Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Controlling agency
Matagorda Island (R-226) (San Antonio).	Latitude 28°16'00", longitude 96°27'00"; latitude 28°18'55", longitude 96°27'45"; latitude 28°20'55", longitude 96°29'15"; latitude 28°12'00", longitude 96°46'00"; latitude 28°07'00", longitude 96°42'00"; thence parallel to and 3 nautical miles from the shoreline to the point of beginning.	Surface to 60,000 feet mean sea level.	Continuous...	Second Air Force, Barksdale, La.

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

This amendment shall become effective on March 22, 1956.

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

[F. R. Doc. 56-1682; Filed, Mar. 5, 1956; 8:45 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

Subchapter B—Food and Food Products

PART 19—CHEESES; PROCESSED CHEESES; CHEESE FOODS; CHEESE SPREADS; AND RELATED FOODS; DEFINITIONS AND STANDARDS OF IDENTITY

ORDER ESTABLISHING A DEFINITION AND STANDARD OF IDENTITY FOR SAMSOE CHEESE

In the matter of establishing a definition and standard of identity for samsoe cheese:

On March 10, 1955, a notice of proposed rule making was published in the FEDERAL REGISTER (20 F. R. 1454) setting forth a proposal to adopt a definition and standard of identity for samsoe cheese. The notice allowed 30 days for interested persons to submit in writing their views regarding the proposal.

Upon consideration of the views presented and other relevant information, it is concluded that honesty and fair dealing in the interest of consumers will be promoted by adoption of the definition and standard of identity for samsoe cheese, but that the proposed standard published as heretofore noted should be modified with respect to curing the cheese. Therefore, pursuant to authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 401, 52 Stat. 1046, 68 Stat. 54; 21 U. S. C. 341) and delegated to the Commissioner of Food and Drugs by the Secretary (20 F. R. 1996): *It is ordered*, That Part 19 be amended by adding thereto the following new section:

§ 19.544 *Samsoe cheese; identity*. (a) Samsoe cheese is the food prepared from milk and other ingredients specified in this section, by the procedure set forth in paragraph (b) of this section, or by another procedure which produces a finished cheese having the same physical and chemical properties as the cheese produced when the procedure set forth in paragraph (b) of this section is used. The shape of the cheese is flat cylindrical. Its weight is approximately 30 pounds (14 kilograms); its diameter is approximately 17 inches (44 centimeters); and its height is approximately 4 inches (10 centimeters). It has a small amount of eye formation of approximately uniform size of about $\frac{5}{16}$-inch (8 millimeters). It contains not more than 46 percent of moisture, and its solids contain not less than 45 percent of milk fat, as determined by the methods prescribed in § 19.500 (c). The cheese so made is cured at a temperature of not less than 35° F. for not less than 60 days. The surface may be covered with plain or colored paraffin or other tightly adhering coating.

(b) Milk, which may be pasteurized or clarified or both, and which may be warmed, is subjected to the action of harmless lactic-acid-producing bacteria, present in such milk or added thereto. Harmless artificial coloring may be added. Sufficient rennet (with or without purified calcium chloride in a quantity not more than 0.02 percent, calculated as anhydrous calcium chloride, of the weight of the milk) is added to set the milk to a semisolid mass. After coagulation the mass is cut into small cube-shaped pieces with sides approximately $\frac{3}{8}$-inch (1 centimeter). The mass is stirred and heated to about 102° F., and so handled by further stirring, heating, dilution with water, and salting as to promote and regulate the separation of curd and whey. When the desired curd is obtained, it is transferred to forms permitting drainage of whey. During drainage, the curd is pressed. After drainage, the curd is removed from the forms and is further salted by immersing in a concentrated salt solution for about 3 days. The curd is then cured at a temperature of from 60° to 70° F. for 3 to 5 weeks to obtain the desired eye formation. Further curing is conducted at a lower temperature.

(c) For the purposes of this section, the word "milk" means cow's milk, which may be adjusted by separating part of the fat therefrom or by adding thereto cream or skim milk.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, shall specify with particularity the provisions of the order deemed objectionable and the grounds for the objections, and shall request a public hearing on the provisions of the order to which objections are made. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall become effective 60 days after its publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of objections thereto. Notice of the filing of objections, or lack thereof, will be announced by publication in the FEDERAL REGISTER.

(Sec. 401, 52 Stat. 1046, 68 Stat. 54; 21 U. S. C. 341)

Dated: February 29, 1956.

[SEAL] JOHN L. HARVEY,
Acting Commissioner of Food and Drugs.

[F. R. Doc. 56-1683; Filed, Mar. 5, 1956; 8:45 a. m.]

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter E—Alcohol, Tobacco, and Other Excise Taxes

PART 200—RULES OF PRACTICE IN PERMIT PROCEEDINGS

On December 6, 1955, a notice of proposed rule making with respect to regulations designated as Part 200 of Title 26 (1954) of the Code of Federal Regulations was published in the FEDERAL REGISTER (20 F. R. 8954). The purposes of the proposals were to adopt Part 200 of Subchapter C of Title 26 of the 1939 Code of Federal Regulations as Part 200 of Subchapter E of Title 26 of the 1954 Code of Federal Regulations, and to amend such adopted regulations (a) to incorporate certain of the recommendations of the President's Conference on Administrative Procedure, (b) to further specify details of procedure with respect to permits under chapter 52, of the Internal Revenue Code, and to clarify procedures applicable to the various types of permits under the Internal Revenue Code by including specific references to tobacco and liquor bottle permits, and (c) to provide minor editorial amendments. No data, views, or arguments pertaining thereto having been received within the period of 30 days from the date of publication of said notice, the regulations so published are hereby adopted subject to the changes set forth below:

PARAGRAPH 1. The "Preamble" is amended by adding a new third paragraph.

PAR. 2. Subpart B is amended by revising the last sentence of § 200.17.

PAR. 3. Subpart I is amended by revising the second sentence of § 200.115.

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

Approved: February 28, 1956.

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

Preamble. 1. The regulations in this part shall supersede Regulations 123 (26 CFR (1939) Part 200; 19 F. R. 8502).

2. These regulations shall not affect any act done or any liability or right accruing or accrued, or any suit or proceeding had or commenced, before the effective date of these regulations.

3. The regulations in this part shall be effective on the 30th day after publication in the FEDERAL REGISTER.

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AUTHORITY: §§ 200.1 to 200.129 issued under sec. 7805, 68A Stat. 917; 26 U. S. C. 7805.

SUBPART A—SCOPE AND CONSTRUCTION OF REGULATIONS

§ 200.1 *Scope of part.* The rules in this part govern the procedure and practice in connection with the disapproval of applications for basic permits, and for the suspension, revocation and annulment of such permits under sections 3 and 4 of the Federal Alcohol Administration Act (27 U. S. C. 201 et seq.) and disapproval, suspension, and revocation of basic permits under the Internal Revenue Code (26 U. S. C.). The rules in this part shall also govern, insofar as applicable, any adversary proceeding involving adjudication required by statute to be determined on the record, after opportunity for hearing, under laws administered by the Alcohol and Tobacco Tax Division, Internal Revenue Service.

§ 200.2 *Liberal construction.* The rules in this part shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Rules of Civil Procedure for the District Courts of the United States, where applicable, shall be a guide in any situation not provided for or controlled by this part, but shall be liberally construed, or relaxed when necessary.

§ 200.3 *Forms prescribed.* The Director, Alcohol and Tobacco Tax Division, is authorized to prescribe all forms required by this part. Information called for shall be furnished in accordance with the instructions on the form or issued in respect thereto.

SUBPART B—DEFINITIONS

§ 200.5 *Meaning of terms.* As used in this part, unless the context otherwise requires, terms shall have the meanings ascribed in this subpart.

§ 200.6 *Applicant.* "Applicant" shall mean any person who has filed an initial application for a permit under the Federal Alcohol Administration Act or Internal Revenue Code.

§ 200.7 *Application.* "Application" shall mean any application for a permit under the Federal Alcohol Administration Act or Internal Revenue Code. The term "initial application" shall mean an application for an original permit for operations not covered by an existing permit. The term "renewal application" shall mean an application timely filed for the renewal of an existing permit.

§ 200.8 *Assistant regional commissioner.* "Assistant regional commissioner" shall mean the Assistant Regional Commissioner, Alcohol and Tobacco Tax, who is responsible to, and functions under the direction and supervision of the regional commissioner.

§ 200.9 *Attorney for the government.* The attorney for the Government shall mean the attorney in the office of the chief counsel (assigned to the National or regional office) authorized to represent the assistant regional commissioner in the proceeding.

§ 200.10 *Citation.* "Citation" shall include any notice contemplating the disapproval of an application (whether initial or renewal) or any order to show cause why a permit should not be suspended, revoked or annulled.

§ 200.11 *Commissioner.* "Commissioner" shall mean the Commissioner of Internal Revenue.

§ 200.12 *Director, Alcohol and Tobacco Tax Division.* "Director, Alcohol and Tobacco Tax Division" shall mean the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D. C.

§ 200.13 *Examiner.* "Examiner" shall mean the examiner appointed pursuant to section 11 of the Administrative Procedure Act, designated to preside over any administrative proceeding under this part.

§ 200.14 *Initial decision.* "Initial decision" shall mean the decision (order) of the assistant regional commissioner in any proceeding on an initial application for a permit, and the decision of the examiner in any proceeding on the suspension, revocation or annulment of a permit or on the disapproval of a renewal application.

§ 200.15 *I. R. C.* "I. R. C." shall mean the Internal Revenue Code.

§ 200.16 *Other terms.* Any other term defined in the Federal Alcohol Administration Act (27 U. S. C. 201), the Internal Revenue Code (26 U. S. C.) or the Administrative Procedure Act (5 U. S. C. 1001) where used in the regulations in this part shall have the meaning assigned to it therein.

§ 200.17 *Permit.* "Permit" shall mean a formal document issued under the Federal Alcohol Administration Act or the Internal Revenue Code, authorizing the person named therein to engage in the activities described. "FAA permit" shall mean a basic permit under the provisions of the Federal Alcohol Administration Act. "Alcohol permit" shall mean a basic permit under the provisions of the Internal Revenue Code relating to alcohol, whether industrial, taxfree, or denatured. "Container permit" shall mean a permit under the provisions of the Internal Revenue Code relating to the regulation of the traffic in containers of distilled spirits. "Tobacco permit" shall mean a permit under the provisions of the Internal Revenue Code relating to tobacco materials, manufactured tobacco, cigars, cigarettes, and cigarette papers and tubes.

§ 200.18 *Permittee.* "Permittee" shall mean any person holding a basic permit under the Federal Alcohol Administration Act or the Internal Revenue Code, as aforesaid.

§ 200.19 *Person.* "Person" shall mean an individual, partnership, joint stock company, business trust, association, corporation or other form of business enterprise including receivers, trustees, or liquidating agents.

§ 200.20 *Recommended decision.* "Recommended decision" shall mean the advisory decision of the examiner in any proceeding on an initial application for a permit.

§ 200.21 *Regional Commissioner.* "Regional Commissioner" shall mean the Regional Commissioner of Internal Revenue of an internal revenue region.

§ 200.22 *Respondent.* "Respondent" shall mean any person holding a permit against which an order has been issued to show cause why such permit should not be suspended, revoked or annulled, or against the renewal of which a notice of contemplated disapproval has been issued.

SUBPART C—GENERAL

§ 200.25 *Communications and pleadings.* All communications to the Government regarding the procedures set forth in this part and all pleadings, such as answers, motions, requests, or other papers or documents required or permitted to be filed under this part, relating to a proceeding pending before an examiner, shall be addressed to the examiner at his post of duty or to the examiner in care of the assistant regional commissioner of the region in which the business of the applicant or respondent is operated or proposed to be operated to be forwarded to the examiner. Communications concerning proceedings not pending before an examiner should be addressed to the Assistant Regional Commissioner or Director, Alcohol and Tobacco Tax Division, as the case may be. All pleadings should be filed in quadruplicate.

§ 200.26 *Service on applicant or respondent.* All orders, notices, citations, motions and other formal documents, except subpoenas, required to be served under the regulations in this part may be served by mailing a signed duplicate original copy thereof to the permittee or applicant by registered mail, with request for return receipt card, at the address stated in his permit or application or at his last known address, or by delivery of such original copy to the permittee or applicant personally, or in the case of a corporation, partnership, or other unincorporated association, by delivering the same to an officer, or manager, or general agent thereof, or to its attorney of record. Such personal service may be made by any employee of the Internal Revenue Service or by any employee of the Treasury Department designated by the Secretary. A certificate of mailing and the return receipt card, or certificate of service signed by the person making such service, shall be filed as a part of the record.

§ 200.27 *Service on the assistant regional commissioner or Director.* Pleadings, motions, notices, and other formal documents, except subpoenas, may be served, by registered mail or personally, on the assistant regional commissioner (or upon the attorney for the Government on behalf of the assistant regional commissioner), or on the Director, Alcohol and Tobacco Tax Division if the proceeding is before him for review on appeal.

TIME

§ 200.28 *Computation.* In computing any period of time prescribed or allowed by this part, the day of the act, event or default after which the designated period of time is to run, is not to be included. The last day of the period to be computed is to be included, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday. Pleadings, requests, or other papers or documents required or permitted to be filed under this part must be received for filing at the appropriate office within the time limits, if any, for such filing.

§ 200.29 *Continuances and extensions.* For good cause shown, the Commissioner, Director, Alcohol and Tobacco Tax Division, Assistant Regional Commissioner, or the examiner, as the case may be, may grant continuances and as to all matters pending before him extend any time limit prescribed by the rules in this part (except where the time limit is statutory).

REPRESENTATION AT HEARINGS

§ 200.30 *Personal representation.* Any individual or member of a partnership may after adequate identification, appear for himself, or such partnership, and a corporation or association may be represented by a bona fide officer of such corporation or association, upon showing of adequate authorization.

§ 200.31 *Attorneys.* A respondent or applicant may be represented by an attorney: *Provided,* That such attorney is duly enrolled to practice before the Treasury Department under the provisions of 31 CFR Part 10 (Treasury Department Circular No. 230),[1] and files in the proceeding a duly executed power of attorney to represent the applicant or respondent. See Conference and Practice Requirements, Internal Revenue Service, §§ 601.501–601.511 of this chapter. The assistant regional commissioner shall be represented in proceedings under this part by the attorney for the Government who is authorized to execute and file motions, briefs and other papers in the proceeding, on behalf of the assistant regional commissioner, in his own name as "Attorney for the Government".

§ 200.32 *Authority of Commissioner.* The Commissioner shall have all the authority granted by this part to examiners, assistant regional commissioners, and the Director, Alcohol and Tobacco Tax Division, and may exercise any of the functions prescribed in this part.

SUBPART D—COMPLIANCE AND SETTLEMENT

§ 200.35 *Opportunity for compliance.* Except in proceedings involving willful-

[1] See also 31 CFR Part 14.

ness or those in which the public interest requires otherwise, and the assistant regional commissioner so alleges in his citation, stating his reasons therefor, no permit shall be suspended, revoked or annulled, or application for renewal disapproved, unless, prior to the institution of proceedings, facts or conduct warranting such action shall have been called to the attention of the permittee, or applicant for renewal, by the assistant regional commissioner, in writing, and the permittee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements, as set forth in section 9 (b) of the Administrative Procedure Act. If the permittee fails to meet the requirements of the law and regulations within such reasonable time as may be specified by the assistant regional commissioner, proceedings for suspension, revocation or annulment of the permit, or disapproval of the renewal application, shall be initiated.

INFORMAL SETTLEMENT

§ 200.36 *General.* In all proceedings in which a permittee is cited to show cause why his permit should not be suspended, revoked or annulled, or his application for renewal disapproved, he shall be afforded opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment, where time, the nature of the proceeding, and the public interest permit, in accordance with section 5 (b) of the Administrative Procedure Act. Such submittals should be made to the assistant regional commissioner, but may be made through the attorney for the Government. Where necessary, the date of the hearing may be postponed, pending consideration of such proposals, when they are made in good faith and not for the purpose of delay. If proposals of settlement are submitted, and they are considered unsatisfactory, the assistant regional commissioner may reject the proposals and may, either directly or through the attorney for the Government, inform the permittee of any conditions on which the alleged violations may be settled. If the proposals of settlement are considered satisfactory to the assistant regional commissioner, he shall notify the permittee thereof and the attorney for the Government shall move the dismissal of the proceedings, unless such proposals of settlement include a monetary offer in compromise, in which event he shall advise the hearing examiner that the offer has been made and is under consideration and the hearing examiner may, in his discretion, continue the proceeding pending final action on such monetary offer in compromise or he may proceed with the hearing and his consideration of the matter pending final action, but in no event shall he render his decision until final action on such offer in compromise.

§ 200.37 *Notice of contemplated action.* Where the assistant regional commissioner believes that the matter may be settled informally, i. e., without formal administrative proceedings, he shall, in accordance with section 5 (b) of the Administrative Procedure Act, prior to the issuance of a citation, inform the permittee of the contemplated issuance of an order to show cause why his permit should not be suspended, revoked or annulled, or his application for renewal thereof be disapproved, and that he is being given an opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment. The notice should inform the permittee of the charges on which the citation would be based, if issued, and afford him a period of 10 days from the date of the notice, or such longer period as the assistant regional commissioner deems necessary, in which to submit proposals of settlement to the assistant regional commissioner. Where informal settlement is not reached promptly because of the inaction of the permittee, or proposals are made for the purpose of delay, citation shall issue in accordance with §§ 200.55 and 200.56, and the hearing shall be held in accordance with the rules in this part.

§ 200.38 *Limitation on informal settlement.* Where the evidence is conclusive and the nature of the violation is such as to preclude any settlement short of suspension, revocation or annulment, or disapproval of renewal application, or the violation is of a continuing character that necessitates immediate action to protect the public interest, or where the assistant regional commissioner believes that any informal settlement of the alleged violation will not insure future compliance with the laws and regulations, or in any similar case where the circumstances are such as to clearly preclude informal settlement, and the assistant regional commissioner so finds and states his reasons therefor as provided in § 200.35, he may restrict settlement to that provided in § 200.71.

SUBPART E—GROUNDS FOR CITATION

§ 200.45 *FAA permits.* Whenever the assistant regional commissioner has reason to believe that any person has willfully violated any of the conditions of his FAA permit, or has not in fact or in good faith engaged in the operations authorized by such permit for a period of more than two years, or that such permit was procured through fraud, misrepresentation or concealment of material facts, he shall issue a citation for the suspension, revocation or annulment of such permit, as the case may be.

§ 200.46 *Tobacco permits.* Whenever the assistant regional commissioner has reason to believe that any person has not in good faith complied with any of the provisions of Chapter 52 or regulations issued thereunder, or has not complied with any provision of the Internal Revenue Code which involves intent to defraud, or has violated any of the conditions of his permit, or has failed to disclose any material information required, or has made any materially false statement, in the application for his permit, or has failed to maintain his premises in such manner as to protect the revenue, the assistant regional commissioner shall issue a citation for the revocation or suspension of such permit.

§ 200.47 *Container permits.* Whenever the assistant regional commissioner has reason to believe that the permittee has violated any of the provisions of the Internal Revenue Code regulating the traffic in containers of distilled spirits, the regulations thereunder, or any of the terms or conditions of his permit, the assistant regional commissioner shall issue a citation for the revocation or suspension of such permit.

§ 200.48 *Alcohol permits.* If at any time there shall be filed with the assistant regional commissioner a complaint under oath setting forth facts showing, or if the assistant regional commissioner has reason to believe, that any person who has an alcohol permit is not in good faith conforming to the provisions of law applicable to such permit or has violated the terms of such permit, or has made any false statement in the application therefor, or has willfully failed to disclose any information required by regulation to be furnished, or has violated any law of the United States, or any State or any Territory or possession of the United States or of the District of Columbia relating to intoxicating liquor, he shall issue a citation for the revocation of such permit.

§ 200.49 *Applications.* If, upon examination of any application (including a renewal application) for a permit, the assistant regional commissioner has reason to believe that the applicant is not entitled to such permit he shall issue a citation for the contemplated disapproval of the application.

§ 200.50 *Expiration of permit.* In any case where a permittee has, in accordance with the law and regulations, made timely and sufficient application for a renewal of its permit, such permit shall not expire until such application shall have been finally determined.

SUBPART F—HEARING PROCEDURE

CITATIONS

§ 200.55 *Content.* Citations for the suspension, revocation or annulment of a permit shall be issued by the assistant regional commissioner and shall set forth (a) the sections of law and regulations relied upon for authority and jurisdiction of the hearing, (b) in separate paragraphs, the matters of fact constituting the violations specified, dates, places, sections of law and regulations violated, and (c) the time (in alcohol permit proceedings not more than 30 and not less than 15 days from date of service of citation) and place and nature of the hearing. Citations for the disapproval of an application for an initial or renewal permit shall set forth (1) the sections of law and regulations relied upon for authority and jurisdiction, (2) in separate paragraphs, the matters of fact and law relied upon for the contemplated disapproval of the application, and (3) that the application will be disapproved unless within 15 days a hearing thereon is requested.

§ 200.56 *Form.* Citations shall be issued on the following forms:

(a) Form 1430, "Order To Show Cause Why Permit Should Not Be Revoked," shall be used where citations are issued against alcohol permittees on complaint, under oath, of persons other than the assistant regional commissioner, and there shall be attached thereto a copy of the complaint.

(b) Form 1430-A, "Order To Show Cause," shall be used for all other citations for the suspension, revocation, or annulment, as the case may be, of permits under the Internal Revenue Code or the Federal Alcohol Administration Act.

(c) Form 1430-C, "Notice of Contemplated Disapproval of Application For Basic Permit," shall be used to issue notice of contemplated disapproval of applications for permit, whether initial or renewal.

§ 200.57 *Execution and disposition.* Forms 1430, 1430-A and 1430-C shall be executed in quintuplicate. A signed duplicate original shall be served on the permittee, one copy shall be sent to the examiner designated to conduct the hearing, the original copy, containing the certificate of service, shall be placed in the official record of the proceeding, and the remaining copies shall be retained for the assistant regional commissioner's office.

§ 200.58 *Designated place of hearing.* The designated place of hearing, (a) in the case of alcohol permits, shall be within the same Federal judicial district and within fifty miles of the place wherein the acts constituting the violations are alleged to have occurred unless the parties agree on a different place; and (b) in the case of all other permits, shall be such as meets the convenience or necessity of the parties.

REQUEST FOR HEARING

§ 200.59 *Application cases.* If the applicant for an initial or renewal permit desires a hearing, he shall file a request therefor, in writing, with the assistant regional commissioner within fifteen days after receipt of notice of the contemplated disapproval, in whole or in part, of his application.

§ 200.60 *Suspension, revocation or annulment cases.* No request for a hearing is necessary on citations for suspension, revocation or annulment, since the order to show cause sets forth on its face the date the respondent is to appear to show cause why his permit should not be suspended, revoked or annulled.

§ 200.61 *Notice of hearing.* In case a request for a hearing is filed by the applicant within the required time, the assistant regional commissioner shall refer the matter to the examiner and the examiner shall set a time and place for a hearing and shall serve notice thereof upon the parties at least ten days in advance of the hearing date.

NON-REQUEST FOR HEARING

§ 200.62 *Initial application.* In the case of an initial application, if the applicant does not request a hearing within the time specified in § 200.59, or within such further time as the assistant regional commissioner may in his discretion allow, the assistant regional commissioner will by order, stating the findings upon which it is based, disapprove the application, and will serve signed duplicate original of such order on the applicant.

§ 200.63 *Renewal application.* In the case of a renewal application, if the applicant does not request a hearing within the time specified in § 200.59, the assistant regional commissioner shall immediately refer the matter to the examiner who shall set it down for hearing as if such hearing had been requested.

ANSWERS

§ 200.64 *When required.* After service of a citation upon the respondent, ordering him to appear and show cause why his permit shall not be suspended, revoked or annulled, if he desires to contest the proceedings he shall, within 15 days from service of the order to show cause, file with the examiner and serve on the assistant regional commissioner an answer, in writing, to the allegations set forth therein. Such answer shall contain a concise statement of the facts that constitute his grounds of defense. Evidence to be introduced upon such hearing may be limited to the issues contained in the order to show cause and answers filed thereto: *Provided, however,* That where justice demands, the examiner shall waive any of the requirements of this section. Answers need not be filed ni application proceedings.

be filed in application proceedings.

§ 200.65 *Answer admitting facts.* If the respondent desires to waive the hearing on the allegations of fact set forth in the order to show cause, and does not contest the facts, the answer may consist of a statement that the respondent admits all material allegations of fact charged in the citation to be true. The examiner shall thereupon base his findings on the citation and such answer: *Provided, however,* That nothing herein contained shall affect the respondent's right to submit proposed findings and conclusions of fact or law and his right of appeal.

§ 200.66 *Prehearing conferences.* In any proceeding the hearing examiner may, upon his own motion or upon the motion of one of the parties or their qualified representatives, in his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:

(a) The simplifications of the issues;

(b) The necessity of amendments to the pleadings;

(c) The possibility of obtaining stipulations, admissions of facts and of documents;

(d) The limitation of the number of expert witnesses; and

(e) Such other matters as may aid in the disposition of the proceeding.

As soon as practicable after such conference, the hearing examiner shall issue an order which recites the action taken thereat, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreement; and such order shall control the subsequent course of the proceedings, unless modified for good cause by a subsequent order.

FAILURE TO APPEAR

§ 200.67 *Initial applications.* Where the applicant on an initial application for a permit has requested a hearing and does not appear at the appointed time and place, and evidence has not been offered to refute or explain the grounds upon which disapproval of the application is contemplated, this shall be construed as a waiver of the hearing, a default will be entered and the examiner shall recommend disapproval of said application.

§ 200.68 *Renewal applications.* Where the applicant on an application for a renewal permit has requested a hearing, or hearing has been set as provided in § 200.63, and no evidence is offered as stated, the attorney for the Government will proceed ex parte as set forth in § 200.69.

§ 200.69 *Suspension, revocation or annulment.* If on the date set for the hearing respondent does not appear and no evidence has been offered, the attorney for the Government will proceed ex parte and offer for the record sufficient evidence to make a prima facie case. At such hearing, documents, statements and affidavits may be submitted in lieu of testimony of witnesses.

WAIVER OF HEARING

§ 200.70 *Application proceedings.* At any time prior to final action thereon the applicant may, by filing written notice with the assistant regional commissioner, withdraw his application. If such a notice is filed after referral to the hearing examiner of a proceeding on an application for an initial or renewal permit and prior to issuance of his recommended decision or decision thereon, the assistant regional commissioner shall move the examiner to dismiss the proceedings as moot. If such a notice is filed while the proceeding is before the assistant regional commissioner and prior to final action thereon, that is, either (a) after issuance of a notice of contemplated disapproval and before referral of the proceeding to the hearing examiner or (b) after issuance by the hearing examiner of his recommended decision and prior to the assistant regional commissioner's order disapproving the application, the assistant regional commissioner shall, by order, dismiss the proceeding.

§ 200.71 *Suspension, revocation or annulment proceedings.* After the service of a citation for the suspension, revocation or annulment of a basic permit, the permittee may, if he so desires, waive the taking of evidence, but such waiver shall be accepted only if he stipulates that the examiner may enter an appropriate decision sustaining the charges and suspending, revoking or annulling the permit.

SURRENDER OF PERMIT

§ 200.72 *Before citation.* If a respondent surrenders his permit before citation, the assistant regional commissioner may accept the surrender. But if the evidence, in the opinion of the assistant regional commissioner, warrants citation for suspension, revocation or annulment, he shall refuse to accept such surrender and shall issue the citation notifying the permittee at the same time that he may file a formal waiver as provided in § 200.71. Should such waiver not be filed after notice, the examiner will proceed with the hearing on the citation.

§ 200.73 *After citation.* If a respondent surrenders his permit after citation and prior to the decision of the examiner, the assistant regional commissioner may accept the surrender of the permit and move the examiner to dismiss the proceeding as moot. If, however, in the opinion of the assistant regional commissioner the evidence is such as to warrant suspension, revocation or annulment, as the case may be, he shall refuse to accept the surrender of the permit and shall notify the respondent that he may file a formal waiver as provided in § 200.71. Should such formal waiver not be filed after notice, the examiner will proceed with the hearing on the citation.

MOTIONS

§ 200.74 *General.* All motions shall be made and addressed to the officer before whom the proceeding is pending, and copies of all motion papers shall be served upon the other party or parties. Such officer may dispose of any motion without oral argument, but he may, if he so desires, set it down for hearing and request argument. He may dispose of such motion prior to the hearing on the merits or he may postpone the disposition until the hearing on the merits. No appeal may be taken from any ruling on a motion until the whole record is certified for review. Examples of typical motions may be found in the Rules of Civil Procedure referred to in § 200.2.

§ 200.75 *Prior to hearing.* All motions which should be made prior to the hearing, such as motions directed to the sufficiency of the pleadings or of preliminary orders, shall be filed in writing with the assistant regional commissioner issuing the citation or the examiner if the matter has been referred to him, and shall briefly state the order or relief applied for and the grounds for such motion, and shall be filed within 15 days after service of the citation.

§ 200.76 *At hearing.* Motions at the hearing may be made in writing to the examiner, or stated orally on the record.

HEARING

§ 200.77 *General.* Unless the hearing is waived by the applicant or permittee, or postponed, or transferred to another place, by a written agreement signed by the applicant or permittee, or his attorney, and the attorney for the Government and approved and filed with the examiner, or unless the hearing is postponed, or transferred (subject to statutory limitations) by order of the examiner for good cause shown by either party, it shall be held at the time and place stated in the citation, by the examiner named in the citation, or in the notice of hearing as the case may be, or any other duly designated and appointed examiner assigned to hold such hearing.

§ 200.78 *Initial applications.* The examiner who presides at the hearing on initial applications shall recommend a decision to the assistant regional commissioner who shall make the initial decision as provided in § 200.107. The applicant may be directed by the assistant regional commissioner to produce such records as may be deemed necessary for examination. All hearings on initial applications shall be open to the public subject to such restrictions and limitations as may be consistent with orderly procedure.

§ 200.79 *Suspension, revocation, annulment or renewal.* The examiner who presides at the hearing in proceedings on applications for renewal permits and in proceedings for the suspension, revocation and annulment of permits shall make the initial decision.

BURDEN OF PROOF

§ 200.80 *Initial applications.* In hearings on the contemplated disapproval of initial applications there may be incorporated in the record sufficient testimony, reports, affidavits and other documents to be considered only for the limited purpose of establishing probable cause for the issuance of the notice of contemplated disapproval by showing that the assistant regional commissioner had reason to believe that the applicant is not entitled to a permit. The burden of proof shall be upon the applicant to produce evidence to show he is entitled to a permit. The assistant regional commissioner may, instead of following the aforementioned procedure, assume the burden of going forward.

§ 200.81 *Suspension, revocation, annulment or renewal.* In hearings on the contemplated disapproval of renewal applications, or on the suspension, revocation or annulment of permits, the burden of proof is on the Government.

GENERAL

§ 200.82 *Stipulations at hearing.* If there has been no prehearing conference under § 200.66, the examiner shall at the beginning of the hearing, require that the parties attempt to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of fact concerning which there is no substantial dispute. The examiner should take similar action, where it appears appropriate, throughout the hearing and should call and conduct any conferences which he deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

§ 200.83 *Evidence.* Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the Courts of the United States, shall be admissible and controlling as far as possible: *Provided*, That the examiner may relax such rules in any hearing when in his judgment such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Except as provided in § 200.81, the proponent of an order shall have the burden of proof. Every party shall have the right to present his case or defense by oral or documentary evidence, depositions, duly authenticated copies of records and documents, to submit rebuttal evidence, and to conduct such reasonable cross-examination as may be required for a full and true disclosure of the facts. The examiner shall have the right in his discretion to limit the number of witnesses whose testimony may be merely cumulative and shall, as a matter of policy, not only exclude irrelevant, immaterial, or unduly repetitious evidence but shall also limit the cross-examination of witnesses to reasonable bounds so as not to unnecessarily prolong the hearing and unduly burden the record. Material and relevant evidence shall not be excluded, because it is not the best evidence, unless its authenticity is challenged, in which case reasonable time shall be given to establish its authenticity. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing examiner and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document should be made available for examination and for use by opposing counsel for purposes of cross-examination. Compilations, charts, summaries of data and photostatic copies of documents may be admitted in evidence if the proceedings will thereby be expedited, and if the material upon which they are based is available for examination by the parties. Objections to the evidence shall be in short form, stating the grounds relied upon. The transcript shall not include argument or debate on objections, except as ordered by the examiner, but shall include the rulings thereon.

§ 200.84 *Closing of hearing; arguments, briefs and proposed findings.* Before closing a hearing, the examiner shall inquire of each party whether he has any further evidence to offer, which inquiry and the response thereto shall be shown in the record. The examiner may hear arguments of counsel and may limit the time of such arguments at his discretion, and may, in his discretion, allow briefs to be filed on behalf of either party but shall closely limit the time within which the briefs for both parties shall be filed, so as to avoid unreasonable delay. The examiner shall also ascertain whether the parties desire to submit proposed findings and conclusions, together with supporting reasons, and if so a period of not more than 15 days (unless extended by the examiner)—after the close of the hearing or receipt of a copy of the record, if one is requested—will be allowed for such purpose.

§ 200.85 *Reopening of the hearing.* The Commissioner, the Director, Alcohol and Tobacco Tax Division, the assistant regional commissioner or the examiner, as the case may be, may, as to all matters pending before him, in his discretion reopen the hearing (a) in case of default where applicant failed to request a hearing or to appear after one was set, upon petition setting forth reasonable grounds for such failure, and (b) in case any party desires leave to adduce additional evidence upon petition summarizing such evidence, establishing its materiality and stating reasonable grounds why such party with due diligence was unable to produce such evidence at the hearing.

RECORD OF TESTIMONY

§ 200.86 *Stenographic record.* A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact (but not arguments of counsel unless otherwise ordered by the examiner) in all proceedings. A transcript of the evidence and proceedings at the hearing shall be made in all cases.

§ 200.87 *Oath of reporter.* The reporter making the stenographic record shall subscribe an oath before the examiner, to be filed in the record of the case, that he will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of his ability.

SUBPART G—HEARING EXAMINERS

§ 200.95 *Responsibilities of examiners.* Examiners shall be under the administrative control of the Commissioner. They shall be responsible for the conduct of hearings and shall render their decisions as soon as is reasonably possible after the hearing is closed. Examiners shall also be responsible for the preparation, certification and forwarding of reports of hearings, and the administrative work relating thereto, and, by arrangement with assistant regional commissioners and representatives of the Chief Counsel, shall have access to facilities and temporary use of personnel at such times and places as are needed in the prompt dispatch of official business.

§ 200.96 *Disqualification.* An examiner shall, at any time, withdraw from any proceeding if he deems himself disqualified; and upon the filing in good faith by the applicant or respondent, or by the attorney for the Government, of a timely and sufficient affidavit of facts showing personal bias or otherwise warranting the disqualification of any examiner, the Director, Alcohol and Tobacco Tax Division, shall upon appeal as provided in § 200.115, if the examiner fails to disqualify himself, determine the matter as a part of the record and decision in the proceeding. If he decides the examiner should have declared himself disqualified, he will remand the record for hearing de novo before another examiner. If the Director, Alcohol and Tobacco Tax Division, should decide against the disqualification of the examiner, the proceeding will be reviewed on its merits.

§ 200.97 *Powers.* Examiners shall have authority to (a) administer oaths and affirmations; (b) issue subpoenas authorized by law; (c) rule upon offers of proof and receive relevant evidence; (d) take or cause depositions to be taken whenever the ends of justice would be served thereby; (e) regulate the course of the hearing; (f) hold conferences for the settlement or simplification of the issues by consent of the parties; (g) dispose of procedural requests or similar matters; (h) render recommended decisions in proceedings on initial applications for permits, and initial decisions in renewal applications for permits and in suspension, revocation, or annulment proceedings against permits; (i) call, examine and cross-examine witnesses, including hostile or adverse witnesses when he deems such action to be necessary to a just disposition of the cause, and introduce into the record documentary or other evidence; and (j) take any other action authorized by rule of the Internal Revenue Service consistent with the Administrative Procedure Act.

§ 200.98 *Separation of functions.* Examiners shall perform no duties inconsistent with their duties and responsibilities as such. Examiners may be assigned duties not inconsistent with the performance of their functions as examiners. Save to the extent required for the disposition of ex parte matters as required by law, no examiner shall consult any person or party as to any fact in issue unless upon notice and opportunity for all parties to participate. The functions of the examiner shall be entirely separated from the general investigative functions of the agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions in any proceeding shall, in that or a factually related proceeding, participate or advise in the examiner's or Commissioner's decision, or in the agency review on appeal, except as a witness or counsel in the proceedings. The examiner may not informally obtain advice or opinions from the parties or their counsel, or from any officer or employee of the Internal Revenue Service, as to the facts or the weight or interpretation to be given to the evidence. He may, however, informally obtain advice on matters of law from officers or employees who were not engaged in the performance of investigative or prosecuting functions in that or a factually related proceeding. This limitation does not apply to the Commissioner, and the examiner may, at any time, consult with and obtain instructions from him on questions of law and policy.

§ 200.99 *Conduct of hearing.* The examiner is charged with the duty of conducting a fair and impartial hearing and of maintaining order in form and manner consistent with dignity. In the event that counsel or any person or witness in any proceeding shall refuse to obey the orders of the examiner, or be guilty of disorderly or contemptuous language or conduct in connection with any hearing, the examiner may, for good cause stated in the record, suspend the hearing, and, in the case of an attorney, recommend that the Commissioner report the matter to the Director of Practice for disciplinary action. The refusal of a witness to answer any question which has been ruled to be proper shall be considered by the examiner in determining the weight to be given all the testimony of that witness.

§ 200.100 *Unavailability of examiner.* In the event that the examiner designated to conduct a hearing becomes unavailable before the filing of his findings and decision or recommended decision, the Commissioner may assign the case to another examiner for the continuance of the proceeding, in accordance with the regulations in this part in the same manner as if he had been designated examiner at the commencement of the proceeding.

SUBPART H—DECISIONS

§ 200.105 *Examiner's finding and decision or recommended decision.* Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the examiner shall render his decision or recommended decision, as the case may be. All decisions shall become a part of the record and, if proposed findings and conclusions have been filed, shall show the examiner's ruling upon each of such proposed findings and conclusions. Decisions shall consist of (a) a brief statement of the issues of fact involved in the proceeding; (b) the examiner's findings and conclusions, as well as the reasons or basis therefor with record references, upon all the material issues of fact, law or discretion presented on the record (including, when appropriate, comment as to the credibility and demeanor of the witnesses); and (c) the examiner's determination or recommended determination on the record. Where the examiner determines that the imposition of a period of suspension of the permit is appropriate, his decision shall state the length of such period of suspension, to commence at such time as the assistant regional commissioner shall specify.

§ 200.106 *Certification and transmittal of record and decision.* After reaching his decision, the examiner shall certify to the complete record of the proceeding before him and (a), in proceedings on initial application, shall immediately forward the complete certified record together with four copies of his recommended decision to the assistant regional commissioner for initial decision, or (b), in proceedings on renewal applications and revocation, suspension or annulment proceedings, shall immediately forward the complete certified record, together with two copies of his decision, to the assistant regional commissioner, serve one copy of his decision on the respondent or his counsel and transmit a copy of his decision to the attorney for the Government.

ACTION BY ASSISTANT REGIONAL COMMISSIONER

§ 200.107 *Initial application proceedings.* If, upon receipt of the record and the recommended decision of the examiner, the assistant regional commissioner decides that the permit should be issued, he shall thereupon approve the application briefly stating, for the record, his reasons therefor, but if he contemplates the disapproval of the application he shall serve a copy of the examiner's recommended decision on the applicant, informing the applicant of his contemplated action and affording the applicant not more than 10 days in which to submit proposed findings and conclusions or exceptions to the recommended decision with reasons in support thereof. If the assistant regional commissioner, after consideration of the record of the hearing and of any proposed findings, conclusions or exceptions filed with him by the applicant, approves the findings, conclusions and recommended decision of the examiner, he shall by order approve or disapprove of the application in accordance therewith. If, after such consideration, he disapproves of the findings, conclusions and recommended decision of the examiner, in whole or in part, he shall by order make such findings and conclusions as in his opinion are warranted by the law and facts in the record. Any decision of the assistant regional commissioner ordering the disapproval of an initial application for a permit shall state the findings and conclusions upon which it is based, including his ruling upon each proposed finding, conclusion and exception to the examiner's recommended decision, together with a statement of his findings and conclusions, and reasons or basis therefor, upon all material issues of fact, law or discretion presented on the record. A signed duplicate original of the decision shall be served upon the applicant and the original copy containing certificate of service shall be placed in the official record of the proceeding.

§ 200.108 *Suspension, revocation, annulment or renewal application proceedings.* Upon receipt of the complete certified record of the hearing the assistant regional commissioner shall enter an order suspending, revoking or annulling the permit (on Form 1430-B) disapproving the application or dismissing the proceedings in accordance with the examiner's findings and decision, unless he disagrees with such findings and decision and files a petition with the Director, Alcohol and Tobacco Tax Division, for review thereof, as provided in § 200.115. If the assistant regional commissioner files such petition, he shall withhold issuance of the order, pending the decision of the Director, Alcohol and Tobacco Tax Division, upon receipt of which he shall issue the order in accordance therewith. A signed duplicate original of the order of the assistant regional commissioner shall be served upon the respondent and the original copy containing certificate of service shall be placed in the official record of the proceeding. In all proceedings in which a suspension is imposed, the assistant regional commissioner's order shall state the time when the suspension period set forth in the examiner's decision shall commence and terminate.

§ 200.109 *Notice to Director, Alcohol and Tobacco Tax Division.* When the assistant regional commissioner makes an order suspending, revoking or annulling a permit or disapproving a renewal application, he will furnish a copy of the order and of the decision on which it is based to the Director, Alcohol and Tobacco Tax Division. Should such order be subsequently set aside on review by the courts, the assistant regional commissioner will so advise the Director, Alcohol and Tobacco Tax Division.

§ 200.110 *Proceedings involving violations not within region of issuance of permit.* In the event that a citation covers violations which occurred at a place not within the region of issuance of the permit involved, the assistant regional commissioner of such region may (and, in the case of alcohol permits, shall) set the matter for hearing. In all such cases the hearing examiner shall forward the complete and duly certified transcript of the entire record of such proceeding and a copy of his decision to the assistant regional commissioner of the region in which the basic permit was issued who shall take appropriate action in accordance with § 200.108.

SUBPART I—REVIEW

§ 200.115 *Appeal on petition to the Director, Alcohol and Tobacco Tax Division.* An appeal is not required prior to application to the Federal Courts for review. An appeal may be taken by the applicant or respondent to the Director, Alcohol and Tobacco Tax Division, from an examiner's decision suspending, revoking or annulling a permit or disapproving a renewal application, and from an order of the assistant regional commissioner disapproving an initial application for a permit. Similarly, an appeal may be taken by the assistant regional commissioner from an examiner's decision. Such appeal shall be taken by filing a petition for review on appeal with the Director, Alcohol and Tobacco Tax Division, within 15 days of the service of the order or examiner's decision. The petition must set forth facts tending to show (a) action of an arbitrary nature, (b) action without reasonable warrant in fact, or (c) action contrary to law and regulations. A copy of the petition shall be filed with the assistant regional commissioner or served on the respondent, as the case may be. In the event of such appeal, the assistant regional commissioner shall immediately forward the complete original record, by registered mail, to the Director, Alcohol and Tobacco Tax Division, for his consideration and review.

§ 200.116 *Review by Director, Alcohol and Tobacco Tax Division.* The Director, Alcohol and Tobacco Tax Division, on appeal on petition for review, shall afford a reasonable opportunity for the submission of proposed findings, conclusions or exceptions with reasons in support thereof and an opportunity for oral argument. He may alter or modify any finding of the examiner (or of the assistant regional commissioner in initial application proceedings) and may affirm, reverse, or modify the decision of the examiner (or of the assistant regional commissioner in initial application proceedings), or he may remand the case for further hearing, but he shall not consider evidence which is not a part of the record. Appeals and petitions for review shall not be decided by the Director, Alcohol and Tobacco Tax Division, in any proceeding in which he has engaged in investigation or prosecution, and in such event he shall so state his disqualification in writing and refer the record to the Commissioner for appropriate action. The Commissioner may designate an Assistant Commissioner or one of his principal aides to consider any proceeding instead of the Director, Alcohol and Tobacco Tax Division. The original copy of the decision on review shall be placed in the official record of the proceeding, a signed duplicate original shall be served upon the applicant or respondent and a copy shall be transmitted to the assistant regional commissioner. When, on appeal, the Director, Alcohol and Tobacco Tax Division, affirms the decision of the assistant regional commissioner or the examiner, as the case may be, disapproving an application or suspending, revoking or annulling a permit, such action shall not supersede the decision of the assistant regional commissioner or the examiner and such decision shall be final.

§ 200.117 *Permit privileges, exceptions.* Pending final determination of any timely appeal in revocation, suspension, annulment or renewal application proceedings to the Director, Alcohol and Tobacco Tax Division, the permit involved shall continue in force and effect except that, in the case of alcohol permits, any time after a citation has been issued withdrawals of alcohol or specially denatured alcohol by such permittee may, in the discretion of the assistant regional commissioner or Director, Alcohol and Tobacco Tax Division, be restricted to the quantity which, together with the quantity then on hand, is necessary to carry on legitimate operations under such permit. The assistant regional commissioner may, in restricting the permittee to his legitimate needs, refuse to issue any purchase or withdrawal permit.

§ 200.118 *Court review; permits under the Internal Revenue Code.* If an applicant or respondent desires to have a decision of the examiner, or a final order of the assistant regional commissioner or of the Director, Alcohol and Tobacco Tax Division, reviewed on appeal by the Federal court, the assistant regional commissioner or the Director, Alcohol and Tobacco Tax Division, upon notification that such an appeal has been taken shall have prepared in triplicate a complete transcript of the record of the proceeding. The assistant regional commissioner or the Director, Alcohol and Tobacco Tax Division, as the case may be, will certify to the correctness of such transcript of the record, forward one copy to the attorney for the Government in the review of the case, and file the original record of the proceedings with the original certificate in the district court.

§ 200.119 *Court review; FAA permits.* If an applicant or respondent desires to have a decision of the examiner or a final order of the assistant regional commissioner, or the Director, Alcohol and Tobacco Tax Division, reviewed on appeal by the United States Circuit Court of Appeals, as provided by law, the Director, Alcohol and Tobacco Tax Division, upon notification of the filing of the petition for review, shall have prepared, in triplicate, a complete transcript of the record of the proceeding. The assistant regional commissioner or Director, Alcohol and Tobacco Tax Division, as the case may be, will certify to the correctness of the record and file the original certificate with the original record in the Circuit Court of Appeals.

SUBPART J—MISCELLANEOUS

§ 200.125 *Depositions.* The examiner may take or order the taking of depositions by either party to the proceeding at such time and place as he may designate before a person having the power to administer oaths, upon application therefor and notice to the parties to the action. The testimony shall be reduced to writing by the person taking the deposition, or under his direction, and the deposition shall be subscribed by the deponent unless subscribing thereof is waived in writing by the parties. Any person may be subpoenaed to appear and depose and to produce documentary evidence in the same manner as witnesses at hearings.

§ 200.126 *Subpoenas.* Where authorized by law, upon written application by a party to a proceeding, the attendance and testimony of any person, or the production of documentary evidence in proceedings instituted under this part may be required by personal subpoena (Form 1644) or by subpoena duces tecum (Form 1645). Application should be addressed to, and subpoenas should be issued by, the examiner before whom the proceedings are pending, but may be issued by the assistant regional commissioner or by the Director, Alcohol and Tobacco Tax Division, if the examiner is unavailable. Both the application and the subpoena shall set forth the title of the proceedings, the name and address of the person whose attendance is required, the date and place of his attendance and, if documents are to be produced, a description thereof; and the application must have reasonable scope and specify as exactly as possible the documents required, if any, and show their general relevance. Subpoenas shall be served in person. When issued on behalf of the United States, service shall be made by an officer, employee, or agent of the Treasury Department; when issued on behalf of a permittee or applicant, service shall be made by any person who is not a party to the proceeding and is not less than 18 years of age.

§ 200.127 *Witnesses and fees.* Witnesses summoned before the examiner may be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear and the person taking the deposition shall be paid by the party at whose instance the deposition is taken.

RECORD

§ 200.128 *What constitutes record.* The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding, together with all findings, decisions and orders, shall constitute the exclusive record. Where the decision rests on official notice of material fact not appearing in the record, the examiner shall so state in his findings and any party shall, on timely request, be afforded an opportunity to show facts to the contrary.

§ 200.129 *Availability.* A copy of the record shall be available for inspection by the parties to the proceedings during business hours at the office of the examiner or the assistant regional commissioner or, pending administrative review, at the office of the Director, Alcohol and Tobacco Tax Division. Copies of the record desired by the respondent or applicant may be purchased from the contract reporter, or, if the hearing was reported by a Government employee, a charge will be made for the copies at the lowest prevailing rates charged by public reporters in the region where the hearing is held, and in the case of photostats or copies of other documents in accordance with the provisions of Com-Mim. A. T. No. 719, dated January 3, 1952.

[F. R. Doc. 56-1700; Filed, Mar. 5, 1956; 8:48 a. m.]

TITLE 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 548—AUTHORIZATION OF ESTABLISHED BASIC RATES FOR COMPUTING OVERTIME PAY

SUBPART B—INTERPRETATIONS

EXCLUDING CERTAIN ADDITIONS TO WAGES

Pursuant to authority under the Fair Labor Standards Act of 1938 (52 Stat., as amended; 29 U. S. C. 201 et seq.), § 548.305 (g) of Subpart B, Part 548, Title 29, Code of Federal Regulations, is amended to read as follows:

(g) Section 548.3 (e) is not applicable to employees employed at subminimum wage rates under learner certificates, or special certificates for handicapped workers, or in the case of employees in Puerto Rico or the Virgin Islands employed at less than $1.00 an hour.

This amendment shall become effective March 6, 1956.

(52 Stat. 1060, as amended; 29 U. S. C. 201-219)

Signed at Washington, D. C., this 1st day of March 1956.

NEWELL BROWN,
Administrator,
Wage and Hour Division.

[F. R. Doc. 56-1705; Filed, Mar. 5, 1956; 8:49 a. m.]

PART 776—INTERPRETATIVE BULLETIN ON THE GENERAL COVERAGE OF THE WAGE AND HOURS PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938

MISCELLANEOUS AMENDMENTS

Pursuant to authority under the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), and General Order No. 45-A (15 F. R. 3290), Part 776, Title 29, Code of Federal Regulations, is amended as follows:

1. Footnote 1 to § 776.0 (a) is amended to read:

[1] Pub. No. 718, 75th Cong., 3d sess. (52 Stat. 1060), as amended by the Act of June 26, 1940 (Pub. Res. No. 88, 76th Cong., 3d sess., 54 Stat. 616); by Reorganization Plan No. 2 (60 Stat. 1095), effective July 16, 1946; by the Portal-to-Portal Act of 1947, approved May 14, 1947 (61 Stat. 84); and by the Fair Labor Standards Amendments of 1949, approved October 26, 1949 (Public Law 393, 81st Cong., 1st sess., 63 Stat. 910); by Reorganization Plan No. 6 of 1950 (15 F. R. 3174), effective May 24, 1950; and by the Fair Labor Standards Amendments of 1955, approved August 12, 1955 (Public Law 381, 84th Cong., 1st sess., C. 867, 69 Stat. 711).

2. Footnote 2 to § 776.0 (a) is amended to read:

[2] The requirement of section 6 as to minimum wages is: "Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—" (not less than $1.00 an hour, except in Puerto Rico and the Virgin Islands to which special provisions apply).

The requirement of section 7 as to maximum hours which an employee may work without receiving extra pay for overtime is: "no employer shall employ any of his employees who is engaged in commerce or in the production of goods for commerce for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

3. The date "January 25, 1950" in the second sentence of § 776.5 is deleted and the date "March 1, 1956" is inserted in its place, and the figure and words "75 cents" in the second sentence of § 776.5 is deleted and the symbols and figures "$1.00" is inserted in place thereof.

4. The title of Part 776 is amended to read as set forth above.

5. The first sentence of § 776.0 (a) is amended to read: "The Fair Labor Standards Act of 1938 [1] (hereinafter referred to as the act), brings within the general coverage of its wage and hours provisions every employee who is 'engaged in commerce or in the production of goods for commerce.' [2]"

(52 Stat. 1060, as amended; 29 U. S. C. 201-219)

These amendments shall become effective March 6, 1956.

Signed at Washington, D. C., this 29th day of February 1956.

NEWELL BROWN,
Administrator,
Wage and Hour Division.

[F. R. Doc. 56-1708; Filed, Mar. 5, 1956; 8:50 a. m.]

PART 777—GENERAL STATEMENT AS TO THE METHODS OF PAYMENT UNDER THE FAIR LABOR STANDARDS ACT AND THE APPLICATION OF SECTION 3 (m) THERETO

MISCELLANEOUS AMENDMENTS

Pursuant to authority under the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), and General Order No. 45–A (15 F. R. 3290), Part 777, Subchapter B, Title 29, Code of Federal Regulations, is amended as follows:

1. The first paragraph of Footnote 4 to § 777.2 (a) is amended to read:

Section 6 requires the payment of a minimum wage rate of not less than $1.00 per hour, except in certain industries in Puerto Rico and the Virgin Islands. Section 7 requires the payment of overtime compensation at not less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 40 in a work week. The general wage and hours provisions of the law are subject to qualifications contained in secs. 7 (b)–(g), 13, and 14. See Parts 779 through 784, 786 through 788 of this title.

2. Section 777.9, 33d line, delete the word "at" and insert the word "on".

3. Section 777.11 (a) and (b) is amended to read:

(a) When no overtime is worked by the employee, section 3 (m) and Part 531 of this chapter are applicable only to the minimum wage of $1 per hour for all hours worked. To illustrate, where an employee works 40 hours a week at a cash wage rate of $1 an hour and is paid $40 in cash free and clear at the end of the workweek, and in addition is furnished facilities valued at $4, no consideration need be given to the question of whether such facilities meet the requirements of section 3 (m) and the regulations, since the employee has received in cash the statutory minimum wage of $1 for all hours worked. Similarly, where an employee is employed at a rate of $1.20 an hour and during a particular workweek works 40 hours for which he is paid $40 in cash, the employer having deducted $8 from his wages for facilities furnished, whether such deduction meets the requirements of section 3 (m) and Part 531 of this chapter need not be considered, since the employee is still receiving, after the deduction has been made, a cash wage of $1 per hour. Deductions for board, lodging, or other facilities may be made in nonovertime workweeks even if they reduce the cash wage below the minimum, provided the prices charged do not exceed the reasonable cost of such facilities. When such items are furnished the employee at a profit, the deductions from wages in weeks in which no overtime is worked are considered to be illegal only to the extent that the profit reduces the wage (which includes the reasonable cost of the facilities) below the required minimum. Accordingly, if an employee employed at a rate of $1.20 an hour works 40 hours in a workweek and is paid only $36 in cash, $12 having been deducted for facilities furnished to him, such facilities must be measured by the requirements of section 3 (m) and Part 531 of this chapter to determine if the employee has received the minimum of $40 (40 hours x $1) in cash or in facilities which may be legitimately included in "wages" payable under the act. The same would be true where an employee is furnished the facilities *in addition* to a cash wage of $36 for 40 hours of work. In either case, if the "reasonable cost" to the employer of legitimate facilities equals at least $4, the requirements of the act are met.[8]

(b) Deductions for articles such as tools, miners' lamps, dynamite caps, and other items which do not constitute "board, lodging, or other facilities" may likewise be made in nonovertime workweeks if the employee nevertheless received the required minimum wage in cash free and clear; but to the extent that they reduce the wages of the employee in any such workweek below the minimum required by the act, they are illegal.

4. Section 777.12 is amended to read:

§ 777.12 *Overtime workweeks.* (a) Section 7 requires that the employee receive compensation for overtime hours at "a rate not less than one and one-half time the regular rate at which he is employed." When overtime is worked by an employee who receives the whole or part of his wage in facilities and it becomes necessary to determine the portion of his wages represented by facilities, all such facilities must be measured by the requirements of section 3 (m) and Part 531 of this chapter. It is the Administrator's opinion that deductions may be made, however, on the same basis in an overtime workweek as in nonovertime workweeks (see § 777.11), if their purpose and effect are not to evade the overtime requirements of the act or other law, providing the amount deducted does not exceed the amount which could be deducted if the employee had only worked 40 hours during the workweek. For example, if an employee is employed at a rate of $1.20 an hour (20 cents in excess of the minimum wage) the maximum amount which may be deducted from his wages in a 40-hour workweek for items such as tools, dynamite caps, miners' lamps, or other articles which are not "facilities" within the meaning of the act, is 40 times 20 cents or $8 (see § 777.11). Deductions in excess of this amount for such articles are illegal in overtime workweeks as well as in nonovertime workweeks. There is no limit on the amount which may be deducted for "board, lodging, or other facilities" in overtime workweeks (as in workweeks when no overtime is worked), provided that these deductions are made only for the reasonable cost of the items furnished. When such items are furnished at a profit, the amount of the profit (plus the full amount of any deductions for articles which are not facilities) may not exceed $8 in the above example. The principles stated above assume a situation where bona fide deductions are made for particular items in accordance with the agreement or understanding of the parties. If the situation is solely one of refusal or failure to pay the full amount of wages required by section 7, these principles have no application. Deductions made only in overtime workweeks, or increases in the prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade the overtime requirements of the act.

(b) Where deductions are made for board, lodging, or other facilities, the regular rate of pay is arrived at on the basis of the stipulated wage before any deductions have been made. Where such facilities are customarily furnished as additions to a cash wage, the reasonable cost of the facilities to the employer must be considered as part of the employee's regular rate of pay.[9] Thus, suppose an employee, employed at a cash rate of $1.20 an hour, works 48 hours during a particular workweek. If, in addition, he is furnished board, lodging, or other facilities valued at $18, but whose "reasonable cost" is $14.40, the $14.40 must be added to his cash straight-time pay of $57.60 ($1.20 × 48 hours) in determining the regular rate of pay on which his overtime compensation is to be calculated. The regular rate then becomes $1.50 an hour ([$57.60 + $14.40 = $72] ÷ [48 hours] = $1.50 an hour). The employee is thus entitled to receive a total of $78 for the week. ([40 hours × $1.50 = $60] + [8 hours × $2.25 = $18].) In addition to the straight-time pay of $57.60 in cash and $14.40 in facilities, extra compensation of $6 in cash for the eight overtime hours must, therefore, be paid by the employer, to meet the requirements of the act.

(52 Stat. 1060, as amended; 29 U. S. C. 201–219)

These amendments shall become effective March 6, 1956.

Signed at Washington, D. C., this 29th day of February 1956.

NEWELL BROWN,
Administrator,
Wage and Hour Division.

[F. R. Doc. 56-1706; Filed, Mar. 5, 1956; 8:49 a. m.]

PART 779—RETAIL AND SERVICE ESTABLISHMENTS AND RELATED EXEMPTIONS

INTRODUCTORY STATEMENT

Pursuant to authority under the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), and General Order No. 45–A (15 F. R. 3290), Part 779, Subchapter B, Title 29, Code of Federal Regulations, is amended as follows:

1. Footnote 1 to § 779.0 (a) is amended to read:

[1] Pub. No. 718, 75th Cong., 3d sess., (52 Stat. 1060), as amended by the Act of June 26, 1940 (Pub. Res. No. 88, 76th Cong., 3d sess.) (54 Stat. 611); by Reorganization Plan No. 2 (60 Stat. 1095) effective July 16, 1946; by the Portal-to-Portal Act of 1947, approved May