventing such corrections are sections 6501, 6511, 6532, and 6901 (c), (d) and (e), relating to periods of limitations; section 6212 (c) and 6512 relating to the effect of petition to the Tax Court of the United States on further deficiency letters and on credits or refunds; section 7121 relating to closing agreements; and sections 6401 and 6514 relating to payments, refunds, or credits after the period of limitations has expired. Section 1311 may also be applied to correct the effect of an error if, on the date of the determination, correction of the error is prevented by the operation of any rule of law, such as *res judicata* or *estoppel.*

(b) The determination (including a determination under section 1313 (a) (4)) may be with respect to any of the taxes imposed by subtitle A of the Internal Revenue Code of 1954, by chapter 1 and subchapters A, B, D, and E of chapter 2 of the Internal Revenue Code of 1939, or by the corresponding provisions of any prior revenue act, or by more than one of such provisions. Section 1311 may be applied to correct the effect of the error only as to the tax or taxes with respect to which the error was made which correspond to the tax or taxes with respect to which the determination relates. Thus, if the determination relates to a tax imposed by chapter 1 of the Internal Revenue Code of 1954, the adjustment may be only with respect to the tax imposed by such chapter or by the corresponding provisions of prior law.

(c) Section 1311 is not applicable if, on the date of the determination, correction of the effect of the error is permissible without recourse to said section.

(d) If the tax liability for the year with respect to which the error was made has been compromised under section 7122 or the corresponding provisions of prior revenue laws, no adjustment may be made under section 1311 with respect to said year.

(e) No adjustment may be made under section 1311 for any taxable year beginning prior to January 1, 1932. See section 1314 (d).

(f) Section 1311 applies only to a determination (as defined in section 1313 (a) and §§ 1.1313 (a)–1 to 1.1313 (a)–4, inclusive) made after November 14, 1954. Section 3801 of the Internal Revenue Code of 1939 and the regulations thereunder apply to determinations, as defined therein, made on or before November 14, 1954. See section 1315.

§ 1.1311 (b) *Statutory provisions; correction of error; conditions necessary for adjustment.*

SEC. 1311. *Correction of error.* * * *

(b) *Conditions necessary for adjustment*—(1) *Maintenance of an inconsistent position.* Except in cases described in paragraphs (3) (B) and (4) of section 1312, an adjustment shall be made under this part only if—

(A) In case the amount of the adjustment would be credited or refunded in the same manner as an overpayment under section 1314, there is adopted in the determination a position maintained by the Secretary or his delegate, or

(B) In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency under section 1314, there is adopted in the determination a position maintained by the taxpayer with respect to whom the determination is made,

and the position maintained by the Secretary or his delegate in the case described in subparagraph (A) or maintained by the taxpayer in the case described in subparagraph (B) is inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be.

(2) *Correction not barred at time of erroneous action*—(A) *Determination described in section 1312 (3) (B).* In the case of a determination described in section 1312 (3) (B) (relating to certain exclusions from income), adjustment shall be made under this part only if assessment of a deficiency for the taxable year in which the item is includible or against the related taxpayer was not barred, by any law or rule of law, at the time the Secretary or his delegate first maintained, in a notice of deficiency sent pursuant to section 6212 or before the Tax Court of the United States, that the item described in section 1312 (3) (B) should be included in the gross income of the taxpayer for the taxable year to which the determination relates.

(B) *Determination described in section 1312 (4).* In the case of a determination

described in section 1312 (4) (relating to disallowance of certain deductions and credits), adjustment shall be made under this part only if credit or refund of the overpayment attributable to the deduction or credit described in such section which should have been allowed to the taxpayer or related taxpayer was not barred, by any law or rule of law, at the time the taxpayer first maintained before the Secretary or his delegate or before the Tax Court of the United States, in writing, that he was entitled to such deduction or credit for the taxable year to which the determination relates.

(3) *Existence of relationship.* In case the amount of the adjustment would be assessed and collected in the same manner as a deficiency (except for cases described in section 1312 (3) (B)), the adjustment shall not be made with respect to a related taxpayer unless he stands in such relationship to the taxpayer at the time the latter first maintains the inconsistent position in a return, claim for refund, or petition (or amended petition) to the Tax Court of the United States for the taxable year with respect to which the determination is made, or if such position is not so maintained, then at the time of the determination.

§ 1.1311 (b)–1 *Maintenance of an inconsistent position*—(a) *In general.* Under the circumstances stated in § 1.1312–1, § 1.1312–2, paragraph (a) of § 1.1312–3, § 1.1312–5, and § 1.1312–6, the maintenance of an inconsistent position is a condition necessary for adjustment. The requirement in such circumstances is that a position maintained with respect to the taxable year of the determination and which is adopted in the determination be inconsistent with the erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, with respect to the taxable year of the error. That is, a position successfully maintained with respect to the taxable year of the determination must be inconsistent with the treatment accorded an item which was the subject of an error in the computation of the tax for the closed taxable year. Adjustments under the circumstances stated in paragraph (b) of § 1.1312–3 and in § 1.1312–4 are made without regard to the maintenance of an inconsistent position.

(b) *Adjustments resulting in refund or credit.* (1) An adjustment under any of the circumstances stated in §§ 1.1312–1, 1.1312–5, or 1.1312–6 which would result in the allowance of a refund or credit is authorized only if (i) the Commissioner, in connection with a determination, has maintained a position which is inconsistent with the erroneous inclusion, omission, disallowance, recognition, or nonrecognition, as the case may be, in the year of the error, and (ii) such inconsistent position is adopted in the determination.

Example. A taxpayer who keeps his books on the cash method erroneously included as income on his return for 1954 an item of accrued interest. After the period of limitations on refunds for 1954 had expired, the district director, on behalf of the Commissioner, proposed an adjustment for the year 1955 on the ground that the item of interest was received in 1955 and, therefore, was properly includible in gross income for that year. The taxpayer and the district director entered into an agreement which meets all of the requirements of § 1.1313 (a)–4 and which determines that the interest item was includible in gross income for 1955. The Commissioner has maintained a position inconsistent with the inclusion of the interest item for 1954. As the determination (the agreement pursuant to § 1.1313 (a)–4 adopted such inconsistent position, an adjustment is authorized for the year 1954.

(2) An adjustment under circumstances stated in §§ 1.1312–1, 1.1312–5, or 1.1312–6 which would result in the allowance of a refund or credit is not authorized if the taxpayer with respect to whom the determination is made, and not the Commissioner, has maintained such inconsistent position.

Example. In the example in subparagraph (1) of this paragraph, assume that the Commissioner asserted a deficiency for 1955 based upon other items for that year but, in computing the net income upon which such deficiency was based, did not include the item of interest. The taxpayer appealed to the Tax Court and in his petition asserted that the interest item should be included in gross income for 1955. The Tax Court in 1960 included the item of interest in its redetermination of tax for the year 1955. In such case no adjustment would be authorized for 1954 as the taxpayer, and not the Commissioner, maintained a position inconsistent with the erroneous inclusion of the item of interest in the gross income of the taxpayer for that year.

(c) *Adjustments resulting in additional assessments.* (1) An adjustment under any of the circumstances stated in §§ 1.1312–2, 1.1312–3 (a), 1.1312–5, or 1.1312–6, which would result in an additional assessment is authorized only if (i) the taxpayer with respect to whom the determination is made has, in connection therewith, maintained a position which is inconsistent with the erroneous exclusion, omission, allowance, recognition, or nonrecognition, as the case may be in the year of the error, and (ii) such inconsistent position is adopted in the determination.

Example. A taxpayer in his return for 1950 claimed and was allowed a deduction for a loss arising from a casualty. After the taxpayer had filed his return for 1951 and after the period of limitations upon the assessment of a deficiency for 1950 had expired, it was discovered that the loss actually occurred in 1951. The taxpayer, therefore, filed a claim for refund for the year 1951 based upon the allowance of a deduction for the loss in that year, and the claim was allowed by the Commissioner in 1955. The taxpayer thus has maintained a position inconsistent with the allowance of the deduction for 1950 by filing a claim for refund for 1951 based upon the same deduction. As the determination (the allowance of the claim for refund) adopts such inconsistent position, an adjustment is authorized for the year 1950.

(2) An adjustment under the circumstances stated in §§ 1.1312–2, 1.1312–3 (a), 1.1312–5, or 1.1312–6 which would result in an additional assessment is not authorized if the Commissioner, and not the taxpayer, has maintained such inconsistent position.

Example. In the example in subparagraph (1) of this paragraph, assume that the taxpayer did not file a claim for refund for 1951 but the Commissioner issued a notice of deficiency for 1951 based upon other items. The taxpayer filed a petition with the Tax Court of the United States and the Commissioner in his answer voluntarily proposed the allowance for 1951 of a deduction for the loss previously allowed for 1950. The Tax Court took the deduction into account in its redetermination in 1955 of the tax for the year 1951. In such case no adjustment would be authorized for the year 1950 as the Commissioner, and not the taxpayer, has maintained a position inconsistent with the allowance of a deduction for the loss in that year.

§ 1.1311 (b)–2 *Correction not barred at time of erroneous action.* (a) An adjustment under the circumstances stated in paragraph (b) of §1.1312–3 (relating to the double exclusion of an item of gross income) which would result in an additional assessment, is authorized only if assessment of a deficiency against the taxpayer or related taxpayer for the taxable year in which the item is includible was not barred by any law or rule of law at the time the Commissioner first maintained, in a notice of deficiency sent pursuant to section 6212 (or section 272 (a) of the Internal Revenue Code of 1939) or before the Tax Court of the United States, that the item described in paragraph (b) of § 1.1312–3 should be included in the gross income of the taxpayer in the taxable year to which the determination relates.

(b) An adjustment under the circumstances stated in § 1.1312–4 (relating to the double disallowance of a deduction or credit), which would result in the allowance of a credit or refund, is authorized only if a credit or refund to the taxpayer or related taxpayer, attributable to such adjustment, was not barred by any law or rule of law when the taxpayer first maintained in writing before the Commissioner or the Tax Court that he was entitled to such deduction or credit for the taxable year to which the determination relates. The taxpayer will be considered to have first maintained in writing before the Commissioner or the Tax Court that he was entitled to such deduction or credit when he first formally asserts his right to such deduction or credit as, for example, in a return, in a claim for refund, or in a petition (or an amended petition) before the Tax Court.

(c) Under the circumstances of adjustment with respect to which the conditions stated in this section are applicable, the conditions stated in § 1.1311 (b)–1 (maintenance of an inconsistent position) are not required. See § 1.1312–3 (b) and § 1.1312–4 for examples of the application of this section.

§ 1.1311 (b)–3 *Existence of relationship in case of adjustment by way of deficiency assessment.* (a) Except for cases described in § 1.1312–3 (b), no adjustment by way of a deficiency assessment shall be made, with respect to a related taxpayer, unless the relationship existed both at some time during the taxable year with respect to which the error was made and at the time the taxpayer with respect to whom the determination is made first maintained the inconsistent position with respect to the taxable year to which the determination relates. In the case of an adjustment by way of a deficiency assessment under the circumstance described in §1.1312–3 (b) (where the maintenance of an inconsistent position is not required), the relationship

need exist only at some time during the taxable year in which the error was made.

(b) If the inconsistent position is maintained in a return, claim for refund, or petition (or amended petition) to the Tax Court of the United States for the taxable year in respect to which the determination is made, the requisite relationship must exist on the date of filing such document. If the inconsistent position is maintained in more than one of such documents, the requisite date is the date of filing of the document in which it was first maintained. If the inconsistent position was not thus maintained, then the relationship must exist on the date of the determination as, for example, where at the instance of the taxpayer a deduction is allowed, the right to which was not asserted in a return, claim for refund, or petition to the Tax Court, and a determination is effected by means of a closing agreement or an agreement under section 1313 (a) (4).

§ 1.1312 *Statutory provisions; circumstances of adjustment.*

SEC. 1312. *Circumstances of adjustment.* The circumstances under which the adjustment provided in section 1311 is authorized are as follows:

(1) *Double inclusion of an item of gross income.* The determination requires the inclusion in gross income of an item which was erroneously included in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(2) *Double allowance of a deduction or credit.* The determination allows a deduction or credit which was erroneously allowed to the taxpayer for another taxable year or to a related taxpayer.

(3) *Double exclusion of an item of gross income*—(A) *Items included in income.* The determination requires the exclusion from gross income of an item included in a return filed by the taxpayer or with respect to which tax was paid and which was erroneously excluded or omitted from the gross income of the taxpayer for another taxable year, or from the gross income of a related taxpayer; or

(B) *Items not included in income.* The determination requires the exclusion from gross income of an item not included in a return filed by the taxpayer and with respect to which the tax was not paid but which is includible in the gross income of the taxpayer for another taxable year or in the gross income of a related taxpayer.

(4) *Double disallowance of a deduction or credit.* The determination disallows a deduction or credit which should have been allowed to, but was not allowed to, the taxpayer for another taxable year, or to a related taxpayer.

(5) *Correlative deductions and inclusions for trusts or estates and legatees, beneficiaries, or heirs.* The determination allows or disallows any of the additional deductions allowable in computing the taxable income of estates or trusts, or requires or denies any of the inclusions in the computation of taxable income of beneficiaries, heirs, or legatees, specified in subparts A to E, inclusive (secs. 641 and following, relating to estates, trusts, and beneficiaries), of part I of subchapter J of this chapter, or corresponding provisions of prior internal revenue laws, and the correlative inclusion or deduction, as the case may be, has been erroneously excluded, omitted, or included, or disallowed, omitted, or allowed, as the case may be, in respect of the related taxpayer.

(6) *Basis of property after erroneous treatment of a prior transaction*—(A) *General rule.* The determination determines the basis of property, and in respect of any transaction on which such basis depends, or in respect of any transaction which was erroneously treated as affecting such basis, there occurred, with respect to a taxpayer described in subparagraph (B) of this paragraph, any of the errors described in subparagraph (C) of this paragraph.

(B) *Taxpayers with respect to whom the erroneous treatment occurred.* The taxpayer with respect to whom the erroneous treatment occurred must be—

(i) The taxpayer with respect to whom the determination is made,

(ii) A taxpayer who acquired title to the property in the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, or

(iii) A taxpayer who had title to the property at the time of the transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015 (a) (relating to the basis of property acquired by gift).

(C) *Prior erroneous treatment.* With respect to a taxpayer described in subparagraph (B) of this paragraph—

(i) There was an erroneous inclusion in, or omission from, gross income,

(ii) There was an erroneous recognition, or non-recognition, of gain or loss, or

(iii) There was an erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible.

§ 1.1312–1 *Double inclusion of an item of gross income.* (a) Paragraph (1) of section 1312 applies if the determination requires the inclusion in a taxpayer's gross income of an item which was erroneously included in the gross income of the same taxpayer for another taxable year or of a related taxpayer for the same or another taxable year.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1). A taxpayer who keeps his books on the cash method erroneously included in income on his return for 1947 an item of accrued rent. In 1952, after the period of limitation on refunds for 1947 had expired, the Commissioner discovered that the taxpayer received this rent in 1948 and asserted a deficiency for the year 1948 which is sustained by the Tax Court of the United States in 1955. An adjustment in favor of the taxpayer is authorized with respect to the year 1947. If the taxpayer had returned the rent for both 1947 and 1948 and by a determination was denied a refund claim for 1948 on account of the rent item, a similar adjustment is authorized.

Example (2). A husband assigned to his wife salary to be earned by him in the year 1952. The wife included such salary in her separate return for that year and the husband omitted it. The Commissioner asserted a deficiency against the wife for 1952 with respect to a different item; she contested that deficiency, and the Tax Court entered an order in her case which became final in 1955. The wife would therefore be barred by section 6512 (a) from claiming a refund for 1952. Thereafter, the Commissioner asserted a deficiency against the husband on account of the omission of such salary from his return for 1952. In 1955 the husband and the Commissioner enter into a closing agreement for the year 1952 in which the salary is taxed to the husband. An adjustment is authorized with respect to the wife's tax for 1952.

§ 1.1312–2 *Double allowance of a deduction or credit.* (a) Paragraph (2) of section 1312 applies if the determination allows the taxpayer a deduction or credit which was erroneously allowed the same taxpayer for another taxable year or a related taxpayer for the same or another taxable year.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1). A taxpayer in his return for 1950 claimed and was allowed a deduction for destruction of timber by a forest fire. Subsequently, it was discovered that the forest fire occurred in 1951 rather than 1950. After the expiration of the period of limitations for the assessment of a deficiency for 1950, the taxpayer filed a claim for refund for 1951 based upon a deduction for the fire loss in that year. The Commissioner in 1955 allows the claim for refund. An adjustment is authorized with respect to the year 1950.

Example (2). The beneficiary of a testamentary trust in his return for 1949 claimed, and was allowed, a deduction for depreciation of the trust property. The Commissioner asserted a deficiency against the beneficiary for 1949 with respect to a different item and a final decision of the Tax Court of the United States was rendered in 1951, so that the Commissioner was thereafter barred by section 272 (*f*) of the Internal Revenue Code of 1939 from asserting a further deficiency against the beneficiary for 1949. The trustee thereafter filed a timely refund claim contending that, under the terms of the will, the trust, and not the beneficiary, was entitled to the allowance for depreciation. The court in 1955 sustains the refund claim. An adjustment is authorized with respect to the beneficiary's tax for 1949.

§ 1.1312–3 *Double exclusion of an item of gross income*—(a) *Items included in income or with respect to which a tax was paid.* (1) Paragraph (3) (A) of section 1312 applies if the determination requires the exclusion, from a taxpayer's gross income, of an item included in a return filed by the taxpayer, or with respect to which tax was paid, and which was erroneously excluded or omitted from the gross income of the same taxpayer for another taxable year or of a related taxpayer for the same or another taxable year.

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

Example (1). (i) A taxpayer received payments in 1951 under a contract for the performance of services and included the payments in his return for that year. After the expiration of the period of limitations for the assessment of a deficiency for 1950, the Commissioner issued a notice of deficiency to the taxpayer for the year 1951 based upon adjustments to other items, and the taxpayer filed a petition with the Tax Court of the United States and maintained in the proceeding before the Tax Court that he kept his books on the accrual basis and that the payments received in 1951 were on income that had accrued and was properly taxable in 1950. A final decision of the Tax Court was rendered in 1955 excluding the payments from 1951 income. An adjustment in favor of the Commissioner is authorized with respect to the year 1950, whether or not a tax had been paid on the income reported in the 1951 return.

(ii) Assume the same facts as in (i) except that the taxpayer had not included the payments in any return and had not paid a tax thereon. No adjustment would be authorized under section 1312 (3) (A) with respect to the year 1950. If the taxpayer, however, had paid a deficiency asserted for 1951 based upon the inclusion of the payments in 1951 income and thereafter successfully sued for refund thereof, an adjustment would be authorized with respect to the year 1950. (See paragraph (b) of this section for circumstances under which correction is authorized with respect to items not included in income and on which a tax was not paid.)

Example (2). A father and son conducted a partnership business, each being entitled to one-half of the net profits. The father included the entire net income of the partnership in his return for 1948, and the son included no portion of this income in his return for that year. Shortly before the expiration of the period of limitations with respect to deficiency assessments and refund claims for both father and son for 1948, the father filed a claim for refund of that portion of his 1948 tax attributable to the half of the partnership income which should have been included in the son's return. The court sustains the claim for refund in 1955. An adjustment is authorized with respect to the son's tax for 1948.

(b) *Items not included in income and with respect to which the tax was not paid.* (1) Paragraphs (3) (B) of section 1312 applies if the determination requires the exclusion from gross income of an item not included in a return filed by the taxpayer and with respect to which a tax was not paid, but which is includible in the gross income of the same taxpayer for another taxable year, or in the gross income of a related taxpayer for the same or another taxable year. This is one of the two circumstances in which the maintenance of an inconsistent position is not a requirement for an adjustment, but the requirements of § 1.1311 (b)–2 (a) must be fulfilled (correction not barred at time of erroneous action).

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

Example (1). The taxpayer, A, who computes his income by use of the accrual method of accounting, performed in 1949 services for which he received payments in 1949 and 1950. He did not include in his return for either 1949 or 1950 the payments which he received in 1950, and he paid no tax with respect to such payments. In 1952 the Commissioner sent a notice of deficiency to A with respect to the year 1949, contending that A should have included all of such payments in his return for that year. A contested the deficiency on the basis that in 1949 he had no accruable right to the payments which he received in 1950. In 1955 (after the expiration of the period of limitations for assessing deficiencies with respect to 1950), the Tax Court sustains A's position. The Commissioner may assess a deficiency for 1950, since a deficiency assessment for that year was not barred when he sent the notice of deficiency with respect to 1949.

Example (2). B and C were partners in 1950, each being entitled to one-half of the profits of the partnership business. During 1950, B received an item of income which he treated as partnership income so that his return for that year reflected only 50 percent of such item. C, however, included no part of such item in any return and paid no tax with respect thereto. In 1952, the Commissioner sent to C a notice of deficiency with respect to 1950, contending that his return for that year should have reflected 50 percent of such item. C contested the deficiency on the basis that such item was not partnership income. In 1955, after the expiration of the period of limitations for assessing deficiencies with respect to 1950, the Tax Court sustained C's position. The Commissioner may assess a deficiency against B with respect to 1950 requiring him to include the entire amount of such item in his income since assessment of the deficiency was not barred when the Commissioner sent the notice of deficiency with respect to such item to C.

§ 1.1312–4 *Double disallowance of a deduction or credit.* (a) Paragraph (4) of section 1312 applies if the determination disallows a deduction or credit which should have been, but was not, allowed to the same taxpayer for another taxable year or to a related taxpayer for the same or another taxable year. This is one of the two circumstances in which the maintenance of an inconsistent position is not a requirement for an adjustment but the requirements of § 1.1311 (b)–2 (b) must be fulfilled (correction not barred at time of erroneous action).

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1). The taxpayer, A, who computes his income by use of the accrual method of accounting, deducted in his return for the taxable year 1951 an item of expense which he paid in such year. At the time A filed his return for 1951, the statute of limitations for 1950 had not expired. Subsequently, the Commissioner asserted a deficiency for 1951 based on the position that the liability for such expense should have been accrued for the taxable year 1950. In 1955, after the period of limitations on refunds for 1950 had expired, there was a determination by the Tax Court disallowing such deduction for the taxable year 1951. A is entitled to an adjustment for the taxable year 1950. However, if such liability should have been accrued for the taxable year 1946 instead of 1950, A would not be entitled to an adjustment, if a credit or refund with respect to 1946 was already barred when he deducted such expense for the taxable year 1951.

Example (2). The taxpayer, B, in his return for 1951 claimed a deduction for a charitable contribution. The Commissioner asserted a deficiency for such year contending that 50 percent of the deduction should be disallowed, since the contribution was made from community property 50 percent of which was attributable to B's spouse. The deficiency is sustained by the Tax Court in 1956, subsequent to the period of limitations within which B's spouse could claim a refund with respect to 1951. An adjustment is permitted to B's spouse, a related taxpayer, since a refund attributable to a deduction by her of such contribution was not barred when B claimed the deduction.

§ 1.1312–5 *Correlative deductions and inclusions for trusts or estates and legatees, beneficiaries, or heirs.* (a) Paragraph (5) of section 1312 applies to distributions by a trust or an estate to the beneficiaries, heirs, or legatees. If the determination relates to the amount of the deduction allowed by sections 651 and 661 or the inclusion in taxable income of the beneficiary required by sections 652 and 662 (including amounts falling within subpart D of subchapter J, relating to treatment of excess distributions by trusts), or if the determination relates to the additional deduction (or inclusion) specified in section 162 (b) and (c) of the Internal Revenue Code of 1939 (or the corresponding provisions of a prior revenue act), with respect to amounts paid, credited, or required to be distributed to the beneficiaries, heirs, and legatees, and such determination requires:

(1) The allowance to the estate or trust of the deduction when such amounts have been erroneously omitted or excluded from the income of the beneficiaries, heirs, or legatees; or

(2) The inclusion of such amounts in the income of the beneficiaries, heirs, or legatees when the deduction has been erroneously disallowed to or omitted by the estate or trust; or

(3) The disallowance to an estate or trust of the deduction when such amounts have been erroneously included in the income of the beneficiaries, heirs, or legatees; or

(4) The exclusion of such amounts from the income of the beneficiaries, heirs, or legatees when the deduction has been erroneously allowed to the estate or trust.

(b) The application of paragraph (a) (1) of this section may be illustrated by the following example:

Example. For the taxable year 1954, a trustee, directed by the trust instrument to accumulate the trust income, made no distribution to the beneficiary and returned the entire income as taxable to the trust. Accordingly the beneficiary did not include the trust income in his return for the year 1954. In 1957, a State court holds invalid the clause directing accumulation and determines that the income is required to be currently distributed. It also rules that certain extraordinary dividends which the trustee in good faith allocated to corpus in 1954 were properly allocable to income. In 1958, the trustee, relying upon the court decision, files a claim for refund of the tax paid on behalf of the trust for the year 1954 and thereafter files a suit in the District Court. The claim is sustained by the court (except as to the tax on the extraordinary dividends) in 1959 after the expiration of the period of limitations upon deficiency assessments against the beneficiary for the year 1954. An adjustment is authorized with respect to the beneficiary's tax for the year 1954. The treatment of the distribution to the beneficiary of the extraordinary dividends shall be determined under subpart D of subchapter J.

(c) The application of paragraph (a) (2) of this section may be illustrated by the following example:

Example. Assume the same facts as in the example in paragraph (b) of this section, except that, instead of the trustee's filing a refund claim, the Commissioner, relying upon the decision of the State court, asserts a deficiency against the beneficiary for 1954. The deficiency is sustained by final decision of the Tax Court of the United States in 1959, after the expiration of the period for filing claim for refund on behalf of the trust for 1954. An adjustment is authorized with respect to the trust for the year 1954.

(d) The application of paragraph (a) (3) of this section may be illustrated by the following example:

Example. A trustee claimed in the trust return for 1954 for amounts paid to the beneficiary a deduction to the extent of distributable net income. This amount was included by the beneficiary in gross income in his return for 1954. In computing distributable net income the trustee had included short and long-term capital gains.

In 1958, the Commissioner asserts a deficiency against the trust on the ground that the capital gains were not includible in distributable net income, and that, therefore, the gains were taxable to the trust, not the beneficiary. The deficiency is sustained by a final decision of the Tax Court in 1960, after the expiration of the period for filing claims for refund by the beneficiary for 1954. An adjustment is authorized with respect to the beneficiary's tax for the year 1954, based on the exclusion from 1954 gross income of the capital gains previously considered distributed by the trust under section 662.

(e) The application of paragraph (a) (4) of this section may be illustrated by the following example:

Example. Assume the same facts as in the example in paragraph (d) of this section, except that, instead of the Commissioner's asserting a deficiency, the beneficiary filed a refund claim for 1954 on the same ground. The claim is sustained by the court in 1960 after the expiration of the period of limitations upon deficiency assessments against the trust for 1954. An adjustment is authorized with respect to the trust for the year 1954.

§ 1.1312–6 *Basis of property after erroneous treatment of a prior transaction.* (a) Paragraph (6) of section 1312 applies if the determination establishes the basis of property, and there occurred one of the following types of errors in respect of a prior transaction upon which such basis depends, or in respect of a prior transaction which was erroneously treated as affecting such basis:

(1) An erroneous inclusion in, or omission from, gross income, or

(2) An erroneous recognition or nonrecognition of gain or loss, or

(3) An erroneous deduction of an item properly chargeable to capital account or an erroneous charge to capital account of an item properly deductible.

(b) For this section to apply, the taxpayer with respect to whom the erroneous treatment occurred must be—

(1) The taxpayer with respect to whom the determination is made, or

(2) A taxpayer who acquired title to the property in the erroneously treated transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title in such a manner that he will have a basis ascertained by reference to the basis in the hands of the taxpayer who acquired title to the property in the erroneously treated transaction, or

(3) A taxpayer who had title to the property at the time of the erroneously treated transaction and from whom, mediately or immediately, the taxpayer with respect to whom the determination is made derived title, if the basis of the property in the hands of the taxpayer with respect to whom the determination is made is determined under section 1015 (a) (relating to the basis of property acquired by gift).

No adjustment is authorized with respect to the transferor of the property in a transaction upon which the basis of the property depends, when the determination is with respect to the original transferee or a subsequent transferee of such original transferee.

(c) The application of this section may be illustrated by the following examples:

Example (1). In 1949 taxpayer A transferred property which had cost him $5,000 to the X Corporation in exchange for an original issue of shares of its stock having a fair market value of $10,000. In his return for 1949 taxpayer A treated the exchange as one in which the gain or loss was not recognizable:

(i) In 1955 the X Corporation maintains that the gain should have been recognized in the exchange in 1949 and therefore the property it received had a $10,000 basis for depreciation. Its position is adopted in a closing agreement. No adjustment is authorized with respect to the tax of the X Corporation for 1949, as none of the three types of errors specified in paragraph (a) of this section occurred with respect to the X Corporation in the treatment of the exchange in 1949. Moreover, no adjustment is authorized with respect to taxpayer A, as he is not within any of the three classes of taxpayers described in paragraph (b) of this section.

(ii) In 1953 taxpayer A sells the stock which he received in 1949 and maintains that, as gain should have been recognized in the exchange in 1949, the basis for computing the profit on the sale is $10,000. His position is confirmed in a closing agreement executed in 1955. An adjustment is authorized with respect to his tax for the year 1949 as the basis for computing the gain on the sale depends upon the transaction in 1949, and in respect of that transaction there was an erroneous nonrecognition of gain to taxpayer A, the taxpayer with respect to whom the determination is made.

Example (2). In 1950 taxpayer A was the owner of 10 shares of the common stock of the Z Corporation which had a basis of $1,500. In that year he received as a dividend thereon 10 shares of the preferred stock of the same corporation having a fair market value of $1,000. On his books, entries were made reducing the basis of the common stock by allocating $500 of the basis to the preferred stock, and on his return for 1950 he did not include the dividend in gross income.

(i) In 1951 taxpayer A made a gift of the preferred stock of the Z Corporation to taxpayer B, an unrelated individual. Taxpayer B sold the stock in 1953 and on his return for that year he reported the sale and claimed a basis of $1,000, contending that the dividend of preferred stock was taxable to A in 1950 at its fair market value of $1,000. The basis of $1,000 is confirmed by a closing agreement executed in 1955. An adjustment is authorized with respect to taxpayer A's tax for 1950, as the closing agreement determines basis of property, and in a prior transaction upon which such basis depends there was an erroneous omission from gross income of taxpayer A, a taxpayer who acquired title to the property in the erroneously treated transaction and from whom, immediately, the taxpayer with respect to whom the determination is made derived title.

(ii) Assuming the same facts as in (i) except that the common stock instead of the preferred stock was the subject of the gift, and the basis claimed by taxpayer B and confirmed in the closing agreement was $1,500. An adjustment is authorized with respect to taxpayer A's tax for 1950, as the closing agreement determines the basis of property, and in a prior transaction which was erroneously treated as affecting such basis there was an erroneous omission from gross income of taxpayer A, a taxpayer who had title to the property at the time of the erroneously treated transaction, and from whom, immediately, taxpayer B, with respect to whom the determination is made, derived title. The basis of the property in taxpayer B's hands with respect to whom the determination is made is determined under section 1015 (a) (relating to the basis of property acquired by gift).

Example (3). In 1950 taxpayer A sold property acquired at a cost of $5,000 to taxpayer B for $10,000. In his return for 1950 taxpayer A failed to include the profit on such sale. In 1953 taxpayer B sold the property for $12,000, and in his return for 1953 reported a gain of $2,000 upon the sale, which is confirmed by a closing agreement executed in 1955. No adjustment is authorized with respect to the tax of taxpayer A for 1950, as he does not come within any of the three classes of taxpayers described in paragraph (b) of this section.

Example (4). In 1950 a taxpayer who owned 100 shares of stock in Corporation Y received $1,000 from the corporation which amount the taxpayer reported on his return for 1950 as a taxable dividend. In 1952 Corporation Y was completely liquidated and the taxpayer received in that year liquidating distributions totalling $8,000. In his return for 1952 the taxpayer reported the receipt of the $8,000 and computed his gain or loss upon the liquidation by using as a basis the amount which he paid for the stock. The Commissioner maintained that the distribution in 1950 was a distribution out of capital and that in computing the taxpayer's gain or loss upon the liquidation in 1952, the basis of the stock should be reduced by the $1,000. This position is adopted in a closing agreement executed in 1955 with respect to the year 1952. An adjustment is authorized with respect to the year 1950 as the basis for computing gain or loss in 1952 depends upon the transaction in 1950, and in respect of the 1950 transaction (upon which the basis of the property depends) there was an erroneous inclusion in gross income of the taxpayer with respect to whom the determination is made.

Example (5). In 1946 a taxpayer received 100 shares of stock of the X Corporation having a fair market value of $5,000, in exchange for shares of stock in the Y Corporation which he had acquired at a cost of $12,000. In his return for 1946 the taxpayer treated the exchange as one in which gain or loss was not recognizable. The taxpayer sold 50 shares of the X Corporation stock in 1947 and in his return for that year treated such shares as having a $6,000 basis. In 1952, the taxpayer sold the remaining 50 shares of stock of the X Corporation for $7,500 and reported $1,500 gain in his return for 1952. After the expiration of the period of limitations on deficiency assessments and on refund claims for 1946 and 1947, the Commissioner asserted a deficiency for 1952 on the ground that the loss realized on the exchange in 1946 was erroneously treated as nonrecognizable, and the basis for computing gain upon the sale in 1952 was $2,500, resulting in a gain of $5,000. The deficiency is sustained by the Tax Court in 1955. An adjustment is authorized with respect to the year 1946 as to the entire $7,000 loss realized on the exchange, as the Court's decision determines the basis of property, and in a prior transaction upon which such basis depends there was an erroneous nonrecognition of loss to the taxpayer with respect to whom the determination was made. No adjustment is authorized with respect to the year 1947 as the basis for computing gain upon the sale of the 50 shares in 1952 does not depend upon the transaction in 1947 but upon the transaction in 1946.

§ 1.1312–7 *Law applicable in determination of error.* The question whether there was an erroneous inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition is determined under the provisions of the internal revenue laws applicable with respect to the year as to which the inclu-

sion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, was made. The fact that the inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, was in pursuance of an interpretation, either judicial or administrative, accorded such provisions of the internal revenue laws at the time of such action is not necessarily determinative of this question. For example, if a later judicial decision authoritatively alters such interpretation so that such action was contrary to such provisions of the internal revenue laws as later interpreted, the inclusion, exclusion, omission, allowance, disallowance, recognition, or nonrecognition, as the case may be, is erroneous within the meaning of section 1312.

§ 1.1313 (a) *Statutory provisions; definition of determination.*

SEC. 1313. *Definitions*—(a) *Determination.* For purposes of this part, the term "determination" means—

(1) A decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) A closing agreement made under section 7121;

(3) A final disposition by the Secretary or his delegate of a claim for refund. For purposes of this part, a claim for refund shall be deemed finally disposed of by the Secretary or his delegate—

(A) As to items with respect to which the claim was allowed, on the date of allowance of refund or credit or on the date of mailing notice of disallowance (by reason of offsetting items) of the claim for refund, and

(B) As to items with respect to which the claim was disallowed, in whole or in part, or as to items applied by the Secretary or his delegate in reduction of the refund or credit, on expiration of the time for instituting suit with respect thereto (unless suit is instituted before the expiration of such time); or

(4) Under regulations prescribed by the Secretary or his delegate, an agreement for purposes of this part, signed by the Secretary or his delegate and by any person, relating to the liability of such person (or the person for whom he acts) in respect of a tax under this subtitle for any taxable period.

§ 1.1313 (a)–1 *Decision by Tax Court or other court as a determination.* (a) A determination may take the form of a decision by the Tax Court of the United States or a judgment, decree, or other order by any court of competent jurisdiction, which has become final.

(b) The date upon which a decision by the Tax Court becomes final is prescribed in section 7481.

(c) The date upon which a judgment of any other court becomes final must be determined upon the basis of the facts in the particular case. Ordinarily, a judgment of a United States district court becomes final upon the expiration of the time allowed for taking an appeal, if no such appeal is duly taken within such time; and a judgment of the United States Court of Claims becomes final upon the expiration of the time allowed for filing a petition for certiorari if no such petition is duly filed within such time.

§ 1.1313 (a)–2 *Closing agreement as a determination.* A determination may take the form of a closing agreement authorized by section 7121. Such an agreement may relate to the total tax liability of the taxpayer for a particular taxable year or years or to one or more separate items affecting such liability. A closing agreement becomes final for the purpose of this section on the date of its approval by the Commissioner.

§ 1.1313 (a)–3 *Final disposition of claim for refund as a determination*—(a) *In general.* A determination may take the form of a final disposition of a claim for refund. Such disposition may result in a determination with respect to two classes of items, i. e., items included by the taxpayer in a claim for refund and items applied by the Commissioner to offset the alleged overpayment. The time at which a disposition in respect of a particular item becomes final may depend not only upon what action is taken with respect to that item but also upon whether the claim for refund is allowed or disallowed.

(b) *Items with respect to which the taxpayer's claim is allowed.* (1) The disposition with respect to an item as to which the taxpayer's contention in the claim for refund is sustained becomes final on the date of allowance of the refund or credit if—

(i) The taxpayer's claim for refund is unqualifiedly allowed; or

(ii) The taxpayer's contention with respect to an item is sustained and with respect to other items is denied, so that the net result is an allowance of refund or credit; or

(iii) The taxpayer's contention with respect to an item is sustained, but the Commissioner applies other items to offset the amount of the alleged overpayment and the items so applied do not completely offset such amount but merely reduce it so that the net result is an allowance of refund or credit.

(2) If the taxpayer's contention in the claim for refund with respect to an item is sustained but the Commissioner applies other items to offset the amount of the alleged overpayment so that the net result is a disallowance of the claim for refund, the date of mailing, by registered mail, of the notice of disallowance (see section 6532) is the date of the final disposition as to the item with respect to which the taxpayer's contention is sustained.

(c) *Items with respect to which the taxpayer's claim is disallowed.* The disposition with respect to an item as to which the taxpayer's contention in the claim for refund is denied becomes final upon the expiration of the time allowed by section 6532 for instituting suit on the claim for refund, unless the suit is instituted prior to the expiration of such period, if—

(1) The taxpayer's claim for refund is unqualifiedly disallowed; or

(2) The taxpayer's contention with respect to an item is denied and with respect to other items is sustained so that the net result is an allowance of refund or credit; or

(3) The taxpayer's contention with respect to an item is sustained in part and denied in part. For example, assume that the taxpayer claimed a deductible loss of $10,000 and a consequent overpayment of $2,500 and the Commissioner concedes that a deductible loss was sustained, but only in the amount of $5,000. The disposition of the claim for refund with respect to the allowance of the $5,000 and the disallowance of the remaining $5,000 becomes final upon the expiration of the time for instituting suit on the claim for refund unless suit is instituted prior to the expiration of such period.

(d) *Items applied by the Commissioner in reduction of the refund or credit.* If the Commissioner applies an item in reduction of the overpayment alleged in the claim for refund, and the net result is an allowance of refund or credit, the disposition with respect to the item so applied by the Commissioner becomes final upon the expiration of the time allowed by section 6532 for instituting suit on the claim for refund, unless suit is instituted prior to the expiration of such period. If such application of the item results in the assertion of a deficiency, such action does not constitute a final disposition of a claim for refund within the meaning of § 1.1313 (a)–3, but subsequent action taken with respect to such deficiency may result in a determination under §§ 1.1313 (a)–1, 1.1313 (a)–2, or 1.1313 (a)–4.

(e) *Elimination of waiting period.* The necessity of waiting for the expiration of the 2-year period of limitations provided in section 6532 may be avoided in such cases as are described in paragraph (c) or (d) of this section by the use of a closing agreement (see § 1.1313 (a)–2) or agreement under § 1.1313 (a)–4 to effect a determination.

§ 1.1313 (a)–4 *Agreement pursuant to section 1313 (a) (4) as a determination*—(a) *In general.* (1) A determination may take the form of an agreement made pursuant to this section. This section is intended to provide an expeditious method for obtaining an adjustment under section 1311 and for offsetting deficiencies and refunds whenever possible. The provisions of sections 1311 through 1315 must be strictly complied with in any such agreement.

(2) An agreement made pursuant to this section will not, in itself, establish the tax liability for the open taxable year to which it relates, but it will state the amount of the tax, as then determined, for such open year. The tax may be the amount of tax shown on the return as filed by the taxpayer, but if any changes in the amount have been made, or if any are being made by documents executed concurrently with the execution of said agreement, such changes must be taken into account. For example, an agreement pursuant to this section may be executed concurrently with the execution of a waiver of restrictions on assessment and collection of a deficiency or acceptance of an overassessment with respect to the open taxable year, or concurrently with the execution and filing of a stipulation in a proceeding before the Tax Court of the United States, where an item which is to be the subject of an adjustment under

section 1311 is disposed of by the stipulation and is not left for determination by the court.

(b) *Contents of agreement.* An agreement made pursuant to this section shall be so designated in the heading of the agreement, and it shall contain the following:

(1) A statement of the amount of the tax determined for the open taxable year to which the agreement relates, and if said liability is established or altered by a document executed concurrently with the execution of the agreement, a reference to said document.

(2) A concise statement of the material facts with respect to the item that was the subject of the error in the closed taxable year or years, and a statement of the manner in which such item was treated in computing the tax liability set forth pursuant to subparagraph (1) of this paragraph.

(3) A statement as to the amount of the adjustment ascertained pursuant to § 1.1314 (a)–1 for the taxable year with respect to which the error was made and, where applicable, a statement as to the amount of the adjustment or adjustments ascertained pursuant to § 1.1314 (a)–2 with respect to any other taxable year or years; and

(4) A waiver of restrictions on assessment and collection of any deficiencies set forth pursuant to subparagraph 3 of this paragraph.

(c) *Execution and effect of agreement.* An agreement made pursuant to this section shall be signed by the taxpayer with respect to whom the determination is made, or on the taxpayer's behalf by an agent or attorney acting pursuant to a power of attorney on file with the Internal Revenue Service. If an adjustment is to be made in a case of a related taxpayer, the agreement shall be signed also by the related taxpayer, or on the related taxpayer's behalf by an agent or attorney acting pursuant to a power of attorney on file with the Internal Revenue Service. It may be signed on behalf of the Commissioner by the district director, or such other person as is authorized by the Commissioner. When duly executed, such agreement will constitute the authority for an allowance of any refund or credit agreed to therein, and for the immediate assessment of any deficiency agreed to therein for the taxable year with respect to which the error was made, or any closed taxable year or years affected, or treated as affected, by a net operating loss deduction or capital loss carryover determined with reference to the taxable year with respect to which the error was made.

(d) *Finality of determination.* A determination made by an agreement pursuant to this section becomes final when the tax liability for the open taxable year to which the determination relates becomes final. During the period, if any, that a deficiency may be assessed or a refund or credit allowed with respect to such year, either the taxpayer or the Commissioner may properly pursue any of the procedures provided by law to secure a further modification of the tax liability for such year. For example, if the taxpayer subsequently files a claim for refund, or if the Commissioner subsequently issues a notice of deficiency with respect to such year, either may adopt a position with respect to the item that was the subject of the adjustment that is at variance with the manner in which said item was treated in the agreement. Any assessment, refund, or credit that is subsequently made with respect to the tax liability for such open taxable year, to the extent that it is based upon a revision in the treatment of the item that was the subject of the adjustment, shall constitute an alteration or revocation of the determination for the purpose of a redetermination of the adjustment pursuant to § 1.1314 (b)–1 (d).

§ 1.1313 (b) (c) *Statutory provisions; definitions of taxpayer and related taxpayer.*

SEC. 1313. *Definitions.* * * *

(b) *Taxpayer.* Notwithstanding section 7701 (a) (14), the term "taxpayer" means any person subject to a tax under the applicable revenue law.

(c) *Related taxpayer.* For purposes of this part, the term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or disallowance was made, in one of the following relationships:

(1) Husband and wife,
(2) Grantor and fiduciary,
(3) Grantor and beneficiary,
(4) Fiduciary and beneficiary, legatee, or heir,
(5) Decedent and decedent's estate,
(6) Partner, or
(7) Member of an affiliated group of corporations (as defined in section 1504).

§ 1.1313 (c)–1 *Related taxpayer.* An adjustment in the case of the taxpayer with respect to whom the error was made may be authorized under section 1311 although the determination is made with respect to a different taxpayer, provided that such taxpayers stand in one of the relationships specified in section 1313 (c). The concept of "related taxpayer" has application to all of the circumstances of adjustment specified in § 1.1312–1 through § 1.1312–5; it does not apply in the circumstances specified in § 1.1312–6. If such relationship exists, it is not essential that the error involve a transaction made possible only by reason of the existence of the relationship. For example, if the error with respect to which an adjustment is sought under section 1311 grew out of an assignment of rents between taxpayer A and taxpayer B, who are partners, and the determination is with respect to taxpayer A, an adjustment with respect to taxpayer B may be permissible despite the fact that the assignment had nothing to do with the business of the partnership. The relationship need not exist throughout the entire taxable year with respect to which the error was made, but only at some time during that taxable year. For example, if a taxpayer on February 15 assigns to his fiancee the net rents of a building which the taxpayer owns, and the two are married before the end of the taxable year, an adjustment may be permissible if the determination relates to such rents despite the fact that they were not husband and wife at the time of the assignment. See § 1.1311 (b)–3 for the requirement in certain cases that the relationship exist at the time an inconsistent position is first maintained.

§ 1.1314 (a) *Statutory provisions; amount and method of adjustment; ascertainment of amount of adjustment.*

SEC. 1314. *Amount and method of adjustment*—(a) *Ascertainment of amount of adjustment.* In computing the amount of an adjustment under this part there shall first be ascertained the tax previously determined for the taxable year with respect to which the error was made. The amount of the tax previously determined shall be the excess of—

(1) The sum of—

(A) The amount shown as the tax by the taxpayer on his return (determined as provided in section 6211 (b) (1) and (3), relating to the definition of deficiency), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) The amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) The amount of rebates, as defined in section 6211 (b) (2), made.

There shall then be ascertained the increase or decrease in tax previously determined which results solely from the correct treatment of the item which was the subject of the error (with due regard given to the effect of the item in the computation of gross income, taxable income, and other matters under this subtitle). A similar computation shall be made for any other taxable year affected, or treated as affected, by a net operating loss deduction (as defined in section 172) or by a capital loss carryover (as defined in section 1212), determined with reference to the taxable year with respect to which the error was made. The amount so ascertained (together with any amounts wrongfully collected as additions to the tax or interest, as a result of such error) for each taxable year shall be the amount of the adjustment for that taxable year.

§ 1.1314 (a)–1 *Ascertainment of amount of adjustment in year of error.* (a) In computing the amount of the adjustment under sections 1311 to 1315, inclusive, there must first be ascertained the amount of the tax previously determined for the taxpayer as to whom the error was made for the taxable year with respect to which the error was made. The tax previously determined for any taxable year may be the amount of tax shown on the taxpayer's return, but if any changes in that amount have been made, they must be taken into account. In such cases, the tax previously determined will be the sum of the amount shown as the tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) as deficiencies, reduced by the amount of any rebates made. The amount shown as the tax by the taxpayer upon his return and the amount of any rebates or deficiencies shall be determined in accordance with the provisions of section 6211 and the regulations thereunder.

(b) (1) The tax previously determined may consist of tax for any taxable year beginning after December 31, 1931, imposed by subtitle A of the Internal Revenue Code of 1954, by chapter 1 and subchapters A, B, D, and E of chapter 2 of the Internal Revenue Code of 1939, or by the corresponding provi-

sions of prior internal revenue laws, or by any one or more of such provisions.

(2) After the tax previously determined has been ascertained, a recomputation must then be made under the laws applicable to said taxable year to ascertain the increase or decrease in tax, if any, resulting from the correction of the error. The difference between the tax previously determined and the tax as recomputed after correction of the error will be the amount of the adjustment.

(c) No change shall be made in the treatment given any item upon which the tax previously determined was based other than in the correction of the item or items with respect to which the error was made. However, due regard shall be given to the effect that such correction may have on the computation of gross income, taxable income, and other matters under chapter 1. If the treatment of any item upon which the tax previously determined was based, or if the application of any provisions of the internal revenue laws with respect to such tax, depends upon the amount of income (e. g. charitable contributions, foreign tax credit, dividends received credit, medical expenses, and percentage depletion), readjustment in these particulars will be necessary as part of the recomputation in conformity with the change in the amount of the income which results from the correct treatment of the item or items in respect of which the error was made.

(d) Any interest or additions to the tax collected as a result of the error shall be taken into account in determining the amount of the adjustment.

(e) The application of this section may be illustrated by the following example:

Example. (1) For the taxable year 1949 a taxpayer with no dependents, who kept his books on the cash receipts and disbursements method, filed a joint return with his wife disclosing adjusted gross income of $42,000, deductions amounting to $12,000, and a net income of $30,000. Included among other items in the gross income were salary in the amount of $15,000 and rents accrued but not yet received in the amount of $5,000. During the taxable year he donated $10,000 to the American Red Cross and in his return claimed a deduction of $6,300 on account thereof, representing the maximum deduction allowable under the 15-percent limitation imposed by section 23 (o) of the Internal Revenue Code of 1939 as applicable to the year 1949. In computing his net income he omitted interest income amounting to $6,000 and neglected to take a deduction for interest paid in the amount of $4,500. The return disclosed a tax liability of $7,788, which was assessed and paid. After the expiration of the period of limitations upon the assessment of a deficiency or the allowance of a refund for 1949, the Commissioner included the item of rental income amounting to $5,000 in the taxpayer's gross income for the year 1950 and asserted a deficiency for that year. As a result of a final decision of the Tax Court of the United States in 1955 sustaining the deficiency for 1950, an adjustment is authorized for the year 1949.

(2) The amount of the adjustment is computed as follows:

Tax previously determined for 1949	$7,788
Net income for 1949 upon which tax previously determined was based	30,000
Less: Rents erroneously included	5,000
Balance	25,000
Adjustment for contributions (add 15 percent of $5,000)	750
Net income as adjusted	25,750
Tax as recomputed	6,152
Tax previously determined	7,788
Difference	1,636
Amount of adjustment to be refunded or credited	1,636

(3) In accordance with the provisions of paragraph (c) of this section, the recomputation to determine the amount of the adjustment does not take into consideration the item of $6,000 representing interest received, which was omitted from gross income, or the item of $4,500 representing interest paid, for which no deduction was allowed.

§ 1.1314 (a)–2 *Adjustment to other barred taxable years.* (a) An adjustment is authorized under section 1311 with respect to a taxable year or years other than the year of the error, but only if all of the following requirements are met:

(1) The tax liability for such other year or years must be affected, or must have been treated as affected, by a net operating loss deduction (as defined in section 172) or by a capital loss carryover (as defined in section 1212).

(2) The net operating loss deduction or capital loss carryover must be determined with reference to the taxable year with respect to which the error was made.

(3) On the date of the determination, the adjustment with respect to such other year or years must be prevented by some law or rule of law, other than sections 1311 through 1315 and section 7122 and the corresponding provisions of prior revenue laws.

(b) The amount of the adjustment for such other year or years shall be computed in a manner similar to that provided in § 1.1314 (a)–1. The tax previously determined for such other year or years shall be ascertained. A recomputation must then be made to ascertain the increase or decrease in tax, if any, resulting solely from the correction of the net operating loss deduction or capital loss carryover. The difference between the tax previously determined and the tax as recomputed is the amount of the adjustment. In the recomputation, no consideration shall be given to items other than the following: (1) The items upon which the tax previously determined for such other year or years was based, and (2) the net operating loss deduction or capital loss carryover as corrected. In determining the correct net operating loss deduction or capital loss carryover, no changes shall be made in taxable income (net income in the case of taxable years subject to the provisions of the Internal Revenue Code of 1939 or prior revenue laws), net operating loss or capital loss, for any barred taxable year, except as provided in section 1314. Section 172 and the corresponding provisions of prior revenue laws, and the regulations promulgated thereunder, prescribe the methods for computing the net operating loss deduction. Section 1212 and the corresponding provisions of prior revenue laws, and the regulations promulgated thereunder, prescribe the methods for computing the capital loss carryover.

(c) A net operating loss deduction or a capital loss carryover determined with reference to the year of the error may affect, or may have been treated as affecting, a taxable year with respect to which an adjustment is not prevented by the operation of any law or rule of law. In such case, the appropriate adjustment shall be made with respect to such open taxable year. However, the redetermination of the tax for such open taxable year is not made pursuant to sections 1311 to 1315, inclusive, and the adjustment for such open year and the method of computation are not limited by the provisions of said sections.

(d) The application of this section may be illustrated by the following example:

Example. The taxpayer is a corporation which makes its income tax returns on a calendar year basis. Its net income in 1949, computed without any net operating loss deduction was $10,000, but because of a net operating loss deduction in excess of that amount resulting from a carryback of a net operating loss claimed for 1950, it paid no income tax for 1949. On its return for 1950 it showed an excess of deductions over gross income of $14,000, and it paid no income tax for 1950. For the year 1951 its net income, computed without any net operating loss deduction, was $15,000, and a net operating loss deduction of $13,000 was allowed ($4,000 of which was attributable to the carryover from 1950 and $9,000 of which was attributable to the carryback of a net operating loss of $9,000 sustained in 1952). In 1957 the assessment of deficiencies or the allowance of refunds for all of said years are barred by the statute of limitations.

(i) A Tax Court decision entered in 1957 with respect to the taxable year 1953 constituted a determination under which an adjustment is authorized to the taxable year 1950, the year with respect to which the error was made. This adjustment increases income for said year by $15,000, so that instead of a net operating loss of $14,000, its corrected net income is $1,000 for 1950, and the tax computed on that income will be assessed as a deficiency for 1950. An adjustment is authorized under this section with respect to each of the years 1949 and 1951, as the tax liability for each year was treated as affected by a net operating loss deduction which was determined by a computation in which reference was made to the year 1950. In the recomputation of the tax for 1949, the net operating loss carryback from 1950 will be eliminated, and in the recomputation of the tax for 1951 the net operating loss carryover from 1950 will be eliminated; for each of the years 1949 and 1951 there will be an adjustment which will be treated as a deficiency for said year.

(ii) Assuming the same facts except that the correction with respect to the year 1950 increases the net operating loss for said year from $14,000 to $20,000. As a result of this correction, there will be no change in the tax due for 1949 and 1950. However, the net operating loss deduction for 1951 is recomputed to be $19,000, the aggregate of the $10,000 carryover from 1950 and the $9,000 carryback from 1952 (the carryover from 1950 is the excess of the $20,000 net operating loss for 1950 over the $10,000 net income for

1949, such 1949 income being determined without any net operating loss deduction). As a result of the correction of the net operating loss deduction for 1951, the tax recomputation will show no tax due for said year, and the adjustment for 1951 will result in a refund or credit of the tax previously paid. Moreover, computations resulting from this adjustment will disclose a net operating loss carryover from 1952 to 1953 of $4,000, that is, the excess of the $9,000 net operating loss for 1952 over the $5,000 net income for 1951 (such net income for 1951 being computed as the $15,000 reduced by the carryover of $10,000 from 1950, the carryback from 1952 not being taken into account). A further adjustment is authorized under section 1311 with respect to any subsequent barred year in which the tax liability is affected by a carryover of the net operating loss from 1952, inasmuch as such carryover from 1952 has been determined by a computation in which reference was made to 1950, the taxable year of the error.

§ 1.1314 (b) *Statutory provisions; amount and method of adjustment; method of adjustment.*

SEC. 1314. *Amount and method of adjustment.* * * *

(b) *Method of adjustment.* The adjustment authorized in section 1311 (a) shall be made by assessing and collecting, or refunding or crediting, the amount thereof in the same manner as if it were a deficiency determined by the Secretary or his delegate with respect to the taxpayer as to whom the error was made or an overpayment claimed by such taxpayer, as the case may be, for the taxable year or years with respect to which an amount is ascertained under subsection (a), and as if on the date of the determination one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for such taxable year or years. If, as a result of a determination described in section 1313 (a) (4), an adjustment has been made by the assessment and collection of a deficiency or the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under subsection (a) of this section shall be redetermined on the basis of such alteration or revocation and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment under this part. In the case of an adjustment resulting from an increase or decrease in a net operating loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss arises.

§ 1.1314 (b)–1 *Method of adjustment.* (a) If the amount of the adjustment ascertained pursuant to § 1.1314 (a)–1 or § 1.1314 (a)–2 represents an increase in tax, it is to be treated as if it were a deficiency determined by the Commissioner with respect to the taxpayer as to whom the error was made and for the taxable year or years with respect to which such adjustment was made. The amount of such adjustment is thus to be assessed and collected under the law and regulations applicable to the assessment and collection of deficiencies, subject, however, to the limitations imposed by § 1.1314 (c)–1. Notice of deficiency, unless waived, must be issued with respect to such amount or amounts, and the taxpayer may contest the deficiency before the Tax Court of the United States or, if he chooses, may pay the deficiency and later file claim for refund. If the amount of the adjustment ascertained pursuant to § 1.1314 (a)–1 or § 1.1314 (a)–2 represents a decrease in tax, it is to be treated as if it were an overpayment claimed by the taxpayer with respect to whom the error was made for the taxable year or years with respect to which such adjustment was made. Such amount may be recovered under the law and regulations applicable to overpayments of tax, subject, however, to the limitations imposed by § 1.1314 (c)–1. The taxpayer must file a claim for refund thereof, unless the overpayment is refunded without such claim, and if the claim is denied or not acted upon by the Commissioner within the prescribed time, the taxpayer may then file suit for refund.

(b) For the purpose of the adjustments authorized by section 1311, the period of limitations upon the making of an assessment or upon refund or credit, as the case may be, for the taxable year of an adjustment shall be considered as if, on the date of the determination, one year remained before the expiration of such period. The Commissioner thus has one year from the date of the determination within which to mail a notice of deficiency in respect of the amount of the adjustment where such adjustment is treated as if it were a deficiency. The issuance of such notice of deficiency, in accordance with the law and regulations applicable to the assessment of deficiencies will suspend the running of the 1-year period of limitations provided in section 1314 (b). In accordance with the applicable law and regulations governing the collection of deficiencies, the period of limitation for collection of the amount of the adjustment will commence to run from the date of assessment of such amount. (See section 6502 and corresponding provisions of prior revenue laws.) Similarly, the taxpayer has a period of one year from the date of the determination within which to file a claim for refund in respect of the amount of the adjustment where such adjustment is treated as if it were an overpayment. Where the amount of the adjustment is treated as if it were a deficiency and the taxpayer chooses to pay such deficiency and contest it by way of a claim for refund, the period of limitation upon filing a claim for refund will commence to run from the date of such payment. See section 6511 and corresponding provisions of prior revenue laws.

(c) The amount of an adjustment treated as if it were a deficiency or an overpayment, as the case may be, will bear interest and be subject to additions to the tax to the extent provided by the internal revenue laws applicable to deficiencies and overpayments for the taxable year with respect to which the adjustment is made. In the case of an adjustment resulting from an increase or decrease in a net operating loss which is carried back to the year of adjustment, interest shall not be collected or paid for any period prior to the close of the taxable year in which the net operating loss arises.

(d) If, as a result of a determination provided for in § 1.1313 (a)–4, an adjustment has been made by the assessment and collection of a deficiency or the refund or credit of an overpayment, and subsequently such determination is altered or revoked, the amount of the adjustment ascertained under § 1.1314 (a)–1 and § 1.1314 (a)–2 shall be redetermined on the basis of such alteration or revocation, and any overpayment or deficiency resulting from such redetermination shall be refunded or credited, or assessed and collected, as the case may be, as an adjustment under section 1311. For the circumstances under which such an agreement can be altered or revoked, see paragraph (d) of § 1.1313 (a)–4.

§ 1.1314 (c) *Statutory provisions; amount and method of adjustment; adjustment unaffected by other items.*

SEC. 1314. *Amount and method of adjustment.* * * *

(c) *Adjustment unaffected by other items.* The amount to be assessed and collected in the same manner as a deficiency, or to be refunded or credited in the same manner as an overpayment, under this part, shall not be diminished by any credit or set-off based upon any item other than the one which was the subject of the adjustment. Other than in the case of an adjustment resulting from a determination under section 1313 (a) (4), the amount of the adjustment under this part, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item other than the one which was the subject of the adjustment.

§ 1.1314 (c)–1 *Adjustment unaffected by other items.* (a) The amount of any adjustment ascertained under § 1.1314 (a)–1 or § 1.1314 (a)–2 shall not be diminished by any credit or set-off based upon any item other than the one that was the subject of the adjustment.

(b) The application of this section may be illustrated by the following examples:

Example (1). In the example set forth in paragraph (e) of §1.1314 (a)–1, if, after the amount of the adjustment had been ascertained, the taxpayer filed a refund claim for the amount thereof, the Commissioner could not diminish the amount of that claim by offsetting against it the amount of tax which should have been paid with respect to the $6,000 interest item omitted from gross income for the year 1949; nor could the court, if suit were brought on such claim for refund, offset against the amount of the adjustment the amount of tax which should have been paid with respect to such interest. Similarly, the amount of the refund could not be increased by any amount attributable to the taxpayer's failure to deduct the $4,500 interest paid in the year 1949.

Example (2). Assume that a taxpayer included in his gross income for the year 1953 an item which should have been included in his gross income for the year 1952. After the expiration of the period of limitations upon the assessment of a deficiency or the allowance of a refund for 1952, the taxpayer filed a claim for refund for the year 1953 on the ground that such item was not properly includible in gross income for that year. The claim for refund was allowed by the Commissioner and as a result of such determination an adjustment was authorized under section 1311 with respect to the tax for 1952. If, in such case, the Commissioner issued a notice of deficiency for the amount of the adjustment and the taxpayer contested the deficiency before the Tax Court of the United States, the taxpayer could not in such proceeding claim an offset based upon his failure to take an allowable deduction for the year 1952; nor could the Tax

Court in its decision offset against the amount of the adjustment any overpayment for the year 1952 resulting from the failure to take such deduction.

(c) If the Commissioner has refunded the amount of an adjustment under section 1311, the amount so refunded may not subsequently be recovered by the Commissioner in any suit for erroneous refund based upon any item other than the one that was the subject of the adjustment.

Example. In the example set forth in paragraph (e) of § 1.1314 (a)–1, if the Commissioner had refunded the amount of the adjustment, no part of the amount so refunded could subsequently be recovered by the Commissioner by a suit for erroneous refund based on the ground that there was no overpayment for 1949, as the taxpayer had failed to include in gross income the $6,000 item of interest received in that year.

(d) If the Commissioner has assessed and collected the amount of an adjustment under section 1311, no part thereof may be recovered by the taxpayer in any suit for refund based upon any item other than the one that was the subject of the adjustment.

Example. In example (2) of paragraph (b) of this section, if the taxpayer had paid the amount of the adjustment, he could not subsequently recover any part of such payment in a suit for refund based upon the failure to take an allowable deduction for the year 1952.

(e) If the amount of the adjustment is considered an overpayment, it may be credited, under applicable law and regulations, together with any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made such overpayment. Likewise, if the amount of the adjustment is considered as a deficiency, any overpayment by the taxpayer of any internal revenue tax may be credited against the amount of such adjustment in accordance with the applicable law and regulations thereunder. (See section 6402 and the corresponding provisions of prior revenue laws.) Accordingly, it may be possible in one transaction between the Commissioner and the taxpayer to settle the taxpayer's tax liability for the year with respect to which the determination is made and to make the adjustment under section 1311 for the year with respect to which the error was made or for a year which is affected, or treated as affected, by a net operating loss deduction or a capital loss carryover from the year of the error.

§ 1.1314 (d)–(e) *Statutory provisions; amount and method of adjustment; no adjustments for years prior to 1932; not applicable to tax imposed by subtitle C.*

SEC. 1314. *Amount and method of adjustment.* * * *

(d) *Periods for which adjustments may be made.* No adjustment shall be made under this part in respect of any taxable year beginning prior to January 1, 1932.

(e) *Taxes imposed by subtitle C.* This part shall not apply to any tax imposed by subtitle C (sec. 3101 and following relating to employment taxes).

§ 1.1315 *Statutory provisions; effective date.*

SEC. 1315. *Effective data*—(a) *In general.* This part shall apply only to determinations (as defined in section 1313 (a)) made after the 90th day after the date of enactment of this title.

(b) *Transitional provision.* Notwithstanding any other provision of this title, section 3801 of the Internal Revenue Code of 1939 shall apply to determinations (as defined in subsection (a) of such section) made on or before such 90th day as if this title had not been enacted.

[F. R. Doc. 56-1004; Filed, Feb. 8, 1956; 8:47 a. m.]

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

Subchapter L—Irrigation Projects; Operation and Maintenance

PART 130—OPERATION AND MAINTENANCE CHARGES

FORT BELKNAP INDIAN IRRIGATION PROJECT, MONTANA; CHARGES

On December 29, 1955, there was published in the daily issue of the FEDERAL REGISTER pursuant to section 4 (a) of the Administrative Procedure Act of June 11, 1946 (Public Law 404, 79th Congress, 60 Stat. 238), and authority contained in the Acts of Congress approved August 1, 1914; May 18, 1916; and March 7, 1928 (38 Stat. 583, 25 U. S. C. 385; 39 Stat. 1942; and 45 Stat. 210, 25 U. S. C. 387), and by virtue of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs (Order No. 2508; 14 F. R. 258), and by virtue of authority delegated by the Commissioner of Indian Affairs to the Area Director (Bureau Order No. 551, Amendment No. 1; 16 F. R. 5454–7), notice of intention to modify § 130.30, Code of Federal Regulations, dealing with irrigable lands of the Fort Belknap Indian Irrigation Project. Interested persons were thereby given opportunity to participate in preparing the modification by submitting data or written arguments within 30 days from the publication of the notice. One objection having been received, and after full consideration of the merits having been overruled, the said section is hereby amended and the rates fixed, for the season of 1956 and thereafter until further notice, as follows:

§ 130.30 *Charges.* Pursuant to the provisions of the Acts of August 1, 1914 and March 7, 1928 (38 Stat. 583, 45 Stat. 210); (25 U. S. C. 385, 387), the basic annual charge for operation and maintenance against the irrigable lands to which water can be delivered and beneficially applied under the constructed works of the Fort Belknap Indian irrigation project in Montana, including the lands operated as a tribal farming and livestock enterprise, is hereby fixed at $2.00 per acre for the year 1956 and thereafter until further notice.

(Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U. S. C. 385)

J. M. COOPER,
Area Director.

[F. R. Doc. 56-993; Filed, Feb. 8, 1956; 8:45 a. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of the Treasury

Subchapter N—Artificial Islands and Fixed Structures on the Outer Continental Shelf

[CGFR 56-4]

SAFETY EQUIPMENT AND OTHER MATTERS RELATING TO PROMOTION OF SAFETY OF LIFE AND PROPERTY

A notice regarding proposed regulations governing safety equipment and other matters relating to promotion of safety of life and property on artificial islands and fixed structures on the outer continental shelf was published in the FEDERAL REGISTER dated December 22, 1955 (20 F. R. 9862–9867). These requirements were considered by the Merchant Marine Council and a public hearing was held on January 23, 1956, at Washington, D. C.

All the comments, views, and data submitted in connection with the proposed regulations considered by the Merchant Marine Council at this public hearing have been very helpful to the Coast Guard and are very much appreciated. This information was the basis for certain changes made in the proposed regulations.

The regulations in this document provide requirements with respect to safety of life and property on artificial islands and fixed structures used directly or indirectly in connection with the exploration, testing, drilling, production, storage, etc., of natural resources of the subsoil and seabed of the outer continental shelf. These regulations will require special safety construction features, emergency equipment, lifesaving appliances, fire-fighting equipment, emergency operation procedures, and special inspections thereof by the Coast Guard. These requirements will be enforced after construction or erection of the artificial islands or fixed structures is completed.

The regulations in this document do not apply to (a) the operating equipment used or employed on artificial islands or fixed structures, and (b) the methods and operations used in the drilling, producing, or transporting by pipe lines of natural resources from the subsoil or seabed of the outer continental shelf. The requirements regarding lights and warning devices will be added to the regulations in Subchapter C—Aids to Navigation in 33 CFR Chapter I at a later date. The vessels in attendance are required to display lights and signals in accordance with the Regulations for Preventing Collisions at Sea, 1948, or the local rules established in accordance with Rule 30 thereof, as appropriate.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Orders 167–15, dated January 3, 1955, and 167–17, dated June 29, 1955 (20 F. R. 840, 4976), Chapter I of Title 33 CFR is amended by adding the following new regulations as a new Subchapter N, consisting of Parts 140 to 146, inclusive, which shall be effective on and after July 1, 1956:

PART 140—GENERAL PROVISIONS

SUBPART 140.01—AUTHORITY AND PURPOSE

Sec.

140.01–1 Purpose of regulations.
140.01–5 Assignment of functions.

SUBPART 140.05—APPLICATION

140.05–1 Artificial islands and fixed structures.
140.05–5 Scope of requirements.
140.05–10 Effective date of regulations.
140.05–15 Amendments or additions to regulations.
140.05–20 Separability of regulations.

SUBPART 140.10—DEFINITIONS OF TERMS USED IN THIS SUBCHAPTER

140.10–1 Approved.
140.10–5 Artificial island or fixed structure.
140.10–10 Attending vessel.
140.10–15 Coast Guard District Commander.
140.10–20 Commandant.
140.10–25 Manned platform.
140.10–30 Mobile platform.
140.10–35 Officer in Charge, Marine Inspection.
140.10–40 Party.
140.10–45 Unmanned platform.

SUBPART 140.15—EQUIVALENTS AND APPROVED EQUIPMENT

140.15–1 Conditions under which equivalents may be used.
140.15–5 Equipment of an approved type.

SUBPART 140.20—ENFORCEMENT

140.20–1 Responsibility for enforcement.
140.20–5 Penalty.

SUBPART 140.25—APPEALS AND JUDICIAL REVIEW

140.25–1 Right of appeal.
140.25–5 Judicial review.

AUTHORITY: §§ 140.01–1 to 140.25–5 issued under sec. 1, 63 Stat. 545, 14 U. S. C. 633. Interpret or apply sec. 4, 67 Stat. 462; 43 U. S. C. 1333.

SUBPART 140.01—AUTHORITY AND PURPOSE

§ 140.01–1 *Purpose of regulations.* (a) The regulations in this subchapter are requirements with respect to safety equipment and other matters relating to the promotion of safety of life and property on the artificial islands and fixed structures located on the outer continental shelf.

(b) These provisions are established to implement section 4 (e) (1) of the Outer Continental Shelf Lands Act (sec. 4, 67 Stat. 462; 43 U. S. C. 1333), which reads as follows:

> The head of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the islands and structures referred to in subsection (a) or on the waters adjacent thereto, as he may deem necessary.

§ 140.01–5 *Assignment of functions.* The Secretary of the Treasury by Treasury Department Order 167–15, dated January 3, 1955, and Treasury Department Order 167–17, dated June 29, 1955 (20 F. R. 820, 4976), delegated to the Commandant, U. S. Coast Guard, the authority to prescribe regulations and to administer the functions described in section 4 (e) of the Outer Continental Shelf Lands Act (43 U. S. C. 1333).

SUBPART 140.05—APPLICATION

§ 140.05–1 *Artificial islands and fixed structures.* This subchapter shall be applicable to all artificial islands and fixed structures located on the outer continental shelf which are directly or indirectly used in connection with the exploration, production, storage, etc. (including drilling and testing), of natural resources of the subsoil and seabed of the outer continental shelf. The phrase "artificial islands and fixed structures" includes both mobile and built-up platforms, whether manned or unmanned, and whether or not attended or serviced by vessels. The term "natural resources" includes oil, gas, petroleum, minerals, etc., which may be removed from the subsoil and seabed of the outer continental shelf.

§ 140.05–5 *Scope of requirements.* (a) This subchapter pertains to special safety construction features required, emergency equipment, lifesaving appliances, fire-fighting equipment, emergency operation procedures, and special inspections thereof by the Coast Guard. These requirements will be enforced after construction or erection of the artificial islands or fixed structures is completed.

(b) The lights and warning devices required for artificial islands and fixed structures shall be provided and maintained in accordance with requirements now in effect or which may hereafter be established in Parts 60 to 76, inclusive (Subchapter C—Aids to Navigation), of this chapter. The vessels in attendance shall display lights and signals in accordance with the Regulations for Preventing Collisions at Sea, 1948, or the local rules established in accordance with Rule 30 thereof, as appropriate.

(c) The regulations in this subchapter shall not apply to operating equipment used and employed, nor to the methods and operations used, in the drilling for and the production of oil, gas, petroleum, or other subsoil minerals, nor to the transportation thereof by pipeline.

§ 140.05–10 *Effective date of regulations.* The regulations in this subchapter shall become effective on and after July 1, 1956. These requirements shall supersede all interim instructions or temporary requirements issued which are in conflict therewith.

§ 140.05–15 *Amendments or additions to regulations.* The right is reserved to alter, amend, cancel, or add to the regulations in this subchapter. However, any additions, cancellations, or amendments shall not be retroactive in effect unless specifically provided for at the time and a reasonable period for compliance will be permitted. Except in an emergency, ninety days will be allowed before amendments or new requirements will become effective.

§ 140.05–20 *Separability of regulations.* If any provision of the regulations in this subchapter, or the application of such provision to any person, firm, company, or corporation, or to any artificial island or fixed structure, shall be held invalid, the validity of the remainder of the regulations in this subchapter and the applicability of such provisions shall not be affected thereby.

SUBPART 140.10—DEFINITIONS OF TERMS USED IN THIS SUBCHAPTER

§ 140.10–1 *Approved.* This term means approved by the Commandant unless otherwise stated.

§ 140.10–5 *Artificial island or fixed structure.* This term means a building or platform secured to the seabed by fixed means or submerged onto the seabed so that for all practical purposes it becomes stationary. This includes both mobile and built-up platforms.

§ 140.10–10 *Attending vessel.* This term means a vessel moored close to and readily accessible to an artificial island or fixed structure, which is especially adapted to providing power, fuel, and/or other services pertaining to the operation being conducted on such artificial island or fixed structure.

§ 140.10–15 *Coast Guard District Commander.* This term means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within a particular Coast Guard district, which includes the inspections, enforcement, and administration of regulations governing artificial islands and fixed structures located on the outer continental shelf.

§ 140.10–20 *Commandant.* This term means the Commandant of the Coast Guard.

§ 140.10–25 *Manned platform.* This term means an artificial island or fixed structure which, after completion of erection, is actually and continuously occupied by persons living and accommodated thereon.

§ 140.10–30 *Mobile platform.* This term means an artificial island or fixed structure, which includes as an integral part of itself features which permit it to be moved as an entity from position to position and to be fixed to or submerged onto the seabed.

§ 140.10–35 *Officer in Charge, Marine Inspection.* This term means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant, and who, under the superintendence of the Coast Guard District Commander is in charge of a marine inspection zone, shall be immediately responsible for the performance of duties with respect to inspections, enforcement, and administration of regulations governing artificial islands and fixed structures.

§ 140.10–40 *Party.* This term means a person, firm, company, or corporation. This includes the owner of the artificial

island or fixed structure, his agent, and the person in charge of an artificial island or fixed structure.

§ 140.10–45 *Unmanned platform.* This term means an artificial island or fixed structure which is not a manned platform. This includes an artificial island or fixed structure which is continuously serviced by an attending vessel.

SUBPART 140.15—EQUIVALENTS AND APPROVED EQUIPMENT

§ 140.15–1 *Conditions under which equivalents may be used.* The use of alternate equipment, apparatus, or arrangements for those specified in this subchapter may be permitted by the Commandant to such extent and upon conditions as will insure a degree of safety comparable to or above the minimum standards set in this subchapter.

§ 140.15–5 *Equipment of an approved type.* (a) Where equipment in this subchapter is required to be of an approved type, such equipment requires the specific approval of the Commandant. Such approvals are published in the FEDERAL REGISTER and in addition are contained in Coast Guard publication CG–190, "Equipment Lists."

(b) Specifications for many of the items required to be of an approved type have been prescribed by the Commandant and are contained in Parts 160 to 164, inclusive, in Subchapter Q—Specifications in 46 CFR Chapter I. In general such specifications are of interest only to the manufacturer of specific items of equipment.

SUBPART 140.20—ENFORCEMENT

§ 140.20–1 *Responsibility for enforcement.* The Coast Guard District Commander has general responsibility for and superintendence over the inspections, enforcement, and administration of the regulations in this subchapter within his assigned district. Under the general superintendence of the Coast Guard District Commander, it is the responsibility of the Officer in Charge, Marine Inspection, within his marine inspection zone, to perform or have performed the inspections, enforcement, and administration of the regulations in this subchapter. To accomplish these purposes, authority to perform these functions is hereby delegated to the Coast Guard District Commanders and Officers in Charge, Marine Inspection, within their respective districts and marine inspection zones. This authority may be redelegated as necessary to any person from the civilian or military branch of the Coast Guard assigned to work for such official.

§ 140.20–5 *Penalty.* The penalty for any violation of the regulations in this subchapter is in section 4 (e) (2) of the Outer Continental Shelf Lands Act (43 U. S. C. 1333) and reads as follows:

> Any person, firm, company, or corporation who shall fail or refuse to obey any of the lawful rules and regulations issued hereunder shall be guilty of a misdemeanor and shall be fined not more than $100 for each offense. Each day during which such violation shall continue shall be considered a new offense.

SUBPART 140.25—APPEALS AND JUDICIAL REVIEW

§ 140.25–1 *Right of appeal.* (a) Any party interested in or aggrieved by any decision or action of the Officer in Charge, Marine Inspection, may appeal therefrom to the Coast Guard District Commander of the district in which the action or decision was made. A further appeal may be made to the Commandant, U. S. Coast Guard, from the decision of the District Commander. Any party interested in or aggrieved by any decision or action of the Coast Guard District Commander may appeal therefrom to the Commandant, U. S. Coast Guard.

(b) Appeals from decisions or actions of the Officer in Charge, Marine Inspection, to the Coast Guard District Commander shall be made in writing within 30 days after the decisions or actions appealed from shall have been rendered or taken. Such an appeal shall set forth the decision or action appealed from and the reasons why the decision or action should be set aside or revised. Appeals from the decisions or actions of the Coast Guard District Commander to the Commandant shall be made in writing within 30 days after the decisions appealed from shall have been rendered.

(c) Pending the determination of the appeal the initial decision or action of the Officer in Charge, Marine Inspection, or the initial decision or action of the Coast Guard District Commander shall remain in effect. The decision of the Commandant is final.

§ 140.25–5 *Judicial review.* Nothing in this subchapter shall be so construed as to prevent any party from seeking a judicial review of the regulations in this subchapter or any decision or action taken pursuant thereto. Section 4 (b) of the Outer Continental Shelf Lands Act (43 U. S. C. 1333) provides that United States district courts shall have original jurisdiction of cases and controversies arising under this act.

PART 142—INSPECTIONS

Sec.
142.01 Application.
142.05 Inspection requirements.
142.10 Scope of inspections.
142.15 Deficiencies.
142.20 Authority to perform inspections.

AUTHORITY: §§ 142.01 to 142.20 issued under sec. 1, 63 Stat. 545, 14 U. S. C. 633. Interpret or apply sec. 4, 67 Stat. 462; 43 U. S. C. 1333.

§ 142.01 *Application.* The provisions of this part shall apply to all artificial islands and fixed structures located on the outer continental shelf.

§ 142.05 *Inspection requirements.* The Officer in Charge, Marine Inspection, will perform, or have performed, the inspections of artificial islands or fixed structures within his area of jurisdiction to determine that the requirements in this subchapter are met. These inspections will be at such time or times as he may deem necessary.

§ 142.10 *Scope of inspections.* In the inspection of an artificial island or a fixed structure, the person assigned will inspect the lifesaving appliances, fire-fighting equipment, emergency equipment, observe emergency drills (if necessary), and otherwise satisfy himself that all provisions of the regulations in this subchapter have been complied with and that the emergency equipment is in good condition and satisfactory in every respect.

§ 142.15 *Deficiencies.* Any deficiency will be reported to the owner. The owner shall have the deficiency corrected as soon as practical. Any equipment required by the regulations in this subchapter found to be deficient or unsatisfactory by the person performing an inspection will be condemned. Such condemned equipment shall be repaired or replaced as soon as practical. Condemned lifesaving or fire-fighting equipment, which cannot be satisfactorily repaired, shall be so mutilated that it cannot be used for the purpose for which it was originally intended.

§ 142.20 *Authority to perform inspections.* Persons assigned to this work may at any time lawfully inspect an artificial island or fixed structure.

PART 143—CONSTRUCTION AND ARRANGEMENT

SUBPART 143.01—GENERAL
Sec.
143.01–1 Application.
143.01–5 Scope of requirements.

SUBPART 143.05—MEANS OF ESCAPE
143.05–1 Types.
143.05–5 Manned platform.
143.05–10 Unmanned platform.

SUBPART 143.10—PERSONNEL LANDINGS
143.10–1 Manned platforms.
143.10–5 Illumination.

SUBPART 143.15—GUARDS AND RAILS
143.15–1 Floor or deck areas and openings.
143.15–5 Catwalks and stairways.

AUTHORITY: §§ 143.01–1 to 143.15–5 issued under sec. 1, 63 Stat. 545, 14 U. S. C. 633. Interpret or apply sec. 4, 67 Stat. 462; 43 U. S. C. 1333.

SUBPART 143.01—GENERAL

§ 143.01–1 *Application.* The provisions of this part apply to all artificial islands and fixed structures.

§ 143.01–5 *Scope of requirements.* No requirements are established with respect to the construction and arrangement of artificial islands and fixed structures except as necessary to comply with safety requirements contained in this subchapter.

SUBPART 143.05—MEANS OF ESCAPE

§ 143.05–1 *Types.* Means of escape shall be fixed stairways or fixed ladders. They shall be constructed of metal and shall extend from the platform to the surface of the water at the low range tidal mark.

§ 143.05–5 *Manned platform.* At least two means of escape shall be provided for each manned platform.

§ 143.05–10 *Unmanned platform.* At least one means of escape shall be provided for each unmanned platform.

SUBPART 143.10—PERSONNEL LANDINGS

§ 143.10–1 *Manned platforms.* Sufficient personnel landings shall be provided on each manned platform to assure safe access and egress. When due to special construction personnel landings are not feasible, then suitable transfer facilities to provide safe access and egress shall be installed.

§ 143.10–5 *Illumination.* The personnel landings shall be provided with satisfactory illumination. The minimum shall be one-foot candle of artificial illumination as measured at the landing floor and guards and rails.

SUBPART 143.15—GUARDS AND RAILS

§ 143.15–1 *Floor or deck areas and openings.* (a) Except for helicopter landing decks which are provided for in paragraph (b) of this section, and areas not normally occupied, the unprotected perimeter of all floor or deck areas and openings shall be rimmed with guards and rails or wire mesh fence. The guard rail or fence shall be at least 42 inches high. The two intermediate rails shall be so placed that the rails are approximately evenly spaced between the guard rail and the floor or deck area: *Provided,* That if a toe board is installed then one of the intermediate rails may be omitted and the other rail placed approximately half way between the top of the toe board and the top guard rail.

(b) The unprotected perimeter of the helicopter landing deck shall be protected with a device of sufficient strength and size as to prevent any person from falling from such deck.

§ 143.15–5 *Catwalks and stairways.* Each catwalk and each stairway shall be provided with a suitable guard rail or rails, as necessary.

PART 144—LIFESAVING APPLIANCES

SUBPART 144.01—MANNED PLATFORMS

Sec.

144.01–1 Life floats.
144.01–5 Location and launching of life floats.
144.01–10 Equipment for life floats.
144.01–15 Alternates for life floats.
144.01–20 Life preservers.
144.01–25 Ring life buoys.
144.01–30 First-aid kit.
144.01–35 Litter.
144.01–40 Emergency communications equipment.

SUBPART 144.10—UNMANNED PLATFORMS

144.10–1 Life preservers.
144.10–5 Ring life buoys.
144.10–10 Other lifesaving appliances.

AUTHORITY: §§ 144.01–1 to 144.10–10 issued under sec. 1, 63 Stat. 545, 14 U. S. C. 633. Interpret or apply sec. 4, 67 Stat. 462; 43 U. S. C. 1333.

SUBPART 144.01—MANNED PLATFORMS

§ 144.01–1 *Life floats.* Each manned platform shall be provided with at least two approved life floats. The life floats shall have sufficient capacity to accommodate all persons present at any one time.

§ 144.01–5 *Location and launching of life floats.* The life floats shall be distributed in accessible locations and mounted on the outboard sides of the working platform in such a manner as to be readily launched.

§ 144.01–10 *Equipment for life floats.* (a) Each life float shall be provided with a painter. This painter shall be a manila rope, or equivalent, not less than 2¾ inches in circumference, and of a length not less than three times the distance from the low water line to the deck or place where the life float is stowed.

(b) An approved electric water light shall be provided for each life float. The water light shall be attached to the life float by a lanyard not less than one fathom nor more than two fathoms in length. The water light shall be mounted in a bracket so that when the life float is launched the water light will pull free of the bracket.

(c) Two paddles shall be provided for each life float. The paddles shall not be less than five feet nor more than six feet long. The paddles shall be stowed in such a way that they will be readily accessible from either side of the life float when in the water.

§ 144.01–15 *Alternates for life floats.* (a) Approved lifeboats or approved life rafts may be used in lieu of approved life floats, for either all or a part of the capacity required. When either lifeboats or life rafts are used approved means of launching will be required.

(b) The equipment required for a lifeboat is a bailer, boat hook, bucket, hatchet, lantern, life line, two life preservers, matches, full complement of oars and steering oar, painter, plug, and rowlocks, of the same type, kind, and character as required for lifeboats carried on vessels engaged in navigating bays, sounds, and lakes other than the Great Lakes, and rivers.

(c) The equipment required for a life raft is a boat hook, life line (if not a Type A life raft), full complement of oars and steering oar, painter, and rowlocks of the same type, kind, and character as required for life rafts carried on cargo and miscellaneous vessels navigating on bays, sounds, and lakes other than the Great Lakes.

§ 144.01–20 *Life preservers.* An approved adult life preserver shall be provided for each person on a manned platform. The life preservers shall be located in easily accessible places.

§ 144.01–25 *Ring life buoys.* (a) At least four approved ring life buoys shall be placed on each manned platform. One ring life buoy shall be placed in a suitable rack on each side of a manned platform in an accessible place. The ring life buoy shall always be capable of being cast loose, and shall not be permanently secured in any way.

(b) An approved electric water light shall be provided with each ring life buoy. The water light shall be attached to the ring life buoy by a lanyard not less than 3 feet nor more than 6 feet in length. The water light shall be mounted in a bracket near the ring life buoy so that when the ring life buoy is cast loose the water light will pull free of the bracket.

§ 144.01–30 *First-aid kit.* On each manned platform a first-aid kit approved by the Commandant or the U. S. Bureau of Mines shall be provided and kept in the custody of the supervisor.

§ 144.01–35 *Litter.* On each manned platform a Stokes litter shall be provided and kept in an accessible place.

§ 144.01–40 *Emergency communications equipment.* On manned platforms means of communication by radio and/or wire telephone shall be provided for contacting the shore or vessels in the vicinity for aid in the event of an emergency.

SUBPART 144.10—UNMANNED PLATFORMS

§ 144.10–1 *Life preservers.* On an unmanned platform an adult life preserver shall be provided for each person thereon while crews are working continuously on a 24-hour basis. The life preservers shall be located in easily accessible places.

§ 144.10–5 *Ring life buoys.* On an unmanned platform at least four approved ring life buoys shall be provided and kept thereon while crews are working continuously on a 24-hour basis. The requirements for stowage, arrangement, and approved electric water lights with brackets and lanyards in § 144.01–25 shall be met when ring life buoys are placed on unmanned platforms.

§ 144.10–10 *Other lifesaving appliances.* While life preservers and ring life buoys are the only lifesaving appliances required on unmanned platforms and then only when crews are continuously working on a 24-hour basis, if at other times lifesaving appliances are provided, the pertinent requirements in this part shall be met with respect to the type and character thereof.

PART 145—FIRE-FIGHTING EQUIPMENT

Sec.

145.01 Portable and semi-portable fire extinguishers.
145.05 Classification of fire extinguishers.
145.10 Locations and number of fire extinguishers required.

AUTHORITY: §§ 145.01 to 145.10 issued under sec. 1, 63 Stat. 545, 14 U. S. C. 633. Interpret or apply sec. 4, 67 Stat. 462; 43 U. S. C. 1333.

§ 145.01 *Portable and semi-portable fire extinguishers.* On all manned platforms and on all unmanned platforms where crews are continuously working on a 24-hour basis, approved type portable fire extinguishers and/or approved type semi-portable fire extinguishers shall be installed and maintained. On all unmanned platforms where crews are not continuously working on a 24-hour basis, approved type portable fire extinguishers and/or approved type semi-portable fire extinguishers are required to be installed and maintained only when crews are working thereon.

§ 145.05 *Classification of fire extinguishers.* (a) Portable and semi-portable extinguishers shall be classified by a combination letter and number symbol. The letter indicating the type of fire which the unit could be expected to extinguish, and the number indicating the relative size of the unit.

(b) The types of fire will be designated as follows:

(1) "A" for fires in ordinary combustible materials where the quenching and cooling effects of quantities of water, or solutions containing large percentages of water, are of first importance.

(2) "B" for fires in flammable liquids, greases, etc., where a blanketing effect is essential.

(3) "C" for fires in electrical equipment where the use of a non-conducting extinguishing agent is of first importance.

(c) The number designations for size will start with "I" for the smallest to "V" for the largest. Sizes I and II are considered portable extinguishers. Sizes III, IV and V are considered semi-portable extinguishers which shall be fitted with suitable hose and nozzle or other practicable means so that all portions of the space concerned may be covered. Examples of size graduations for some of the typical portable and semi-portable extinguishers are set forth in Table 145.05 (c).

TABLE 145.05 (c)—PORTABLE AND SEMIPORTABLE EXTINGUISHERS

Classification type, size	Soda-acid and water, gallons	Foam, gallons	Carbon dioxide, pounds	Dry chemical, pounds
A-II	2½	2½	.....	.....
B-II	.....	2½	15	12
C-II	.....	.....	15	12
B-V	.....	40	100	(1)

[1] Minimum values not established at this time.

(d) All portable and semi-portable extinguishers shall have permanently attached thereto a durable name plate giving the name of the item, the rated capacity in gallons or pounds, the name and address of the person or firm for whom approved, and the identifying mark of the actual manufacturer.

§ 145.10 *Locations and number of fire extinguishers required.* (a) Approved portable and semi-portable extinguishers shall be installed in accordance with Table 145.10 (a).

TABLE 145.10 (a)—PORTABLE AND SEMIPORTABLE EXTINGUISHERS

Space	Classification	Quantity and location
SAFETY AREAS		
Communicating corridors	A-II	1 in each main corridor not more than 150 feet apart. (May be located in stairways.)
Radio room	C-II	1 in vicinity of exit.
ACCOMMODATIONS		
Sleeping accommodations	A-II	1 in each sleeping accommodation space. (Where occupied by more than 4 persons.)
SERVICES SPACES		
Galleys	B-II or C-II	1 for each 2,500 square feet or fraction thereof for hazards involved.
Storerooms	A-II	1 for each 2,500 square feet or fraction thereof located in vicinity of exits, either inside or outside of spaces.
MACHINERY SPACES		
Gas-fired boilers	B-II (CO_2 or dry chemical).	2 required.
Gas-fired boilers	B-V	1 required.[1]
Oil-fired boilers	B-II	2 required.
Oil-fired boilers	B-V	1 required.[1]
Internal combustion or gas turbine engines	B-II	1 for each engine.[2]
Electric motors or generators of open type	C-II	1 for each 2 motors or generators.[3]

[1] Not required where a fixed carbon dioxide system is installed.
[2] When installation is on weather deck or open to atmosphere at all times 1 B-II for each three engines is allowable.
[3] Small electrical appliances, such as fans, etc., shall not be counted or used as basis for determining number of extinguishers required.

(b) Semi-portable extinguishers shall be located in the open so as to be readily seen.

PART 146—OPERATIONS

SUBPART 146.01—SPECIAL OPERATING REQUIREMENTS

Sec.

146.01-1 Application.
146.01-5 Identification marks required.
146.01-10 Recording identification marks.
146.01-15 Maintenance of emergency equipment.
146.01-20 Casualty or accident report.
146.01-25 Authority of person in charge.

SUBPART 146.05—MANNED PLATFORMS

146.05-1 Application.
146.05-5 General alarm system.
146.05-10 Emergency signals.
146.05-15 Duties of personnel.
146.05-20 Manning of life floats, etc.
146.05-25 Emergency drills.
146.05-30 Station bill.
146.05-35 Markings for emergency equipment.

AUTHORITY: §§ 146.01-1 to 146.05-35 issued under sec. 1, 63 Stat. 545, 14 U. S. C. 633. Interpret or apply sec. 4, 67 Stat. 462; 43 U. S. C. 1333.

SUBPART 146.01—SPECIAL OPERATING REQUIREMENTS

§ 146.01-1 *Application.* The provisions of this subpart apply to all artificial islands or fixed structures.

§ 146.01-5 *Identification marks required.* The owner or operator shall assign a name or number or other suitable designation to each artificial island and each fixed structure located on the outer continental shelf. This name or number or other suitable designation shall be permanently and conspicuously displayed on the artificial island or fixed structure so that it can be readily seen in clear visibility by vessels or aircraft.

§ 146.01-10 *Recording identification marks.* The owner or operator shall record the name or number or other suitable designation assigned each artificial island and each fixed structure with the Coast Guard District Commander having jurisdiction over the area in which it is located. This information is for identification purposes.

§ 146.01-15 *Maintenance of emergency equipment.* The emergency equipment provided, regardless of whether or not required by this subchapter, shall be maintained in good condition at all times. Good operating practices require replacement of expended equipment, as well as periodic renewal of those items which have a limited period of effectiveness, such as replacing charges in fire extinguishers, replacing batteries in electric water lights, etc.

§ 146.01-20 *Casualty or accident report.* (a) The owner, or his agent, or the person in charge, shall report as soon as possible to the Officer in Charge, Marine Inspection, having jurisdiction, whenever his artificial island or fixed structure is involved in a casualty or accident and any one or more of the following occur:

(1) If it is hit by a vessel and damage to property is in excess of $1,500.

(2) Damage to artificial island or fixed structure in excess of $25,000.

(3) Material damage affecting the usefulness of life-saving or fire-fighting equipment.

(4) Loss of life.

(5) Injury causing any person to remain incapacitated for a period in excess of 72 hours, arising out of or being directly connected with the use or employment of any emergency equipment described in this subchapter.

(b) The written report, in narrative form, shall contain the name or number or other suitable designation assigned to the artificial island or fixed structure; the names and addresses of the owner, his agent (if any), operator (if any), and the person in charge; the nature and probable cause of the casualty or accident; the date and time the casualty or accident occurred, if known, otherwise approximately when it occurred; details of damage incurred, especially with respect to lifesaving and fire-fighting equipment; the nature and extent of injury to any person; names and addresses of persons involved; and other comments, especially with respect to use or need for emergency equipment.

(c) In the investigations of casualties and accidents ocurring on artificial islands or fixed structures, the procedures in 46 CFR Part 136 for marine casualties will be followed to the extent applicable.

§ 146.01-25 *Authority of person in charge.* In case an emergency arises, nothing in the regulations in this subchapter shall be so construed as preventing the person in charge from pursuing the most effective action in his judgment for rectifying the conditions causing the emergency.

SUBPART 146.05—MANNED PLATFORMS

§ 146.05-1 *Application.* The provisions of this subpart apply only to manned platforms.

§ 146.05–5 *General alarm system.* Each manned platform shall be provided with a general alarm system. When operated, this system shall be audible in all parts of the manned platform on which provided.

§ 146.05–10 *Emergency signals.* The owner, or his agent, or the person in charge, shall establish emergency signals to be used for calling the personnel to their emergency stations. The abandon platform signal shall be an intermittent signal on the general alarm system, for not less than 15 seconds, and a like signal on the fog horn. This signal should be supplemented by word of mouth warning.

§ 146.05–15 *Duties of personnel.* (a) The owner, or his agent, or the person in charge, shall assign to each person on a manned platform special duties and duty stations so that in event an emergency arises confusion will be minimized and no delay will occur with respect to the use or application of equipment required by this subchapter. The duties shall, as far as possible, be comparable with the regular work of the individual.

(b) The duties shall be assigned as necessary for the proper handling of any emergency, and shall include the following:

(1) The closing of airports, watertight doors, scuppers, sanitary and other discharges which lead through the platform's hull below the margin line, etc.

(2) The stopping of fans and ventilation systems.

(3) The donning of life preservers.

(4) The preparation and launching of life floats, lifeboats, or life rafts.

§ 146.05–20 *Manning of life floats, etc.* The owner, or his agent, or the person in charge, shall assign a person to each life float, lifeboat, or life raft, who shall be responsible for launching it in event of an emergency.

§ 146.05–25 *Emergency drills.* (a) Emergency drills shall be conducted at least once each month by the person actually in charge of the manned platform. The drill shall be conducted as if an actual emergency existed. All personnel should report to their respective stations and be prepared to perform the duties assigned to them.

(b) The person actually in charge and conducting the emergency drill shall give such instructions to the personnel as are necessary to insure that all persons are familiar with their duties and stations.

(c) The date and time of such drills shall be reported in writing by the person actually in charge at the time of the drill to the owner who shall maintain this report record for a year and furnish it upon request to the Coast Guard. After one year, such records may be destroyed. When it is impossible to conduct emergency drills as required by this section during a particular calendar month, during the following month a written report by the owner shall be submitted to the Officer in Charge, Marine Inspection, stating why the drills could not be conducted.

§ 146.05–30 *Station bill.* (a) The owner, his agent, and the person in charge, shall be responsible for and have prepared a station bill (muster list). This station bill must be signed by the person in charge. Copies shall be duly posted in conspicuous locations on the manned platform.

(b) The station bill shall set forth the special duties and duty stations of each member of the personnel for any emergency which involves the use or application of equipment required by this subchapter. In addition, it shall contain all other duties assigned and considered as necessary for the proper handling of any emergency.

(c) The station bill shall contain the various signals to be used for calling the personnel to their emergency stations, and to abandon platform.

§ 146.05–35 *Markings for emergency equipment.* (a) Markings shall be provided as considered necessary for the guidance of persons on manned platforms.

(b) The general alarm bell switches shall be identified by red letters at least one inch high with a contrasting background: "GENERAL ALARM."

(c) All general alarm bells shall be identified by a sign at each bell in red letters at least one inch high with a sharp contrasting background: "GENERAL ALARM—WHEN BELL RINGS GO TO YOUR STATION."

(d) All life floats, lifeboats, and life rafts, together with paddles or oars, shall be conspicuously marked with a name or number or identification of the artificial island or fixed structure on which placed. The number of persons allowed on each life float, lifeboat, or life raft shall be conspicuously marked thereon in letters and numbers 1½ inches high. These numbers shall be placed on both sides of the life float, lifeboat, or life raft.

(e) All life preservers and ring life buoys shall be marked with the name and number or identification of the manned platform on which placed.

Dated: February 1, 1956.

[SEAL] A. C. RICHMOND,
Vice Admiral, U. S. Coast Guard,
Commandant.

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TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 46—RURAL SERVICE

PART 61—MONEY ORDERS

MISCELLANEOUS AMENDMENTS

A. In § 46.4 *Payment of postage* amend paragraph (a) to read as follows:

(a) *Acceptance of mail.* A rural carrier will accept any mailable matter provided the postage is fully prepaid or money equal to the required postage is furnished, unless the purpose of handing mail to the carrier for deposit into one office is to "boycott" another office or deprive it of legitimate revenue. When a rural carrier finds unstamped mail in a patron's box and the requisite amount of money for postage, he will collect the mail and money and pay the necessary postage. For convenience and safety, patrons who leave mail and money for postage in rural mail boxes to be collected by the carrier should either wrap the money, place it in a coin holding receptacle, or attach it to the mail by means of a clip or other suitable fastener.

(R. S. 161, 396; sec. 1, 39 Stat. 4, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369, 39 U. S. C. 191, 192)

B. In § 61.3 *How to cash a money order* make the following changes:

1. Delete paragraph (a).

2. Amend paragraph (b) to read as follows:

(b) *Where to cash.* (1) You may cash a card money order at full face value at any post office or bank. Consult your local postmaster to obtain payment of an old style paper money order.

(2) If you are a patron of a rural route, your rural carrier will cash your money order. You must endorse it in his presence. No fee or compensation is required for this service.

(3) Money orders issued at military post offices are payable only at military post offices, post offices or at banks located in the United States, its possessions or Territories, and countries with which the United States transacts domestic-international money-order business. If the purchaser or payee of a money order issued at a military post office transfers ownership by endorsement to another, the endorsee must cash the money order at either a military post office or at a post office located in the United States, its possessions or Territories.

3. Amend paragraph (e) (3) to read as follows:

(3) *On death of payee.* A money order less than a year old belonging to a deceased owner may be paid to the executor or administrator of the estate appointed by the court. A certified copy of the appointment as executor or administrator must be filed with the local postmaster. Payments will be made in accordance with the laws of the State of which the deceased was a resident. If more than one year old consult your local postmaster.

C. In § 61.4 *Lost or damaged money orders* make the following changes:

1. Amend paragraph (a) to read as follows:

(a) *When you lose a money order.* A money order that is lost will be replaced without charge by the Post Office Department. Make application through your local postmaster.

2. Amend paragraph (c) to read as follows:

(c) *Consent of payee or endorsee.* A duplicate money order will be issued in accordance with the wishes of the applicant, without the consent of the payee or endorsee.

(R. S. 161, 396, 4027; secs. 304, 309, 42 Stat. 24, 25, sec. 12, 65 Stat. 676; 5 U. S. C. 22, 369, 39 U. S. C. 246f, 711)

[SEAL] ABE MCGREGOR GOFF,
The Solicitor.

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