

employees' trusts; in section 631 (b) and (c), relating to treatment of gain on disposal of timber, coal, or domestic iron ore with a retained economic interest; in section 1235, relating to treatment of gain on sale or exchange of patents; and after September 2, 1958, in section 403 (a) (2), relating to treatment of payments under certain employee annuities, each of which items is considered to be gain from the sale or exchange of capital assets.

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

[P.R. Doc. 65-7889; Filed, July 26, 1965; 8:49 a.m.]

SUBCHAPTER E—ALCOHOL, TOBACCO, AND OTHER EXCISE TAXES

[T.D. 6840]

PART 270—MANUFACTURE OF TOBACCO PRODUCTS

Miscellaneous Amendments

On August 6, 1964, a notice of proposed rule making with respect to regulations designated as Part 270 of Title 26 of the Code of Federal Regulations was published in the *FEDERAL REGISTER* (29 F.R. 11377). The purposes of the proposal were to (1) improve and clarify certain provisions relating to the mark on packages of tobacco products, the furnishing of tax-exempt tobacco products to employees for personal consumption, and the treatment of tax determined tobacco products returned to the factory; (2) incorporate provisions relating to the keeping of records in support of transfers of tobacco products in bond, repackaging of tobacco products, and the treatment of shortages and overages of tobacco products disclosed by a physical inventory; (3) liberalize present requirements relating to records maintained by manufacturers of tobacco products; (4) delete obsolete provisions relating to the redemption of stamps; and (5) make miscellaneous clarifying and conforming changes of a minor nature.

After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations so published are hereby adopted subject to the changes set forth below:

PARAGRAPH 1. Paragraph 19 is changed to extend the term "employee," in § 270.231, to include those persons whose duties relate to the manufacture, distribution, or sale of tobacco products and to provide that tobacco products for off-factory consumption must be furnished the employee within the factory.

PAR. 2. Paragraph 21 is changed to clarify, in § 270.255, the provisions concerning overages and shortages of tobacco products by kind as required to be recorded and reported, and also the provisions concerning payment of tax on any shortage.

PAR. 3. Paragraph 24 is changed to clarify provisions relating to the filing of a claim for refund.

This Treasury decision shall be effective on the first day of the first month

which begins not less than 30 days following the date of publication in the *FEDERAL REGISTER*.

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

[SEAL] SHELDON S. COHEN,
Commissioner of Internal Revenue.

Approved: July 21, 1965.

STANLEY S. SURREY,
Assistant Secretary of the
Treasury.

1. Section 270.11 is amended by adding, in alphabetical sequence, the definition as follows:

§ 270.11 Meaning of terms.

Permit number. The combination of (1) the letters indicating the kind of permit, (2) the identifying number, and (3) the name or abbreviation of the State (or the District of Columbia) in which the factory is located, as assigned to the permit by the assistant regional commissioner; for example, "TP-999-Utah".

2. Section 270.47 is amended to include the procedure for submitting applications for authorization to engage in another business within the factory. As amended, § 270.47 reads as follows:

§ 270.47 Other businesses within factory.

The Director may authorize such other businesses within the factory as he finds will not jeopardize the revenue, will not hinder the effective administration of this part, and will not be contrary to law. Where a manufacturer desires to engage in another business within the factory he shall submit a written application to do so, in triplicate, to the assistant regional commissioner for the region in which the factory is located, for his transmittal to the Director. A manufacturer shall not engage in such other business until the application is approved by the Director. The manufacturer shall retain, as part of his records, any authorization of the Director under this section.

3. Section 270.63 is amended to include provisions, formerly in § 270.68, relating to authority of corporate officials to represent a corporate manufacturer. As amended, § 270.63 reads as follows:

§ 270.63 Corporate documents.

Every corporation, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 270.62, a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation shall likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters re-

lating to Chapter 52, I.R.C., and regulations issued thereunder. The corporation shall also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the same assistant regional commissioner and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

4. Section 270.68 is amended to clarify the requirements relating to the filing of a power of attorney and to eliminate provisions concerning corporate documents which are now included in § 270.63. As amended, § 270.68 reads as follows:

§ 270.68 Power of attorney.

If the application for permit or any report, return, notice, schedule, or other document required to be executed is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on Form 1534 shall be furnished to the assistant regional commissioner. (For power of attorney in connection with conference and practice requirements see Subpart E, Part 601 of this chapter.) Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 270.63. Form 1534 does not have to be filed again with an assistant regional commissioner where such form has previously been submitted to that assistant regional commissioner and is still in effect.

5. Section 270.69 is amended to require a factory diagram under certain circumstances in addition to those previously required. As amended, § 270.69 reads as follows:

§ 270.69 Factory premises.

The premises to be used by a manufacturer of tobacco products as his factory may consist of more than one building, or portions of buildings, which need not be contiguous but must be located in the same city, town, or village. Except that, where the assistant regional commissioner determines that a building or portion of a building which is not within the city, town, or village, is so conveniently and closely situated to the general factory premises as to present no jeopardy to the revenue and as to offer no hindrance to the administration of this part, he may authorize the inclusion of such building or portion of building as part of the factory. The buildings or portions of buildings shall be described in the application for permit and the bond by number, street, and city, town, or village, and State. If any of the following conditions exist a diagram shall also be furnished, in duplicate, showing the information indicated:

(a) Where the factory is in more than one building, and each building is not identifiable by a separate street address—identify each building by a letter, number, or similar designation;

(b) Where the factory consists of a portion of a building or where portions of buildings are part of the factory—show the particular floor or floors, or room or rooms, comprising the factory;

(c) Where there is an adjoining retail store operated by the manufacturer in which tobacco products are sold—identify the factory and the retail store including any doors or other openings between the premises.

(72 Stat. 1421; 26 U.S.C. 5712)

6. Section 270.92 is amended to provide for the addition or discontinuance of a trade name. As amended, § 270.92 reads as follows:

§ 270.92 Change in trade name.

Where there is a change in, or an addition or discontinuance of, a trade name used by a manufacturer of tobacco products in connection with operations authorized by his permit the manufacturer shall, within 30 days of such change, addition, or discontinuance, make application on Form 2098 for an amended permit to reflect such change. The manufacturer shall also furnish a true copy of any new trade name certificate or document issued to him, or statement in lieu thereof, required by § 270.65.

(72 Stat. 1421; 26 U.S.C. 5712)

7. Section 270.103 is amended to require notification when there is a change in authority of officers to act in behalf of a corporation furnished under § 270.63. As amended § 270.103 reads as follows:

§ 270.103 Change in officers, directors, or stockholders of a corporation.

Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of a manufacturer of tobacco products, or upon any occurrence which results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the manufacturer shall, within 30 days of such action, so notify the assistant regional commissioner in writing, giving the identity of such person. When there is any change in the authority furnished under § 270.63 for officers to act in behalf of the corporation the manufacturer shall immediately so notify the assistant regional commissioner in writing.

(72 Stat. 1421; 26 U.S.C. 5712)

8. Section 270.131 is amended to change the statement concerning the filing of powers of attorney for agents of surety companies, to conform with changed procedures in Subpart D of Part 296 of this chapter. As amended § 270.131 reads as follows:

§ 270.131 Corporate surety.

Surety bonds required under the provisions of this part may be given only with corporate sureties holding certificates of authority from the Secretary

of the Treasury as acceptable sureties on Federal bonds. Power of attorney and other evidence of appointment of agents and officers to execute bonds on behalf of such corporate sureties shall be filed with the assistant regional commissioner with whom any bond executed by such agent or officer is filed. Limitations concerning corporate sureties are prescribed by the Secretary in Treasury Department Circular No. 570, as revised. The surety shall have no interest whatever in the business covered by the bond. (61 Stat. 648, 72 Stat. 1421; 6 U.S.C. 6, 26 U.S.C. 5711)

9. Section 270.139 and the heading are amended for clarification. As amended, § 270.139 and the heading read as follows:

§ 270.139 Termination of bond.

Any bond required by this part may be terminated by the assistant regional commissioner as to liability for future operations (a) pursuant to application by the surety as provided in the bond, (b) on approval of a superseding bond, or (c) when operations by the manufacturer are permanently discontinued in accordance with Subpart J. After a bond is terminated the surety shall remain bound with respect to any liability for unpaid taxes, penalties, and interest, not in excess of the amount of the bond, incurred by the manufacturer prior to the termination date.

(72 Stat. 1421; 26 U.S.C. 5711)

10. Section 270.164 is amended to provide for inclusion in the tax return and taxpayment of shortages in inventory. As amended, § 270.164 reads as follows:

§ 270.164 Adjustments in the semi-monthly return.

A manufacturer may make adjustments in Schedules A and B of his semi-monthly tax return, Form 3071, as provided in this section. Schedule A of the return will be used where an error resulted in an underpayment of tax or where a shortage in inventory is disclosed as set forth in § 270.255. Schedule B of the return will be used where prepayment of tax has been made during the return period, or where notice has been received from the assistant regional commissioner that a claim for allowance of tax has been approved. Schedule B may also be used as provided in § 270.286 where a computational error resulted in an overpayment of tax. In the case of an adjustment based on prepayment of tax, the serial number(s) of the prepayment return(s), Form 2617, shall be shown. Any adjustments made in a return must be fully explained in the appropriate schedule or in a statement attached to and made a part of the return in which such adjustment is made.

(68A Stat. 791, 72 Stat. 1417; 26 U.S.C. 6402, 5703)

11. Section 270.181 is amended to include reference to new § 270.186. As amended, § 270.181 reads as follows:

§ 270.181 General.

Every manufacturer of tobacco products shall keep records of his operations

and transactions which shall reflect, for each day, the information specified in §§ 270.182 and 270.183. For the aforesaid purpose "day" shall mean calendar day, except that the assistant regional commissioner may, upon application of the manufacturer by letter, in duplicate, authorize as such day for a factory a 24-hour cycle of operation other than the calendar day. A day once so established as other than the calendar day may be changed only by like application approved by the assistant regional commissioner. A manufacturer who maintains commercial records from which the required information may be readily ascertained may utilize such records for this purpose. Where a manufacturer does not maintain commercial records which adequately reflect the information required by this part, he shall keep a record on Form 3063 with respect to tobacco materials, on Form 3065 with respect to large cigars, on Form 3066 with respect to small cigars and large and small cigarettes, and on Form 3064 with respect to manufactured tobacco. The manufacturer shall keep the auxiliary and supplemental records from which such records are compiled, and shall keep supporting records, as specified in §§ 270.184 and 270.186, of tobacco products removed subject to tax and transferred in bond. Except as provided in §§ 270.184 and 270.186 the entries in the commercial or form records so maintained or kept shall be made not later than the close of the business day next following that on which the transactions occur. As used in this section the term "business day" shall mean any day other than Saturday, Sunday, a legal holiday in the District of Columbia, or a statewide legal holiday in the State wherein the factory to which the records relate is located.

(72 Stat. 1423; 26 U.S.C. 5741)

12. Section 270.183 is amended to provide for the rounding off of fractions of pounds of manufactured tobacco. As amended, undesignated text has been added at the end of § 270.183 to read as follows:

§ 270.183 Record of tobacco products.

In recording the daily totals with respect to manufactured tobacco as required by this section, a manufacturer may disregard fractions of less than one-half pound and increase fractions of one-half pound or more to the next whole pound. Such daily total shall be determined before the fraction of pound is disregarded or increased.

(72 Stat. 1423; 26 U.S.C. 5741)

13. Section 270.184 is amended to provide for the acceptance under certain conditions of supporting records which do not specifically show the tax classification of cigars and cigarettes. As amended, § 270.184 reads as follows:

§ 270.184 Record in support of removals subject to tax.

Every manufacturer of tobacco products shall keep a supporting record of tobacco products removed from his factory subject to tax and shall make the entries therein at the time of removal.

Such supporting record shall show, with respect to each removal, the date of removal, the name and address of the person to whom shipped or delivered, the kind and quantity of cigars, cigarettes, or manufactured tobacco, and in the case of large cigars the class: *Provided*, That where the tobacco products are delivered within the factory directly to the consumer the name and address of the person to whom delivered need not be shown. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such orderly manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section. Such invoices or other commercial records which do not show specifically the tax classification of cigars or cigarettes will be acceptable if they contain adequate information to readily enable an internal revenue officer to ascertain therefrom the appropriate tax rate.

(72 Stat. 1423; 26 U.S.C. 5741)

14. A new section, designated § 270.186, is added to read as follows:

§ 270.186 Record in support of transfers in bond.

Every manufacturer of tobacco products shall keep a supporting record of tobacco products transferred in bond to or received in bond from other factories, and shall make the entries therein at the time of each receipt or removal of such products. Such supporting record shall show the date of receipt or removal, the name of the manufacturer and address of the factory from which received or to which removed or the permit number of such factory, and the kind and quantity of cigars, cigarettes, or manufactured tobacco. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each receipt and removal, in such orderly manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(72 Stat. 1423; 26 U.S.C. 5741)

15. Section 270.202 is amended to prescribe for the separate reporting of shortages and overages disclosed by physical inventory. As amended, paragraphs (d) through (i) of § 270.202 read as follows:

§ 270.202 Reports.

- (d) Disclosed by inventory as an overage,
- (e) Removed subject to tax,
- (f) Removed in bond,
- (g) Otherwise disposed of without determination of tax,
- (h) Disclosed by inventory as a shortage, and
- (i) On hand, in bond, beginning of and end of month.

(72 Stat. 1422; 26 U.S.C. 5722)

16. Section 270.212 is amended to eliminate, under certain conditions, the requirement that the manufacturer show in the mark the location of his factory. As amended, § 270.212 reads as follows:

§ 270.212 Mark.

Every package of tobacco products packaged in a domestic factory shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a mark as specified in this section. The mark may consist of the name of the manufacturer removing the product subject to tax and the location (by city and State) of the factory from which the products are to be so removed, or may consist of the permit number of the factory from which the products are to be so removed. (Any trade name of the manufacturer approved as provided in § 270.65 may be used in the mark as the name of the manufacturer.) As an alternative, where tobacco products are both packaged and removed subject to tax by the same manufacturer, either at the same or different factories, the mark may consist of the name of such manufacturer if the factory where packaged is identified on or in the package by a means approved by the Director. Before using the alternative, the manufacturer shall notify the Director in writing of the name to be used as the name of the manufacturer and the means to be used for identifying the factory where packaged. If approved by him the Director shall return approved copies of the notice to the manufacturer. A copy of the approved notice shall be retained as part of the factory records at each of the factories operated by the manufacturer.

(72 Stat. 1422; 26 U.S.C. 5723)

17. A new section, designated § 270.216, is added to read as follows:

§ 270.216 Fill of packages of manufactured tobacco.

Packages of manufactured tobacco must be so filled that the weight at the time of removal agrees with that stated on the package, except for such variations in weight as may occur when the filling is conducted in compliance with good commercial practices which result in substantially the same number of underweight and overweight packages.

18. A new section, designated § 270.217, is added to read as follows:

§ 270.217 Repackaging.

Where a manufacturer of tobacco products desires to repackage, outside the factory, tobacco products on which the tax has been determined or which were removed for a tax-exempt purpose or transferred in bond to an export warehouse, or to repackage tax determined tobacco products in the factory, he shall make application for authorization to do so, in duplicate, to the assistant regional commissioner for the region in which the products are to be repackaged. The application shall set forth the location and the number of packages, a description of the contents, the tax status of the tobacco products, the reason for wanting to repackage the products (e.g., packages soiled, damaged, or otherwise in a condition making the product unsalable), and a description of the package to be used for repackaging. The packages to be used must comply with the package, mark, and notice provisions of this chapter applicable to the tobacco products being repackaged.

The operations authorized under this section are limited solely to repackaging for good cause by a manufacturer, pursuant to an approved application, of the specified tobacco products in the described packages, and do not include any manufacturing processes. If the assistant regional commissioner approves the application, he may assign an internal revenue officer to supervise the repackaging or he may authorize the manufacturer to repackage the products without supervision by so stating on a copy of the application returned to the manufacturer. Where the manufacturer is authorized to repackage he shall record the date of repackaging on the approved application and retain it as part of his records.

(72 Stat. 1422; 26 U.S.C. 5723)

19. Section 270.231 is amended by redefining the term "employee" and to provide that tobacco products for off-factory consumption must be furnished the employee within the factory. As amended, § 270.231 reads as follows:

§ 270.231 Consumption by employees.

A manufacturer of tobacco products may gratuitously furnish tobacco products, without determination and payment of tax, for personal consumption by employees in the factory in such quantities as desired. Each employee may also be gratuitously furnished by the manufacturer, for off-factory personal consumption, not more than 5 large cigars or cigarettes, 20 small cigars or cigarettes, 2 ounces of manufactured tobacco, or a proportionate quantity of each, without determination and payment of tax, on each day the employee is at work. For the purpose of this section, the term "employee" shall mean those persons whose duties require their presence in the factory or whose duties relate to the manufacture, distribution, or sale of tobacco products and who receive compensation from the manufacturer, or a parent, subsidiary, or auxiliary company or corporation of the manufacturer. Such products furnished for off-factory consumption shall be furnished to the employee within the factory and taken from the factory by the employee on the day for which furnished. Employees shall not sell, offer for sale, or give away products so furnished to them.

(72 Stat. 1418; 26 U.S.C. 5704)

20. Section 270.254 is amended to clarify the requirements relating to tobacco products returned to the factory. As amended, § 270.254 reads as follows:

§ 270.254 Receipt into factory.

A manufacturer of tobacco products may receive in bond into his factory any tobacco products which he is authorized under his permit to produce in that factory, and may also receive into his factory any tobacco products on which the tax has been determined (including products on which the tax has been paid). Tobacco products on which the tax has been determined which are so received shall be segregated and identified as products on which the tax has been

determined. If tax determined products received into the factory are so handled that they cannot be identified both physically and in the records as tax determined products they shall be accounted for as returned to bond and upon subsequent removal shall be tax determined. Where returned tax determined tobacco products are to be repackaged without being returned to bond the manufacturer shall make application for authorization to do so to the assistant regional commissioner in accordance with § 270.217. Where the manufacturer intends to file claim for allowance or refund of tax on tax determined products he shall comply with the provisions of §§ 270.311 and 270.313.

21. A new section, designated § 270.255, is added to read as follows:

§ 270.255 Shortages and overages in inventory.

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an internal revenue officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (i.e., small cigarettes, large cigarettes, small cigars, large cigars, plug, twist and other forms of leaf, fine-cut chewing, scrap chewing, smoking tobacco, and snuff), the manufacturer shall enter such shortage or overage in the records required by § 270.183. (While overages and shortages of kinds of manufactured tobacco are recorded and reported separately for statistical purposes, only a total overage or shortage of all kinds of manufactured tobacco, as disclosed by each inventory, has tax implications.) Shortages or overages in inventories made at different times may not be used to offset each other, but shall be recorded and reported separately. Unless the manufacturer establishes that a shortage was not caused by a removal subject to tax the manufacturer shall determine the tax on any shortage, make an adjustment in Schedule A of his next semimonthly tax return, and pay the tax thereon. If, after paying the tax on a shortage, the manufacturer satisfactorily establishes that the shortage was not caused by a removal subject to tax, then such payment would be an overpayment of tax which the manufacturer may recover as provided in § 270.286. Where the manufacturer can establish, prior to paying the tax on a shortage, that the shortage was not the result of a removal subject to tax he shall submit an explanation of such shortage with his report for the month in which the shortage was disclosed and, if appropriate, he may file claim for remission of tax liability as provided in § 270.287. When an overage is disclosed which the manufacturer can explain, he shall include such explanation in his monthly report and refund of any overpayment may be recovered as provided in § 270.286. Whenever a physical inventory discloses a shortage or overage of tobacco products which have not been packaged the manufacturer shall appropriately enter such

shortage or overage in his records and shall, at the time required by the assistant regional commissioner, furnish an explanation in the form of a claim for remission of tax liability as provided in § 270.287. The manufacturer shall pay the tax on any shortage or portion thereof for which he is unable to furnish an explanation acceptable to the assistant regional commissioner.

(68A Stat. 791, 72 Stat. 1417, 1419, 1423; 26 U.S.C. 6402, 5703, 5705, 5741)

22. Section 270.262 is amended to provide for delivery of tobacco materials to a Federal institution and to set out the conditions of use by Federal and State institutions. As amended, paragraph (c) of § 270.262 reads as follows: § 270.262 Shipment or delivery.

*** (c) a Federal or State institution for use in the manufacture of tobacco products within the institution for gratuitous or non-profit distribution to inmates of such institution and to inmates of other institutions operated by the same governmental entity; ***

(72 Stat. 1418; 26 U.S.C. 5704)

23. Section 270.285 is deleted to remove outdated provisions relating to the redemption of tobacco products tax stamps.

24. A new section, designated § 270.286, is added to read as follows:

§ 270.286 Refund of overpayment.

Where an error in computation of the quantity of tobacco products or in computation of the amount of tax due results in an overpayment and such error is specifically identified and supported by records, the manufacturer may file claim for refund or may make an adjustment in his semimonthly tax return as provided in § 270.164. (Section 6511, I.R.C., provides that, in most cases, any adjustment or claim for refund of an overpayment of tax on tobacco products must be made or filed within 3 years after the tax was paid.) If the manufacturer elects to file a claim for refund of an overpayment resulting from such a computational error, he shall do so on Form 843, in duplicate. The original shall be filed with the assistant regional commissioner for the region in which the tax was paid, and the duplicate retained by the manufacturer. Where an overpayment of tax on tobacco products results from other than a computational error any claim for refund or credit shall be made in accordance with Subpart A of Part 296 of this chapter.

(68A Stat. 791, 72 Stat. 9; 26 U.S.C. 6402, 6423)

25. A new section, designated § 270.287, is added to read as follows:

§ 270.287 Remission of tax liability on shortage.

Whenever a manufacturer of tobacco products desires to submit a claim for remission of tax liability on shortages of tobacco products in bond, disclosed by physical inventory as set forth in § 270.255, he shall prepare such claim on Form 2635, in triplicate. All copies of the claim shall be filed with the assistant regional commissioner for the region in

which the factory is located. The claim shall specify the quantities of tobacco products on which claim is made and the tax liability in respect thereof, and shall set forth the circumstances surrounding the shortage and the reason the manufacturer believes tax is not due or payable. The assistant regional commissioner will, after such investigation as he deems appropriate, allow the claim to the extent that he is satisfied the shortage was due to operating losses such as damage during grading, sorting, or packaging, and was not caused by theft or other unlawful or improper removal. Upon action on the claim by the assistant regional commissioner he will return a copy of the Form 2635 to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1414, 1417, 1419; 26 U.S.C. 5701, 5703, 5705)

[F.R. Doc. 65-7815; Filed July 26, 1965; 8:45 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

PART 9-2—PROCUREMENT BY FORMAL ADVERTISING

Miscellaneous Amendments

Section 9-2.102 Policy, paragraph (b) is deleted and present paragraph (c) is relettered (b).

The following sections are added:

§ 9-2.102-50 Policy, cost-type contractor procurement.

The following sections of AECPR Part 2 constitute specific provisions which the contracting officer shall bring to the attention of cost-type contractors, Class A and B, as constituting areas which require appropriate treatment in the development of statements of contractor procurement practices, in order to carry out the basic AEC procurement policy set forth in AECPR 9-1.5203. There are no provisions in FPR 1-2 which require appropriate treatment in the development of statements of contractor procurement practices.

Section	Subject
AECPR:	
9-2.102-51	Cost-type contractor procurement through competitive bids and awards.
9-2.403	Recording of bids.
9-2.406-50	Mistakes in bids for cost-type contractor procurement before and after award.
9-2.407-50	Government estimates.
9-2.408	Information to bidders.

§ 9-2.102-51 Cost-type contractor procurement through competitive bids and awards.

(a) Section 9-1.5203(a) provides for the use of "competitive bids and awards" whenever procurement through such methods is feasible and practicable under

the circumstances. "Competitive bids and awards" involve the following basic steps:

(1) Preparation of invitations for bids, describing the requirements clearly, accurately and completely, but avoiding unnecessarily restrictive specifications or requirements.

(2) Publicizing the invitation for bids by distribution to prospective bidders, and by such other means as may be appropriate, in sufficient time to enable prospective bidders to prepare and submit bids before the time set for opening of bids.

(3) Submission of bids by prospective contractors.

(4) Awarding the contract, after bids are opened to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors included.

(b) In reviewing contractors "competitive bids and awards" procedures consideration should be given to the criteria and dollar levels for making procurements by this method, and to the adequacy of measures provided to implement the basic steps in paragraph (a) of this section, keeping in mind the objectives of full and free competition and award of a contract on an impartial basis. Other factors bearing on these objectives include: Reasonableness of bidding time; methods of soliciting bids; and procedures for the submission and handling of bids and for award of a contract.

In § 9-2.406-50 *Mistakes in bids or quotations for cost-type contractor procurement before and after award*, paragraph (a) and subparagraphs (1) and (2) under (a) are revised to read as follows:

§ 9-2.406-50 *Mistakes in bids for cost-type contractor procurement before and after award.*

(a) *Mistakes not in excess of \$500.* Managers of Field Offices may permit cost-type contractors to correct mistakes (obvious clerical errors in any amount may be corrected informally) in connection with bids and subcontracts as follows:

(1) Mistakes not in excess of \$50.00 without referral to AEC; or

(2) Mistakes in excess of \$50.00, but not in excess of \$500.00, with the prior written approval of the AEC contracting officer.

Section 9-2.408, *Information to bidders*, is revised to read as follows:

§ 9-2.408 *Information to bidders.*

Managers of Field Offices shall provide for the release of award information by the AEC Field Office concerned, in those cases where the contractor's approved procedures do not provide for release of such data.

(Sec. 161, Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205, Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486)

Effective date. These amendments are effective upon publication in the FEDERAL REGISTER.

Dated at Germantown, Md., this 9th day of July 1965.

For the U.S. Atomic Energy Commission.

JOSEPH L. SMITH,
Director,
Division of Contracts.

[F.R. Doc. 65-7837; Filed, July 26, 1965; 8:45 a.m.]

PART 9-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 9-4.51—Washington-Designed Research and Development Contracts with Educational Institutions

RESPONSIBILITIES OF AEC FIELD OFFICES

Section 9-4.5112-2 is amended by adding the following paragraph (d):

§ 9-4.5112-2 *Responsibilities of AEC Field Offices.*

(d) Determining whether to use the Grant Act (P.L. 85-934) or the contractor's contribution to the research as the authority for vesting title to equipment in the contractor when authorized to do so pursuant to AECPR 9-4.5106-6 (c) (6).

(Sec. 161, Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205, Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486)

Effective date. This amendment is effective upon publication in the FEDERAL REGISTER.

Dated at Germantown, Md., this 20th day of July 1965.

For the U.S. Atomic Energy Commission.

JOSEPH L. SMITH,
Director,
Division of Contracts.

[F.R. Doc. 65-7838; Filed, July 26, 1965; 8:45 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[PCC 65-652]

PART 0—COMMISSION ORGANIZATION

Board of Commissioners

Order. At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 21st day of July 1965:

The Commission having under consideration § 0.212 of the rules and regulations, under which a Board, composed of all Commissioners present and able to act, may be convened by the Chairman or Acting Chairman of the Commission in the absence of a quorum of the Commission; and

It appearing, that the authority of such a Board of Commissioners should be restated for purposes of clarity and to conform more closely with the func-

tions the Board is expected to perform; and

It further appearing, that authority for the amendment adopted herein is set forth in sections 4(i), 5(d) and 303(r) of the Communications Act of 1934, as amended; and

It further appearing, that the amendment adopted herein pertains to internal delegations of authority, and hence is not subject to prior notice and effective date provisions of section 4 of the Administrative Procedure Act:

It is ordered, Effective July 30, 1965, that § 0.212 of the rules and regulations is amended as set forth below.

(Sec. 4, 48 Stat. 1096, as amended; 47 U.S.C. 154. Interpret or apply sec. 303, 48 Stat. 1082, as amended; sec. 5, 66 Stat. 713; 47 U.S.C. 303, 155)

Released: July 22, 1965.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

Section 0.212 is amended to read as follows:

§ 0.212 Board of Commissioners.

(a) Whenever the Chairman or Acting Chairman of the Commission determines that a quorum of the Commission is not present or able to act, he may convene a Board of Commissioners. The Board shall be composed of all Commissioners present and able to act.

(b) The Board of Commissioners is authorized to act upon all matters normally acted upon by the Commission en banc, except the following:

(1) The final determination on the merits of any adjudicatory or investigatory hearing proceeding or of any rule making proceeding, except upon a finding by the Board that the public interest would be disserved by waiting the convening of a quorum of the Commission.

(2) Petitions for reconsideration of Commission actions.

(3) Applications for review of actions taken pursuant to delegated authority.

(c) The Board of Commissioners is authorized to act upon all matters normally acted upon by an individual Commissioner (when he or his alternates are not present or able to act) or by a committee of Commissioners (in the absence of a quorum of the committee).

(d) Actions taken by the Board of Commissioners shall be recorded in the same manner as actions taken by the Commission en banc.

(e) This section has no application in circumstances in which the Commission is unable to function at its offices in Washington, D.C. See §§ 0.181-0.186 and 0.381-0.387.

[F.R. Doc. 65-7899; Filed, July 26, 1965; 8:50 a.m.]

[PCC 65-658]

PART 1—PRACTICE AND PROCEDURE

PART 87—AVIATION SERVICES

Renewal of Station Licenses

Order. In the matter of amendment of Parts 1 and 87 to provide for renewal of

¹ Commissioners Lee and Loevinger absent.

station licenses in the Aviation Services on FCC Form 405-A.

At a session of the Federal Communications Commission held at its offices in Washington, D.C. on the 21st day of July 1965;

The Commission, having under consideration amendment of Parts 1 and 87 to provide for renewal of station licenses in the Aviation Services on FCC Form 405-A; and,

It appearing, that applications for renewals in the Safety and Special Radio Services are generally submitted on FCC Form 405-A, whereas in the Aviation Services, such applications are made on the same form as the original application; and,

It further appearing, that a filing fee for a renewal in the Aviation Services is \$10.00 or \$30.00 in the case of a fixed station using frequencies above 952 Mc/s (so-called microwave station) while a renewal filed on FCC Form 405-A is \$4.00; and,

It further appearing, that the information submitted to the Commission on FCC Form 405-A is sufficient to process an application for renewal in the Aviation Services and, thus, the differences in renewal procedures serves no useful purpose and should be resolved by amendment of Parts 1 and 87 to provide for the filing of renewals in the Aviation Services on FCC Form 405-A; and,

It further appearing, that the amendments adopted herein are procedural in nature and, hence, that the prior notice, procedure, and effective date provisions of section 4 of the Administrative Procedure Act are not applicable; and,

It further appearing, that authority for the rules herein adopted is contained in sections 4(i) and 303(r) of the Communications Act:

It is ordered, That Parts 1 and 87 of the Commission's rules are amended as set forth below, effective September 7, 1965.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: July 22, 1965.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Secretary.

§ 1.926 [Amended]

1. In § 1.926(b) (5), (6), (7) and (8), the text is deleted and the word "[Reserved]" is inserted in lieu thereof.

2. Section 87.29 (a)(1) and (b) is amended to read as follows:

§ 87.29 Application for aircraft radio station license.

(a)(1) Application for new or modified aircraft radio station licenses shall be made on FCC Form 404. The purchaser or assignee of a radio-equipped aircraft shall apply for a new aircraft radio station license on FCC Form 404.

(b) Application for new or modified Civil Air Patrol mobile (including air-

craft) radio station licenses shall be made on FCC Form 480.

3. Section 87.31 (a), (b) and (d) is amended to read as follows:

§ 87.31 Application for ground station authorization.

(a) Application for new, modified or assignment of ground station authorizations, except as provided in paragraphs (b), (c), and (d) of this section, shall be submitted on FCC Form 406. A construction permit must be obtained prior to commencement of construction in the case of operational fixed stations and stations involving special antenna considerations.

(b) Applications for new or modified Civil Air Patrol land station authorizations shall be submitted on FCC Form 480.

(d) Application for construction permit, license, modification, or assignment thereof for a fixed station using frequencies above 952 Mc/s (a so-called microwave station) shall be submitted on FCC Form 402.

4. A new § 87.33 is added to read as follows:

§ 87.33 Application for renewal of license.

Application for renewal of station license shall be submitted on FCC Form 405-A, except where a modification of the license is also sought, in which case the application form applicable for a modification of such station shall be used for both the modification and renewal.

5. Section 87.53(a) is amended to read as follows:

§ 87.53 Schedule of fees.

(a) Except as provided in paragraph (b) of this section, applications filed under this part shall be accompanied by the fees prescribed below:

Applications for new or modified radio station authorizations for operational fixed radio stations for which frequencies above 952 Mc/s are requested (no fee is required for applications for license to cover construction permit).....	\$30
Applications for renewal of license only for which FCC Form 405-A is prescribed.....	4
All other applications for radio station authorizations.....	10

[F.R. Doc. 65-7900; Filed, July 26, 1965; 8:50 a.m.]

[Docket No. 15657, RM-524; FCC 65-654]

PART 15—RADIO FREQUENCY DEVICES

Operation of Radio Door Controls

First Report and Order. 1. Notice of proposed rule making in this proceeding was issued on October 14, 1964 (29 F.R. 14409, Oct. 20, 1964), in response to a petition filed by the Door Operator and Remote Control Manufacturers Association (DORCMA). This notice proposed regulations covering the operation

without a license of radio control devices for door operators on frequencies above 70 Mc/s. It was proposed to delete the duty cycle requirement heretofore required for such devices, to prohibit operation on certain frequency bands, to reduce the permitted level of radiation from both the transmitter and receiver part of the control, and to require that such devices be certificated to this Commission.

2. The comments received in this proceeding suggested that a specific test procedure be provided so that the manufacturers would be able to assure themselves that their control devices complied with the proposed rules. The manufacturers of these devices generally objected to excluding any frequency from use whereas users of radio communications requested that additional frequency bands be excluded over and above those contained in the notice of proposed rule making. The manufacturers of these devices further requested that the radiation limits for the transmitter part of the device not be changed from the level now permitted in the rules, and that the level of the radiation from the receiver be reduced only to the level specified in the DORCMA petition. In addition, an objection was raised to the wording specified for the label proposed to be required on certificated control devices.

Prohibited frequencies. 3. The notice of proposed rule making proposed to prohibit the operation of these door controls on the aeronautical radionavigation frequencies (NAVAIDS) and on the safety frequencies 121.5 Mc/s and 243 Mc/s. Parties concerned with aeronautical radio communications requested additional exclusions for the aeronautical communications frequencies 118-136 Mc/s and the flight test frequencies at 123 Mc/s. In addition, exclusions were requested for the bands 150.8-162 Mc/s and 450-470 Mc/s, and for all the bands allocated to radio astronomy. In contrast, the manufacturers of these radio control devices objected to the exclusion of any frequency above 70 Mc/s on the grounds that devices conforming to the Commission's rules would radiate such a low level of energy as not to constitute a source of interference. In support of this comment DORCMA and the Linear Corporation presented a mathematical analysis of an area saturated with radio operated door opener controls which purported to show that the cumulative radiation from a large number of devices would not exceed a free space interference level of 16 microvolts per meter per 10 kc/s of bandwidth.

4. In this connection, the Commission notes that in recent months it has received from other Government agencies over 300 urgent complaints of interference to aeronautical radionavigation operations caused by garage door openers. The job of tracking down the offending devices and obtaining corrective action has been inordinately expensive to the Government. In the course of investigating these interference cases, measurements were made on a majority of the devices. In every case, the fields produced by these devices substantially exceeded permissible limits. The record thus established by this experience

¹ Commissioners Lee and Loevinger absent.