

operations conducted by the air carrier.

(c) For the purposes of this schedule, fuel drawn for domestic operations is that fuel drawn for use between certificated flight stages with both terminals within the 50 States of the United States and the District of Columbia. The cost of fuel drawn within the United States and the District of Columbia for a flight stage outside of the United States and the District of Columbia is: (1) If drawn from "Carrier's Storage Facilities," included in columns (6) and (7), "Sold to Others and Consumed by Carrier in International Operations," footnoted as to that portion so reported therein, and (2) excluded from Schedule P-5(b) if it is "Delivered Directly to Aircraft by Others."

(d) The indicated data shall be grouped in alphabetical sequence by station as to (1) fuel issued from "Carrier's Storage Facilities," as reported in columns (2) through (11) and (2) Fuel "Delivered Directly to Aircraft by Others," reported in columns (8) and (9) only. Where the amounts reported for a station include other than Jet A fuel, a footnote should be added to this schedule indicating the number of gallons and applicable costs included in the amounts reported for that station. However, for stations where less than 5,000 gallons of fuel per month are issued in total, the aggregate fuel information for all such stations may be reported as "Miscellaneous," denoting the number of stations so reported.

(e) The cost of fuel shall include shrinkage, but shall exclude (1) "through-put" and "in to plane" fees, i.e., service charges or gallonage levies assessed by or against the fuel vendor or concessionaire and passed on to the carrier in a segregated and identifiable form and (2) nonrefundable Federal and State excise taxes.

(f) All costs reported under the caption "Carrier's Storage Facilities," except those actual costs which are to be reported in column (5), "Receipts," shall be computed on the periodic average method. Under this method, the average is computed by dividing the total cost of the Beginning Inventory plus Receipts during the period by the total number of units in these groups. The resulting quotient shall then be applied to extend the units issued and in ending inventory.

(g) Actual costs shall be used to report the cost of fuel under "Delivered Directly to Aircraft by Others."

(h) The beginning inventory of each schedule shall be the ending inventory of the prior-period schedule. Differences shall be properly annotated and reconciled.

5. Amend CAB Form 41 by adding new Schedule P-5(b) as shown in Exhibit A below to the rule and made a part thereof.

(Secs. 204(a) and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766 (49 U.S.C. 1324, 1377))

Effective: May 1, 1974.

Adopted: March 14, 1974.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

NOTE: The reporting requirements herein have been approved by the General Accounting Office in accordance with the Federal Reports Act of 1942, as amended.

[FR Doc. 74-7209 Filed 3-28-74; 8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

SUBCHAPTER C—DRUGS

SUBCHAPTER F—BIOLOGICS

RECODIFICATION EDITORIAL AMENDMENTS

The Commissioner of Food and Drugs, for the purpose of establishing an orderly development of informative regulations for the Food and Drug Administration, furnishing ample room for expansion of such regulations in years ahead, and providing the public and affected industries with regulations that are easy to find, read, and understand, has initiated a recodification program for Chapter I of Title 21 of the Code of Federal Regulations.

The fifth document in a series of recodification documents that will eventually include all regulations administered by the Food and Drug Administration appears elsewhere in this issue of the FEDERAL REGISTER. The regulations formerly under Parts 130, 131, 164, 165, and 167 of Subchapter C—Drugs, have been reorganized into Parts 310, 312, 314, 328, 329, 330, 369, and 429 of new Subchapter D—Drugs for Human Use, in an effort to provide greater clarity and adequate space for the development of future regulations.

These recodified regulations are referenced in Parts 1, 2, 3, 8, 132, 135, 144, 146, and 601 of this chapter.

Regulations pertaining to veterinary drugs have been left in Part 131.

To provide uniformity and continuity during the recodification the Commissioner concludes that the references to the recodified material should be revised at this time, and the title of Part 131 be revised to reflect its new composition. Therefore, Parts 1, 2, 3, 8, 131, 132, 135, 144, 146, and 601 of Chapter I of Title 21 of the Code of Federal Regulations are amended as follows:

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

§ 1.102 [Amended]

1. In § 1.102(b) by changing the reference "§ 164.7" to read "§ 429.12."

§ 1.106 [Amended]

2. In § 1.106:
a. In paragraph (j), by changing the reference "§ 167.1(a)" to read "§ 328.3(a)"; and by changing the reference "Part 167" to read "Part 328."
b. In paragraph (l) (2) by changing the reference "§ 130.3" to read "§ 312.1."

§ 1.115 [Amended]

3. In § 1.115(b) (2) by changing the reference "Part 164" to read "Part 429."

PART 2—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

§ 2.65 [Amended]

4. In § 2.65(a) by changing the parenthetical reference "(21 CFR Parts 164 and 8, respectively)" to read "(21 CFR Parts 429 and 8, respectively)."

§ 2.121 [Amended]

5. In § 2.121:
a. In paragraph (u) (1) and (2) by changing the reference "§ 130.3" to read "§ 312.1"; and by changing the reference "§ 130.3a" to read "§ 312.9."

PART 3—STATEMENTS OF GENERAL POLICY OR INTERPRETATION

§ 3.15 [Amended]

6. In § 3.15(a) (2) by changing the reference "§ 130.4(c)" to read "§ 314.1(e)."

§ 3.29 [Amended]

7. In § 3.29(c) (3) by changing the reference "§ 130.4(c)" to read "§ 314.1(e)."

§ 3.36 [Amended]

8. In § 3.36(d) by changing the reference "§ 130.4(c)" to read "§ 314.1(e)."

§ 3.48 [Amended]

9. In § 3.48(c) by changing the reference "§ 130.3" to read "§ 312.1."

§ 3.52 [Amended]

10. In § 3.52:
a. By changing the reference "§ 130.3" in the introductory text of paragraph (c) to read "§ 312.1."

b. In paragraph (d) (1) by changing the reference "§ 130.3a(a)" to read "§ 312.9(a)."

§ 3.53 [Amended]

11. In § 3.53(c) by changing the reference "§ 130.3" to read "§ 312.1."

§ 3.67 [Amended]

12. In § 3.67(d) (2) by changing the reference "§ 130.4(c) (2)" to read "§ 314.1(c) (2)."

§ 3.77 [Amended]

13. In § 3.77(b), by changing the phrase "Bureau of Narcotics and Dangerous Drugs" to read "Drug Enforcement Administration, Department of Justice" each time it appears; and by changing the reference "§ 130.44" to read "§ 310.505."

§ 3.81 [Amended]

14. In § 3.81(d) by changing the reference "§ 130.9 (d) and (e)" to read "§ 314.8(d) and (e)."

§ 3.90 [Amended]

15. In § 3.90(d) by changing the reference "§ 130.9(d)" to read "§ 314.8(d)."

§ 3.91 [Amended]

16. In § 3.91:
a. In paragraph (c) (4) (ii) by changing the reference "§ 130.9(d)" to read "§ 314.8(d)."
b. In paragraph (c) (4) (v) by changing the reference "§ 130.4" to read "§ 314.1" each time it appears.

PART 8—COLOR ADDITIVES

§ 8.28 [Amended]

17. In § 8.28(b) by changing in the last sentence the reference "§§ 130.14-130.26 of this chapter" to read "§§ 314.200 through 314.232 of this chapter."

PART 131—INTERPRETIVE STATEMENTS RE WARNINGS ON VETERINARY DRUGS FOR OVER-THE-COUNTER SALE

18. The heading for Part 131 is revised to read as set forth above.

PART 132—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

§ 132.1 [Amended]

19. In § 132.1(d) by changing the reference "§ 130.3" to read "§ 312.1."

§ 132.1 [Amended]

20. In § 132.31(b) by changing the reference "§ 130.3" to read "§ 312.1 of this chapter."

PART 135—NEW ANIMAL DRUGS

§ 135.1 [Amended]

21. In § 135.1(1) by changing the reference "§ 130.38" to read "§ 310.9."

§ 135.37 [Amended]

22. In the introductory text of § 135.37 by changing the reference "§ 130.38" to read "§ 310.9."

PART 144—ANTIBIOTIC DRUGS; EXEMPTIONS FROM LABELING AND CERTIFICATION REQUIREMENTS

§ 144.8 [Amended]

23. In § 144.8 by changing the reference "§ 130.3," each time it appears, to read "§ 312.1."

§ 144.26 [Amended]

24. In § 144.26(b) (18) (i), (22) (i), (32) (i), (35), (39), (42), (44), (45), (49), (50), (54), (56), (59), (60), (61), (62), and (63), by changing the reference "§ 130.4(c) (3)" to read "§ 314.1(c) (3)"; and by changing the reference "§ 130.9" to read "§ 314.8."

PART 146—ANTIBIOTIC DRUGS; PROCEDURAL AND INTERPRETIVE REGULATIONS

§ 146.1 [Amended]

25. In § 146.1(g) (2) by changing the reference "§ 130.12(a) (5)" to read "§ 314.111(a) (5)."

PART 601—LICENSING

§ 601.25 [Amended]

26. In § 601.25(d) (2) by changing the reference "§ 130.12(a) (5) (ii)" to read "§ 314.111(a) (5) (ii)."

The changes being made are nonsubstantive in nature and for this reason notice and public procedure are not prerequisites to this promulgation.

Dated: March 27, 1974.

SAM D. FINE,
Associate Commissioner
for Compliance.

[FR Doc. 74-7384 Filed 3-28-74; 8:45 am]

Chapter II—Drug Enforcement Administration; Department of Justice

Part 1301—Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

Part 1308—Schedules of Controlled Substances

Etorphine Hydrochloride Transfer to Schedule II

A notice dated November 15, 1973, and published in the FEDERAL REGISTER on November 23, 1973 (38 FR 32262) proposed the transfer of etorphine hydrochloride from Schedule I to Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91-513). All interested persons were given 30 days after publication to submit their objections, comments, or requests for a hearing.

In response to the said notice, the Administration received two comments and one objection. The Department of Health and Social Services, State of Wisconsin by letter dated December 20, 1973, concurred in the proposed transfer. The Division of Wildlife, Department of Wildlife, State of Colorado, by letter dated December 10, 1973, suggested that the distribution of etorphine hydrochloride should not be limited to licensed veterinarians. The Food and Drug Administration has restricted the use of etorphine hydrochloride and diprenorphine by or on the order of a licensed veterinarian. The Drug Enforcement Administration shall transmit additional information to the Food and Drug Administration indicating its willingness to permit other qualified persons to use

these substances if the Food and Drug Administration deems it proper and changes the labelling of the substances.

The American Pharmaceutical Association by letter dated December 20, 1973, objected to the restricted distribution of etorphine hydrochloride alleging that the Drug Enforcement Administration does not have the authority to deny any registrant the right to distribute controlled substances in schedules for which he is registered without deciding whether the American Pharmaceutical Association is an interested party with standing to object to the regulation, the Administration clearly has the authority to proscribe regulation, the Administration clearly has the authority to proscribe regulations restricting the distribution of etorphine hydrochloride. Section 871(b) of Title 21 of the United States Code provides that "the Attorney General may promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this title." Additional authority is found in Sections 301, 307, and 308 of the Controlled Substances Act (21 U.S.C. 827, 828 and 871(b)).

The Administration does acknowledge the necessity for codification of these procedures and amendments to Title 21 of the Code of Federal Regulations are published in this volume of the FEDERAL REGISTER.

Based upon the investigations of the Drug Enforcement Administration and upon the scientific and medical evaluation and recommendation of the Secretary of Health, Education, and Welfare, received pursuant to section 201(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811 (b)), the Administrator of the Drug Enforcement Administration finds that etorphine hydrochloride:

- (1) Has a high potential for abuse;
- (2) Has a currently accepted medical use in treatment in the United States with severe restrictions; and
- (3) May, if abused, lead to severe psychological or physical dependence.

On July 3, 1973 (38 FR 17717), the Administrator of the Drug Enforcement Administration ordered that § 1308.11(c) of Title 21 of the Code of Federal Regulations be amended by adding a new item, Drotebanol. The amendment to § 1308.11(c) rennumbers the items therein to place Drotebanol in alphabetical order with the other controlled substances.

Therefore, under the authority vested in the Attorney General by section 201(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(a)), and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations (see 38 FR 18380, July 2, 1973) the Administrator orders that:

- a. Section 1301.02(b) of Title 21 of the Code of Federal Regulations be amended by inserting a new paragraph (b) (4) (iv) and renumbering paragraphs (b) (4) (iv)–(xiv) to read:

§ 1301.02 Definitions.

- (b) * * *
- (4) * * *
- (iv) Etorphine hydrochloride;
- (v) Ethylmorphine;
- (vi) Hydrocodone;
- (vii) Hydromorphone;
- (viii) Metopon;
- (ix) Morphine;
- (x) Oxycodone;
- (xi) Oxymorphone;
- (xii) Thebaine;
- (xiii) Mixed alkaloids of opium listed in § 1308.12(b) (2) of this chapter;
- (xiv) Cocaine; and
- (xv) Ecgonine;

b. Section 1308.11(c) of Title 21 of the Code of Federal Regulations be amended by revising subparagraphs (9)-(23) of paragraph (c) to read:

§ 1308.11 Schedule I.

(c) * * *	
(9) Droterbanol	9335
(10) Etorphine (except hydrochloride salt)	9056
(11) Heroin	9200
(12) Hydromorphenol	9301
(13) Methylmorphine	9302
(14) Methylidihydromorphone	9304
(15) Morphine methylbromide	9306
(16) Morphine methylsulfonate	9308
(17) Morphine-N-Oxide	9307
(18) Myrophine	9308
(19) Nicocodine	9309
(20) Nicomorphine	9312
(21) Normorphine	9313
(22) Pholcodine	9314
(23) Thebaine	9315

(c) Section 1308.12(b) of Title 21 of the Code of Federal Regulations be amended by revising paragraph (b) (1) to read:

§ 1308.12 Schedule II.

(b) * * *	
(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium of opiate, excluding naloxone hydrochloride, but including the following:	
(i) Raw opium	9600
(ii) Opium extracts	9610
(iii) Opium fluid extracts	9620
(iv) Powdered opium	9639
(v) Granulated opium	9640
(vi) Tincture of opium	9630
(vii) Apomorphine	9030
(viii) Codeine	9050
(ix) Ethylmorphine	9190
(x) Etorphine hydrochloride	9059
(xi) Hydrocodone	9193
(xii) Hydromorphone	9194
(xiii) Metopon	9260
(xiv) Morphine	9300
(xv) Oxycodone	9143
(xvi) Oxymorphone	9652
(xvii) Thebaine	9333

The requirements imposed on the substance controlled by this order are as follows:

1. *Registration.* Any person who manufactures, distributes, engages in research, imports or exports any of this substance or who proposes to engage in the manufacture, distribution, importa-

tion, or exportation of, or research with, this substance shall obtain a registration to conduct that activity on or before April 19, 1974.

2. *Security.* This substance must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a), 1301.73, 1301.74(a), 1301.75, and § 1301.76 of Title 21 of the Code of Federal Regulations. In addition, all registrants desiring to handle etorphine hydrochloride will be required to use a safe or steel cabinet equivalent to a U.S. Government Class V security container after August 1, 1974. In the event that this imposes special hardships, the Drug Enforcement Administration will entertain any justified requests for extensions of time.

3. *Labelling and packaging.* All labels on commercial containers of, and all labelling of, this substance which is packaged after April 19, 1974 shall comply with the requirements of §§ 1302.03-1302.05 and 1302.08 of Title 21 of the Code of Federal Regulations. In accordance with § 1302.08 of Title 21 of the Code of Federal Regulations, the Administrator finds that in order to protect the public health and safety early compliance with these requirements is necessitated by the high potential for abuse and the limited medical use of this substance. The shipment of etorphine hydrochloride should be under secure conditions using substantial packaging material with no markings on the outside of the package which would indicate the content. Shipment would be by the most secure means of transport available.

4. *Quotas.* Quotas for this substance have been established pursuant to section 1303 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Registrants possessing this substance will not be required to take an additional inventory.

6. *Records.* All registrants shall continue to keep records pursuant to §§ 1304.21-1304.27 of Title 21 of the Code of Federal Regulations. In addition, records for this substance shall be maintained separately from all other records on or before April 19, 1974.

7. *Reports.* All registrants are required to continue filing reports pursuant to Sections 1304.37-1304.41 of Title 21 of the Code of Federal Regulations. In addition, registrants supplying this substance are required to forward copies of the order forms received to the Drug Enforcement Administration on a weekly basis on or before April 19, 1974.

8. *Order forms.* Each distribution of this substance requires the use of an order form pursuant to Part 1305.03 of Title 21 of the Code of Federal Regulations. Order forms for etorphine hydrochloride shall contain this substance alone or with diprenorphine (but shall not contain any other substance) on or after April 19, 1974.

9. *Prescriptions.* The Food and Drug Administration has restricted the use of this substance by or on the order of a licensed veterinarian. Therefore, this substance is not to be obtained by use of a prescription.

10. *Importation and exportation.* All importation and exportation of any of this substance on or after April 19, 1974 shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

11. *Criminal liability.* Any activity with etorphine hydrochloride not authorized by or in violation of the Controlled Substances Act or the Controlled Substances Import and Export Act before April 19, 1974 shall be unlawful. The applicable penalties shall be those of a Schedule I narcotic controlled substance. On April 19, 1974, etorphine hydrochloride for the purposes of criminal liability shall be treated as a Schedule II controlled substance. It should be noted that penalties of Schedule I or II narcotic controlled substances are the same. The only effect of the transfer will be for pleading purposes.

12. *Other.* In all other respects, this order is effective on April 19, 1974.

Dated: March 25, 1974.

JOHN R. BARTELS, JR.,

Administrator,

Drug Enforcement Administration.

[FR Doc. 74-7275 Filed 3-28-74; 8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7309]

PART 301—PROCEDURE AND ADMINISTRATION

Time for Performance of Acts Where Last Day Falls on a Legal Holiday

By a notice of proposed rulemaking appearing in the FEDERAL REGISTER for Monday, July 16, 1973 (38 FR 18897), an amendment to the regulations on Procedure and Administration (26 CFR Part 301) under section 7503 of the Internal Revenue Code of 1954 was proposed in order to conform such regulations to the changes made by Pub. L. 90-363, 82 Stat. 250, which amended 5 U.S.C. 6103(a), regarding the observance of certain legal holidays on Monday. The amendment of 5 U.S.C. 6103(a) was effective on January 1, 1971. After consideration of all such relevant matter as was presented by interested persons, certain changes were made, and the proposed amendment of the regulations, subject to the changes indicated below, is adopted by this document.

The amendment to the regulations is designed to conform § 301.7503-1(b) (1) to the present District of Columbia law regarding the date of observance of legal holidays. The District of Columbia now observes Washington's Birthday on the third Monday in February, Memorial Day on the last Monday in May, Veterans' Day on the fourth Monday in October, and Thanksgiving on the fourth Thursday in November. Columbus Day is also considered a legal holiday in the District of Columbia for all calendar years after 1970, and is observed on the

second Monday in October. Under the amendment of the regulations, the dates of observance of these holidays for purposes of the Internal Revenue Code of 1954 will correspond to the dates of observance of these holidays in the District of Columbia. So that the amendment to the regulations will not adversely affect certain taxpayers who relied on the current regulations, for the calendar years 1971, 1972, 1973, and 1974, taxpayers may, at their option (except with respect to the performance of any act relating to the jurisdiction of a court), treat Washington's Birthday as falling on either February 22 or the third Monday in February. For the calendar years 1971, 1972, and 1973, taxpayers may, at their option (except with respect to the performance of any act relating to the jurisdiction of a court), treat Memorial Day as falling on either May 30 or the last Monday in May, and Veterans' Day as falling on either November 11 or the fourth Monday in October. The option is denied to taxpayers in those cases where the performance of an act relates to the jurisdiction of a court in order to be consistent with William M. Winkler, 56 T.C. 844 (1971). In that case the United States Tax Court held that in computing the 150-day filing requirement of section 6213(a) of the Code, Monday, February 15, 1971, was a legal holiday (Washington's Birthday) in the District of Columbia. The Tax Court made no mention of the availability of an option in cases where the performance of an act relates to the jurisdiction of a court.

The proposed regulations did not extend optional treatment to Veterans' Day for 1973 or Washington's Birthday for 1974.

Pursuant to paragraph 4(a) of Treasury Order 221, published in the FEDERAL REGISTER for June 10, 1972 (37 FR 11696), certain regulations of the Internal Revenue Service continue in effect as regulations of the Bureau of Alcohol, Tobacco, and Firearms until superseded or revised. The regulations amended by this Treasury decision are among those that continue to apply for purposes of the laws administered by the Bureau in addition to applying for purposes of the laws administered by the Internal Revenue Service. The Director, Bureau of Alcohol, Tobacco, and Firearms has, for this reason, joined as a signatory to this Treasury decision.

Adoption of amendment to the regulations. On Monday, July 16, 1973, a notice of proposed rulemaking was published in the FEDERAL REGISTER (33 FR 18897) to amend the Regulations on Procedure and Administration (26 CFR Part 301) under section 7503 of the Internal Revenue Code of 1954 in order to conform such regulations to the changes made by Pub. L. 90-363, 82 Stat. 250, which amended 5 U.S.C. 6103(a), regarding the observance of certain legal holidays on Monday. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted:

PARAGRAPH (b)(1) of § 301.7503-1 is amended as set forth below:

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917 (26 U.S.C. 7805)))

REX D. DAVIS,
Director, Bureau of Alcohol,
Tobacco, and Firearms.

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: March 22, 1974.

JOHN H. HALL,
Deputy Assistant Secretary of the
Treasury.

Paragraph (b)(1) of § 301.7503-1 is amended to read as follows:

§ 301.7503-1 Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.

(b) *Legal holidays.* (1) For the purpose of section 7503, the term "legal holiday" includes the legal holidays in the District of Columbia. Such legal holidays found in D.C. Code Ann. § 28-2701 (1967) and 5 U.S.C. 6103(a), as enacted and made effective by the Act of June 28, 1968 (82 Stat. 250), are—

- (i) January 1, New Year's Day,
- (ii) January 20, when such day is Inauguration Day,
- (iii) Third Monday in February, Washington's Birthday,
- (iv) Last Monday in May, Memorial Day,
- (v) July 4, Independence Day,
- (vi) First Monday in September, Labor Day,
- (vii) Second Monday in October, Columbus Day,
- (viii) Fourth Monday in October, Veterans' Day,
- (ix) Fourth Thursday in November, Thanksgiving Day, and
- (x) December 25, Christmas Day.

When a legal holiday in the District of Columbia falls on a Sunday, the next day is a legal holiday in the District of Columbia (see D.C. Code Ann. § 28-2701 (1967)). For the purpose of section 7503, when a legal holiday in the District of Columbia (other than Inauguration Day) falls on a Saturday it shall be treated as falling on the preceding Friday. For calendar years prior to 1971, Washington's Birthday will be treated as falling on February 22, Memorial Day on May 30, and Veterans' Day on November 11. For calendar years 1971, 1972, 1973, and 1974, the taxpayer may, at his option (except with respect to the performance of any act relating to the jurisdiction of a court), treat Washington's Birthday as falling on either February 22 or the third Monday in February. For calendar years 1971, 1972, and 1973, the taxpayer may, at his option (except with respect to the performance of any act relating to the jurisdiction of a court), treat Memorial Day as falling on either May 30 or the last Monday in May, and Veterans' Day as falling on either November 11 or the fourth Monday in October. Columbus Day is not a legal

holiday in the District of Columbia in any calendar year prior to 1971.

[FR Doc. 74-7342 Filed 3-27-74; 8:45 am]

[T. D. 7310]

PART 301—PROCEDURE AND ADMINISTRATION

Disclosure or Use of Information by Preparers of Returns

By a notice of proposed rulemaking appearing in the FEDERAL REGISTER for December 20, 1972 (37 FR 28070), amendments to the Regulations on Procedure and Administration (26 CFR Part 301) were proposed in order to conform the regulations to section 7216 of the Internal Revenue Code of 1954, relating to the disclosure or use of information by preparers of returns, as added by section 316 of the Revenue Act of 1971 (85 Stat. 529). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the proposed amendments of the regulations, subject to the changes indicated below, are adopted by this document.

Section 7216(a) of the Code provides that any person who is engaged in the business of preparing, or providing services in connection with the preparation of, income tax returns or declarations of estimated tax and who discloses any tax return information or uses such information for any purpose other than to prepare, or assist in preparing, a return shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both. Section 7216(a) also applies to any person who for compensation prepares any such return or declaration, whether or not such person is in the tax return preparer business.

Section 7216(b) provides certain exceptions to the new penalty rule. A tax return preparer may without penalty disclose tax return information if such disclosure is made pursuant to any other provision of the Internal Revenue Code or pursuant to an order of a court. The penalty does not apply to the use of information in the preparation of State and local tax returns. Furthermore, the Secretary or his delegate is authorized to prescribe regulations under which other disclosures or uses will not be subject to the penalty.

As published with the notice of proposed rule making, § 301.7216-1 contained in paragraph (a) the general rule for the application of section 7216 and in paragraph (b) detailed definitions of the terms "tax return", "tax return preparer", "tax return processor", and "tax return information". This document makes a technical change in paragraph (a) to make clear that the tax return referred to therein is the return of the taxpayer in respect of whom the information was furnished. Paragraph (b) is revised substantially by this document. The distinction between a tax return preparer and a tax return processor is eliminated. Persons who under the notice of

proposed rule making were defined as tax return processors are included within the new definition of tax return preparers. As a result of this revision, all of the disclosures or uses permitted without formal written consent under § 301.7216-2, and with formal written consent under § 301.7216-3, are applicable to all persons classified as tax return preparers.

Pursuant to the authority granted to the Secretary or his delegate, § 301.7216-2, as set forth in the notice of proposed rule making provided that certain disclosures or uses of tax return information were permitted without the formal written consent of the taxpayer. The taxpayer's attorney was permitted to disclose or use tax return information in connection with the rendering of legal services, such as estate planning, preparation of trial briefs, etc., to the taxpayer. Accountants were permitted to disclose or use tax return information in the preparation of books of account, working papers, and accounting statements or reports, or in the performance of other services for a taxpayer. In addition, other disclosures without the formal written consent of the taxpayer were permitted, such as a disclosure by a tax return preparer to a tax return processor, or a disclosure by one employee to another employee of a tax return preparer or a tax return processor.

A number of changes have been made by this document in proposed § 301.7216-2. Thus, a new paragraph (b) has been added to authorize in appropriate circumstances the disclosure or use, in the preparation of a tax return of one taxpayer, of tax return information furnished by another taxpayer. These situations are limited to those involving related taxpayers having no adverse interest. The rules governing attorneys and accountants have been combined and revised, and specifically extended to corporate fiduciaries, such as trust companies and bank trust departments, with the objective of permitting, without formal written consent of the taxpayer, the disclosure or use of tax return information in the customary and ordinary course of performing the professional or fiduciary services to or for the taxpayer. Another new rule makes clear that a tax return preparer may, without penalty, make tax return information available to the fiduciary of a taxpayer who, after furnishing the information, has become incompetent, insolvent, or bankrupt, or to the fiduciary of the estate of a deceased taxpayer. The rule on disclosure by one employee to another employee of a tax return preparer has been clarified and made applicable to officers and partners. The rule relating to use of information in the preparation of State returns has been expanded to apply to disclosure or use in the preparation or audit of State returns. In addition, the rules on retention of records and compiling of taxpayer lists have been made less restrictive.

Under the notice of proposed rule making, and pursuant to the authority granted to the Secretary or his delegate,

certain disclosures or uses were permitted under § 301.7216-3 only with the formal written consent of the taxpayer. These consents were required to permit tax return preparers to use tax return information in connection with the solicitation of certain additional current business, to allow lawyers and accountants to disclose to third parties, and to permit tax return preparers to use the tax return information of one taxpayer in preparing the tax return of another taxpayer entering into a tax-related transaction with the first. These rules were intended to cover situations where tax return information could not be disclosed or used pursuant to § 301.7216-2.

Section 301.7216-3 has been revised in this document. The rule on solicitation of current business has been revised so that it applies only to matters not related to the Internal Revenue Service. Existing rules in Treasury Department Circular No. 230 (31 CFR 10.30) and Rev. Proc. 68-20, 1968-1 C.B. 812, govern the solicitation of employment in matters related to the Internal Revenue Service. The rule on disclosure to third parties has been expanded to apply to all tax return preparers; it will not apply where disclosure without formal written consent is permitted under § 301.7216-2 in the performance of professional or fiduciary services. The rule on use of tax return information in connection with another person's return has been revised to apply to disclosures or uses where the new § 301.7216-2(b) added by this document does not permit disclosure or use without formal written consent. A revised rule permits the formal consent to be signed by the taxpayer or his duly authorized agent or fiduciary. Two examples affecting certified public accountants have been eliminated from proposed § 301.7216-3(c) since the situations involved will be covered by revised § 301.7216-2(e).

In view of the foregoing, the amendments of the regulations as proposed are hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 301.7216-1, as set forth in the notice of proposed rule making, is changed by deleting subparagraph (3) of paragraph (b), by redesignating subparagraph (4) of paragraph (b) as subparagraph (3), and by revising paragraph (a), subparagraph (2) of paragraph (b), subparagraph (3) of paragraph (b), as so redesignated, and so much of paragraph (b) as precedes subparagraph (1) thereof, to read as set forth below:

PAR. 2. Section 301.7216-2, as set forth in the notice of proposed rulemaking, is changed to read as set forth below:

PAR. 3. Section 301.7216-3, as set forth in the notice of proposed rulemaking, is changed by revising the heading of such section, by revising paragraphs (a) and (b), by deleting examples (2) and (3) in paragraph (c), by redesignating examples (4) and (5) in paragraph (c) as examples (2) and (3), and by revising example (3) as so redesignated, as set forth below:

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917 (26 U.S.C. 7805)))

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: March 25, 1974.

FREDERIC W. HICKMAN,
Assistant Secretary of the
Treasury.

§ 301.7216 Statutory provisions; disclosure or use of information by preparers of returns.

SEC. 7216. Disclosure or use of information by preparers of returns.—(a) *General rule.* Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of the tax imposed by chapter 1, or declarations or amended declarations of estimated tax under section 6015, or any person who for compensation prepares any such return or declaration for any other person, and who—

(1) Discloses any information furnished to him for, or in connection with, the preparation of any such return or declaration, or

(2) Uses any such information for any purpose other than to prepare, or assist in preparing, any such return or declaration, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(b) *Exceptions.*—(1) *Disclosure.* Subsection (a) shall not apply to a disclosure of information if such disclosure is made—

(A) Pursuant to any other provision of this title, or

(B) Pursuant to an order of a court.

(2) *Use.* Subsection (a) shall not apply to the use of information in the preparation of, or in connection with the preparation of, State and local tax returns and declarations of estimated tax of the person to whom the information relates.

(3) *Regulations.* Subsection (a) shall not apply to a disclosure or use of information which is permitted by regulations prescribed by the Secretary or his delegate under this section.

[Sec. 7216 as added by sec. 216, Rev. Act 1971 (85 Stat. 529)]

§ 301.7216-1 Penalty for disclosure or use of tax return information.

(a) *In general.* Section 7216(a) provides in effect that, except as provided in section 7216(b), any tax return preparer (as described in paragraph (b) (2) of this section) who on or after January 1, 1972, discloses or uses any tax return information (as described in paragraph (b) (3) of this section) other than for the specific purpose of preparing, assisting in preparing, or obtaining or providing services in connection with the preparation of, any tax return of the taxpayer by or for whom the information was made available to a tax return preparer, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution. Pursuant to section 7216(b), the provisions of section 7216(a) and this paragraph do not apply to any disclosure or use permitted under § 301.7216-2 or § 301.7216-3.

(b) *Definitions.* For purposes only of section 7216 and §§ 301.7216-1 through 301.7216-3—

(1) *Tax return.* The term "tax return" means any return (or amended return) of the income tax imposed by chapter 1 or 2 of the Code, or any declaration (or amended declaration) of estimated tax made under section 6015.

(2) *Tax return preparer.* (i) The term tax return preparer means any person—

(A) Who is engaged in the business of preparing tax returns,

(B) Who is engaged in the business of providing auxiliary services in connection with the preparation of tax returns,

(C) Who is remunerated for preparing, or assisting in preparing, a tax return for any other person, or

(D) Any individual who, as part of his duties or employment with any person described in (A), (B), or (C) of this subdivision, performs services which assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, a tax return.

For example, assume that a bank is a tax return preparer within the meaning of (A) of this subdivision and it employs one individual to solicit the necessary tax return information for the preparation of a tax return and another individual to prepare the return on the basis of the information that is furnished. Under these circumstances, both employees are tax return preparers. Also, for example, a secretary to a tax return preparer who types or otherwise works on returns prepared by the preparer is a tax return preparer.

(ii) A person is engaged in the business of preparing tax returns as described in subdivision (i) (A) of this subparagraph if, in the course of his business, he holds himself out to taxpayers as a person who prepares tax returns, whether or not tax return preparation is his sole business activity and whether or not he charges a fee for such services.

(iii) A person is engaged in the business of providing auxiliary services in connection with the preparation of tax returns as described in subdivision (i) (B) of this subparagraph if, in the course of his business, he holds himself out to tax return preparers or to taxpayers as a person who performs such auxiliary services, whether or not providing such auxiliary services is his sole business activity and whether or not he charges a fee for such services. For example, a person part or all of whose business is to provide a computerized tax return processing service based on tax return information furnished by another person is a tax return preparer.

(iv) A tax return preparer described in subdivision (i) (C) of this subparagraph includes any person who—

(A) For remuneration but not in the course of a business prepares a tax return for another person, or

(B) For remuneration and on a casual basis helps a relative, friend, or other acquaintance to prepare the latter's tax return.

(v) A person is not a tax return preparer merely because he leases office

space to a tax return preparer, furnishes credit to a taxpayer whose tax return is prepared by a tax return preparer, or otherwise performs some service which only incidentally relates to the preparation of tax returns. For example, assume that a tax return preparer contracts with a department store for the rental of space in the store, and that the store advertises that taxpayers who use the tax return preparation service may charge the cost of having their tax return prepared to their charge account with the department store. Under such circumstances, the department store is not a tax return preparer.

(3) *Tax return information.* The term "tax return information" means any information, including but not limited to a taxpayer's name, address, or identifying number, which is furnished in any form or manner by a taxpayer for, or in connection with, the preparation of a tax return of such taxpayer. Information furnished by a taxpayer includes information which is furnished on behalf of the taxpayer by any person; for example, any person required under section 6012 to make a return for such taxpayer, such as a guardian for a minor, by a duly authorized agent for his principal, by a fiduciary for an estate or trust, or by a receiver, trustee in bankruptcy, or assignee for a corporation.

§ 301.7216-2 Disclosure or use without formal consent of taxpayer.

(a) *Disclosure pursuant to other provisions of Internal Revenue Code.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to any disclosure of tax return information if such disclosure is made pursuant to any other provision of the Code or the regulations thereunder. Thus, for example, the provisions of such sections do not apply to a disclosure pursuant to section 7269 to an officer or employee of the Internal Revenue Service of information concerning the estate of a decedent or a disclosure pursuant to section 7602 to an officer or employee of the Internal Revenue Service of books, papers, records, or other data which may be relevant to the liability of any person for the income tax.

(b) *Disclosure or use of information in the case of related taxpayers.* (1) A tax return preparer may use, in preparing a tax return of a second taxpayer, and may disclose to such second taxpayer in the form in which it appears on such return, any tax return information which the preparer obtained from a first taxpayer if—

(i) The second taxpayer is related to the first taxpayer within the meaning of subparagraph (2) of this paragraph.

(ii) The first taxpayer's tax interest in such information is not adverse to the second taxpayer's tax interest in such information, and

(iii) The first taxpayer has not expressly prohibited such disclosure or use.

(2) For purposes of subparagraph (1) (i) of this paragraph, one taxpayer is related to another taxpayer if they have any one of the following relationships:

husband and wife, child and parent, grandchild and grandparent, partner and partnership, trust or estate and beneficiary, trust or estate and fiduciary, corporation and shareholder, or members of a controlled group of corporations as defined in section 1563.

(3) See § 301.7216-3(a) (3) for disclosure or use of tax return information of the taxpayer in preparing the tax return of a second taxpayer where the requirements of this paragraph are not satisfied.

(c) *Disclosure pursuant to court order.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to any disclosure of tax return information if such disclosure is made pursuant to the order of any court of record, Federal, State, or local, clearly identifying the information to be disclosed.

(d) *Disclosure for use in revenue investigations or court proceedings.* A tax return preparer may disclose tax return information (1) to his attorney, or to an employee of the Internal Revenue Service, for use in connection with an investigation of such tax return preparer conducted by the Internal Revenue Service or (2) to his attorney, or to any officer of a court, for use in connection with proceedings involving such tax return preparer before the court.

(e) *Attorneys and accountants.* A tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer to or for whom it renders legal or accounting services may disclose or use the tax return information of such taxpayer in the ordinary course of rendering such legal or accounting services to or for such taxpayer. Thus, for example, a lawyer who prepares a tax return for a taxpayer to or for whom he renders legal services may disclose or use the tax return information of the taxpayer for, or in connection with, the rendering of legal services, such as estate planning or administration, or preparation of trial briefs or trust instruments, to the taxpayer or his estate. In further illustration, an accountant who prepares a tax return for a taxpayer to or for whom he renders accounting services may disclose or use the tax return information of the taxpayer for, or in connection with, the preparation of books of account, working papers, or accounting statements or reports of the taxpayer and, in the normal course of rendering such accounting services to or for the taxpayer, may, with the express or implied consent of the taxpayer, make such tax return information available to stockholders, management, suppliers, lenders, or other third parties.

(f) *Corporate fiduciaries.* A trust company, trust department of a bank, or other corporate fiduciary which prepares a tax return for a taxpayer to or for whom it renders fiduciary, investment, or other custodial or management services may (1) disclose or use the tax return information of such taxpayer in the ordinary course of rendering such services to or for the taxpayer or (2), with

the express or implied consent of the taxpayer, make such information available to the taxpayer's attorney, accountant, or investment advisor.

(g) *Disclosure to taxpayer's fiduciary.* If after furnishing tax return information to a tax return preparer the taxpayer dies or becomes incompetent, insolvent, or bankrupt, or his assets are placed in conservatorship or receivership, the tax return preparer may disclose such information to the duly appointed fiduciary of the taxpayer or his estate, or to the duly authorized agent of such fiduciary.

(h) *Disclosure by tax return preparer to tax return processor.* A tax return preparer may disclose tax return information of a taxpayer to another tax return preparer described in § 301.7216-1(b) (2) (i) (B) for the purpose of having the second tax return preparer transfer that information to, and compute the tax liability on, a tax return of such taxpayer by means of electronic, mechanical, or other form of tax return processing service.

(i) *Disclosure by one officer, employee, or member to another officer, employee, or member.* An officer, employee, or member of a tax return preparer may transfer any tax return information to another officer, employee, or member of the same tax return preparer for the purpose of performing services which assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, the tax return of a taxpayer by or for whom the information was furnished.

(j) *Identical information obtained from other sources.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to the disclosure or use by a tax return preparer of information which is identical to any tax return information which has been furnished to him if such identical information was obtained otherwise than in connection with the preparation of, or providing auxiliary services in connection with the preparation of, a tax return.

(k) *Disclosure or use of information in preparation or audit of State returns.* The provisions of section 7216(a) and § 301.7216-1 shall not apply to the disclosure or use by any tax return preparer of any tax return information in the preparation or audit of, or in connection with the preparation or audit of, any tax return or declaration of estimated tax required of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, or of any possession of the United States.

(l) *Retention of records.* A tax return preparer may retain tax return information of a taxpayer, including copies of tax returns or data processing tapes prepared on the basis of such tax return information, and may use such information in connection with the preparation of other tax returns of the taxpayer or in connection with an audit by the Internal Revenue Service of any tax return. The provisions of paragraph (m) of this section respecting the transfer of a tax-

payer list apply also to the transfer of any records and related workpapers to which this paragraph applies.

(m) *Lists for solicitation of tax return business.* Any tax return preparer may compile and maintain a separate list containing the names and address of taxpayers whose tax returns he has prepared or processed. This list may be used by the compiler solely to contact the taxpayers on the list for the purpose of offering tax information or additional tax return preparation services to such taxpayers. The compiler of the list may not transfer the taxpayer list, or any part thereof, to any other person unless such transfer takes place in conjunction with the sale or other disposition of the tax return preparation business of such compiler. A person who acquires a taxpayer list, or a part thereof, in conjunction with such a sale or other disposition shall be subject to the provisions of this paragraph with respect to such list as if he had been the compiler of such list. The term "list", as used in this paragraph, includes any record or system whereby the names and addresses of taxpayers are retained.

§ 301.7216-3 Disclosure or use only with formal consent of taxpayer.

(a) *Written consent to use or disclosure—(1) Solicitation of other business.*

(i) If a tax return preparer has obtained from the taxpayer a consent described in paragraph (b) of this section, he may use the tax return information of such taxpayer to solicit from the taxpayer any additional current business, in matters not related to the Internal Revenue Service, which the tax return preparer provides and offers to the public. The request for such consent may not be made later than the time the taxpayer receives his completed tax return from the tax return preparer. If the request is not granted, no follow up request may be made. This authorization to use the tax return information of the taxpayer does not apply, however, for purposes of facilitating the solicitation of the taxpayer's use of any services or facilities furnished by a person other than the tax return preparer, unless such other person and the tax return preparer are members of the same affiliated group within the meaning of section 1504. Thus, for example, the authorization would not apply if the other person is a corporation which is owned or controlled directly or indirectly by the same interests which own or control the tax return preparer but which is not affiliated with the tax return preparer within the meaning of section 1504(a). Moreover, this authorization does not apply for purposes of facilitating the solicitation of additional business to be furnished at some indefinite time in the future, as, for example, the future sale of mutual fund shares or life insurance, or the furnishing of future credit card services. It is not necessary, however, that the additional business be furnished in the same locality in which the tax return information is furnished.

(ii) For prohibition against solicitation of employment in matters related to the Internal Revenue Service, see 31 CFR 10.30 (Treasury Department Circular No. 230) and § 7 of Rev. Proc. 68-20, 1968-1 C.B. 812.

(2) *Permissible disclosures to third parties.* If a tax return preparer has obtained from a taxpayer a consent described in paragraph (b) of this section, he may disclose the tax return information of such taxpayer to such third persons as the taxpayer may direct. However, see § 301.7216-2 for certain permissible disclosures without formal written consent.

(3) *Disclosure or use of information in connection with another person's return.* A tax return preparer may disclose or use any tax return information, which was obtained from a first taxpayer, in preparing a tax return of a second taxpayer if the tax return preparer has obtained from the first taxpayer a written consent described in paragraph (b) of this section. See § 301.7216-2(b) for disclosure or use in certain cases without formal consent.

(b) *Form of consent.* A separate written consent, signed by the taxpayer or his duly authorized agent or fiduciary, must be obtained for each separate use or disclosure authorized in paragraph (a) (1), (2) or (3) of this section and shall contain—

(1) The name of the tax return preparer,

(2) The name of the taxpayer,

(3) The purpose for which the consent is being furnished,

(4) The date on which such consent is signed,

(5) A statement that the tax return information may not be disclosed or used by the tax return preparer for any purpose (not otherwise permitted under § 301.7216-2) other than that stated in the consent, and

(6) A statement by the taxpayer, or his agent or fiduciary, that he consents to the disclosure or use of such information for the purpose described in subparagraph (3) of this paragraph.

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

Example (1). In order to stimulate the making of loans, a bank advertises that it is in the business of preparing tax returns. A taxpayer goes to the bank to have his tax return prepared. After the return has been completed by the bank, the employee of the bank who obtained the tax return information from the taxpayer explains that the taxpayer owes an additional \$400 in taxes and that the bank's loan department may be able to offer the taxpayer a loan to pay the tax due. If the taxpayer decides to accept the opportunity offered to apply for a loan, the bank must first have the taxpayer execute a written consent described in paragraph (b) of this section for the bank to use any of such information which is required in determining whether to make the tax loan.

Example (2). An individual who sells life insurance and shares in a mutual fund is

also in the business of preparing tax returns. A taxpayer who has gone to the individual to have his tax return prepared is requested, at the time he picks up his completed tax return, to give his consent to the individual's use of his tax return information in connection with such individual's solicitation of the taxpayer's purchasing a life insurance policy and shares in the mutual fund. Before the individual may use such tax return information as a basis for soliciting such additional business from the taxpayer, the taxpayer must execute separate written consents under paragraph (b) of this section, one authorizing the use of such information as a basis for soliciting the sale of the mutual fund shares and a second authorizing the use of such information as a basis for soliciting the sale of the life insurance.

Example (3). The facts are the same as in example (2) except that the individual does not sell life insurance but does sell shares in several mutual funds. If the request is for the purpose of using the tax return information as a basis for soliciting the sale at one time of shares in mutual funds A and B, only one written consent under paragraph (b) of this section is required of the taxpayer. If, however, the request is for the purpose of using the tax return information as a basis for soliciting the sale of shares in fund A at one time, and the sale of shares in fund B at a later time, two written consents under such paragraph are required of the taxpayer.

[FR Doc.74-7343 Filed 3-27-74;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 73-100R]

PILOT RULES FOR THE GREAT LAKES AND INLAND WATERS

Lights and Day Signals; Passing a Floating Plant; Pilot Vessels

These amendments to the Pilot Rules for the Great Lakes add regulations for—

- a. Lights and day signals for vessels, dredges, and vessels working on wrecks and obstructions, etc.;
- b. Passing a floating plant working in a navigable channel; and
- c. Lights for Great Lakes pilot vessels.

These regulations are identical to the regulations in Part 201 of Title 33 which are administered by the U.S. Army Corps of Engineers. The Corps of Engineers has revoked Part 201 in the FEDERAL REGISTER of May 16, 1973 (38 FR 12804). The effective date of that revocation is the effective date of the regulations published in this document.

Though Part 201 applies to both the Great Lakes and Western Rivers, the regulations in this document apply only to the Great Lakes. Sections 95.52 through 95.66 of the Pilot Rules for Western Rivers already contain regulations similar to those in Part 201.

These amendments are based on a notice of proposed rulemaking published in the Wednesday, August 1, 1973, issue of the FEDERAL REGISTER (38 FR 20467). Interested parties were invited to comment on the proposal. No comments in response to the notice of proposed rulemaking were received. Accordingly, the proposed amendments are adopted in

this document without substantive change.

The proposed regulations were numbered in the notice of proposed rulemaking as §§ 90.31 through 90.46. In this document they have been renumbered as §§ 90.22 through 90.37 to provide organization that is consistent with the organization of the Pilot Rules in Part 80 and Part 95 of Title 33. To accomplish the renumbering of these regulations, the present §§ 90.22 through 90.30 in Part 90 are renumbered as §§ 90.38 through 90.46.

This document also deletes the footnotes in Title 33 that immediately precede § 80.18 of Part 80 and § 95.51 of Part 95. These footnotes explained that some of the Pilot Rules for the Great Lakes were contained in Part 201. Notice and public procedure on these amendments to Part 80 and Part 95 are unnecessary because the amendments are clerical in nature and do not amend any regulations.

In accordance with the foregoing, Chapter I of Title 33 of the Code of Federal Regulations is amended as follows:

PART 80—PILOT RULES FOR INLAND WATERS

1. The Note immediately preceding § 80.18 and following the centerhead after § 80.17 entitled "Lights and Day Signals For Vessels, Dredges of All Types, And Vessels Working on Wrecks and Obstructions, Etc." is deleted.

(Sec. 1, Pub. L. 85-656, 72 Stat. 612 (33 U.S.C. 157); Sec. 6, Pub. L. 89-670, 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b))

PART 90—PILOT RULES FOR THE GREAT LAKES

2. Sections 90.22 through 90.30 grouped under the centerhead entitled MISCELLANEOUS are redesignated as §§ 90.38 through 90.46 and grouped under the same centerhead.

3. New §§ 90.22 through 90.37 to be grouped under the centerhead entitled "Lights and Day Signals for Vessels, Dredges, and Vessels Working on Wrecks and Obstructions, Etc." are added to read as follows:

LIGHTS AND DAY SIGNALS FOR VESSELS, DREDGES, AND VESSELS WORKING ON WRECKS AND OBSTRUCTIONS, ETC.

Sec.

90.22 Signals to be displayed by a towing vessel when towing a submerged or partly submerged object upon a hawser when no signals can be displayed upon the object which is towed.

90.23 Steam vessels, derrick boats, lighters, or other types of vessels made fast alongside a wreck, or moored over a wreck which is on the bottom or partly submerged, or which may be drifting.

90.24 Dredges held in stationary position by moorings or spuds.

90.25 Self-propelling suction dredges under way and engaged in dredging operations.

90.26 Vessels moored or anchored and engaged in laying cables or pipe, submarine construction, excavation, mat sinking, bank grading, dike construction, revetment, or other bank protection operations.

90.27 Lights to be displayed on pipelines.

90.28 Lights generally.

90.29 Vessels moored or at anchor.

PASSING FLOATING PLANT WORKING IN NAVIGABLE CHANNELS

- 90.30 Passing signals.
- 90.31 Speed of vessels passing floating plant working in channels.
- 90.32 Light-draft vessels passing floating plant.
- 90.33 Aids to navigation marking floating-plant moorings.
- 90.34 Obstruction of channel by floating plant.
- 90.35 Clearing of channels.
- 90.36 Protection of marks placed for the guidance of floating plant.
- 90.37 Lights for Great Lakes pilot vessels.

AUTHORITY: Sec. 3, 28 Stat. 649, as amended (33 U.S.C. 243); Sec. 6(b)(1), Pub. L. 89-670, 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 40 CFR 1.46(b), unless otherwise noted.

LIGHTS AND DAY SIGNALS FOR VESSELS, DREDGES, AND VESSELS WORKING ON WRECKS AND OBSTRUCTIONS, ETC.

§ 90.22 Signals to be displayed by a towing vessel when towing a submerged or partly submerged object upon a hawser when no signals can be displayed upon the object which is towed.

(a) The vessel having the submerged object in tow shall display by day, where they can best be seen, two shapes, one above the other, not less than six feet apart, the lower shape to be carried not less than 10 feet above the deck house. The shapes shall be in the form of a double frustrum of a cone, base to base, not less than two feet in diameter at the center nor less than eight inches at the ends of the cones, and to be not less than four feet lengthwise from end to end, the upper shape to be painted in alternate horizontal stripes of black and white, eight inches in width, and the lower shape to be painted a solid bright red.

(b) By night the towing vessel shall display the regular side lights, but in lieu of the regular white towing lights shall display four lights in a vertical position not less than three feet nor more than six feet apart, the upper and lower of such lights to be white, and the two middle lights to be red, all of such lights to be of the same character as the regular towing lights.

§ 90.23 Steam vessels, derrick boats, lighters, or other types of vessels made fast alongside a wreck, or moored over a wreck which is on the bottom or partly submerged, or which may be drifting.

(a) Steam vessels, derrick boats, lighters, or other types of vessels made fast alongside a wreck, or moored over a wreck which is on the bottom or partly submerged, or which may be drifting, shall display by day two shapes of the same character and dimensions and displayed in the same manner as required by § 90.22(a), except that both shapes shall be painted a solid bright red, but where more than one vessel is working under the above conditions, the shapes need be displayed only from one vessel on each side of the wreck from which they can best be seen from all directions.

(b) By night this situation shall be indicated by the display of a white light from the bow and stern of each outside vessel or lighter not less than six feet above the deck, and in addition thereto there shall be displayed in a position where they can best be seen from all directions two red lights carried in a vertical line not less than three feet nor more than six feet apart, and not less than 15 feet above the deck.

§ 90.24 Dredges held in stationary position by moorings or spuds.

(a) Dredges which are held in stationary position by moorings or spuds shall display by day two red balls not less than two feet in diameter and carried in a vertical line not less than three feet nor more than six feet apart, and at least 15 feet above the deck house and in a position where they can best be seen from all directions.

(b) By night they shall display a white light at each corner, not less than six feet above the deck, and in addition thereto there shall be displayed in a position where they can best be seen from all directions two red lights carried in a vertical line not less than three feet nor more than six feet apart, and not less than 15 feet above the deck. When scows are moored alongside a dredge in the foregoing situation they shall display a white light on each outboard corner, not less than six feet above the deck.

§ 90.25 Self-propelling suction dredges under way and engaged in dredging operations.

(a) Self-propelling suction dredges under way and engaged in dredging operations shall display by day two black balls not less than two feet in diameter and carried in a vertical line not less than 15 feet above the deck house, and where they can best be seen from all directions. The term "dredging operations" shall include maneuvering into or out of position at the dredging site, but shall not include proceeding to and from the site.

(b) By night they shall carry, in addition to the regular running lights, two red lights of the same character as the white masthead light and in a vertical line beneath that light, the red lights to be not less than three feet nor more than six feet apart and the upper red light to be not less than four feet nor more than six feet below the masthead light, and on or near the stern two red lights in a vertical line not less than four feet nor more than six feet apart, to show through four points of the compass; that is, from right astern to two points on each quarter.

§ 90.26 Vessels moored or anchored and engaged in laying cables or pipe, submarine construction, excavation, mat sinking, bank grading, dike construction, revetment, or other bank protection operations.

(a) Vessels which are moored or anchored and engaged in laying cables or pipe, submarine construction, excavation, mat sinking, bank grading, dike

construction, revetment, or other bank protection operations, shall display by day, not less than 15 feet above the deck, where they can best be seen from all directions, two balls not less than two feet in diameter, in a vertical line not less than three feet nor more than six feet apart, the upper ball to be painted in alternate black and white vertical stripes six inches wide, and the lower ball to be painted a solid bright red.

(b) By night they shall display three red lights, carried in a vertical line not less than three feet nor more than six feet apart, in a position where they can best be seen from all directions, with the lowermost light not less than 15 feet above the deck.

(c) Where a stringout of moored vessels or barges is engaged in the operations, three red lights carried as prescribed in paragraph (b) of this section shall be displayed at the channelward end of the stringout. Where the stringout crosses the navigable channel and is to be opened for the passage of vessels, the three red lights shall be displayed at each side of the opening instead of at the outer end of the stringout. There shall also be displayed upon such stringout one horizontal row of amber lights not less than six feet above the deck, or above the deck house where the craft carries a deck house, in a position where they can best be seen from all directions, spaced not more than 50 feet apart so as to mark distinctly the entire length and course of the stringout.

§ 90.27 Lights to be displayed on pipe lines.

Pipe lines attached to dredges, and either floating or supported on trestles, shall display by night one row of amber lights not less than eight feet nor more than 12 feet above the water, about equally spaced and in such number as to mark distinctly the entire length and course of the line, the intervals between lights where the line crosses navigable channels to be not more than 30 feet. There shall also be displayed on the shore or discharge end of the line two red lights, three feet apart, in a vertical line with the lower light at least eight feet above the water, and if the line is to be opened at night for the passage of vessels, a similar arrangement of lights shall be displayed on each side of the opening.

§ 90.28 Lights generally.

(a) All the lights required by §§ 90.22 to 90.27, except as provided in §§ 90.22 (b) and 90.25 (b), shall be of such character as to be visible on a dark night with a clear atmosphere for a distance of at least two miles.

(b) The lights required by § 90.22 (b) to be of the same character as the regular towing lights, and the lights required by § 90.25 (b) to be of the same character as the masthead light, shall be of such character as to be visible on a dark night with a clear atmosphere for a distance of at least five miles.

(c) All floodlights or headlights which may interfere with the proper navigation

of an approaching vessel shall be so shielded that the lights will not blind the pilot of such vessel.

§ 90.29 Vessels moored or at anchor.

Vessels of more than 65 feet in length when moored or anchored in a fairway or channel shall display between sunrise and sunset on the forward part of the vessel where it can best be seen from other vessels one black ball not less than two feet in diameter.

PASSING FLOATING PLANT WORKING IN NAVIGABLE CHANNELS

§ 90.30 Passing signals.

(a) Vessels intending to pass dredges or other types of floating plant working in navigable channels, when within a reasonable distance therefrom and not in any case over a mile, shall indicate such intention by one long blast of the whistle, and shall be directed to the proper side for passage by the sounding, by the dredge or other floating plant, of the signal prescribed in the local pilot rules for vessels under way and approaching each other from opposite directions, which shall be answered in the usual manner by the approaching vessel. If the channel is not clear, the floating plant shall sound the alarm or danger signal and the approaching vessel shall slow down or stop and await further signal from the plant.

(b) When the pipe line from a dredge crosses the channel in such a way that an approaching vessel cannot pass safely around the pipe line or dredge, there shall be sounded immediately from the dredge the alarm or danger signal and the approaching vessel shall slow down or stop and await further signal from the dredge. The pipe line shall then be opened and the channel cleared as soon as practicable; when the channel is clear for passage the dredge shall so indicate by sounding the usual passing signal as prescribed in paragraph (a) of this section. The approaching vessel shall answer with a corresponding signal and pass promptly.

(c) When any pipe line or swinging dredge shall have given an approaching vessel or tow the signal that the channel is clear, the dredge shall straighten out within the cut for the passage of the vessel or tow.

NOTE: The term "floating plant" as used in §§ 90.30 to 90.36, includes dredges, derrick boats, snag boats, drill boats, pile drivers, maneuver boats, hydraulic graders, survey boats, working barges, and mat sinking plant.

§ 90.31 Speed of vessels passing floating plant working in channels.

Vessels, with or without tows, passing floating plant working in channels, shall reduce their speed sufficiently to insure the safety of both the plant and themselves, and when passing within 200 feet of the plant their speed shall not exceed five miles per hour. While passing over lines of the plant, propelling machinery shall be stopped.

§ 90.32 Light-draft-vessels passing floating plant.

Vessels whose draft permits shall keep outside the buoys marking the ends of mooring lines of floating plant working in channels.

§ 90.33 Aids to navigation marking floating-plant moorings.

Breast, stern, and bow anchors of floating plant working in navigable channels shall be marked by barrel or other suitable buoys. By night approaching vessels shall be shown the location of adjacent buoys by throwing a suitable beam of light from the plant on the buoys until the approaching vessel has passed, or the buoys may be lighted by red lights, visible in all directions, of the same character as specified in § 90.28(a).

§ 90.34 Obstruction of channel by floating plant.

Channels shall not be obstructed unnecessarily by any dredging or other floating plant. While vessels are passing such plant all lines running therefrom across the channel on the passing side which may interfere with or obstruct navigation shall be slack to the bottom of the channel.

§ 90.35 Clearing of channels.

When special or temporary regulations have not been prescribed and action under the regulations contained in §§ 90.30 to 90.34 will not afford clear passage, floating plant in narrow channels shall, upon notice, move out of the way of vessels a sufficient distance to allow them a clear passage. Vessels desiring passage shall, however, give the master of the floating plant ample notice in advance of the time they expect to pass.

NOTE: If it is necessary to prohibit or limit the anchorage or movement of vessels within certain areas in order to facilitate the work of improvement, application should be made through official channels for establishment by the Secretary of the Army of special or temporary regulations for this purpose.

§ 90.36 Protection of marks placed for the guidance of floating plant.

Vessels shall not run over anchor buoys, or buoys, stakes, or other marks placed for the guidance of floating plant working in channels; and shall not anchor on the ranges of buoys, stakes, or other marks placed for the guidance of such plant.

§ 90.37 Lights for Great Lakes pilot vessels.

(a) A power driven pilot vessel when engaged on pilotage duty and under way:

(1) Shall carry a white light at the masthead at a height of not less than 20 feet above the hull, visible all round the horizon at a distance of at least 3 miles and at a distance of 8 feet below it a red light similar in construction and character. If such a vessel is of less than 65 feet in length the vessel may carry the white light at a height of not less than 9 feet above the gunwale and

the red light at a distance of 4 feet below the white light.

(2) Shall carry the sidelights prescribed by Great Lakes Rule 3 (33 U.S.C. 252) or by the Act of April 25, 1940 (46 U.S.C. 526b), as appropriate, and a white light at the stern showing an unbroken light over an arc of the horizon of 135°, so fixed as to show the light 67½° from right aft on each side of the vessel, and of such a character as to be visible at a distance of at least 2 miles.

(3) Shall show one or more flareup lights at intervals not exceeding 10 minutes. An intermittent white light visible all round the horizon may be used in lieu of flareup lights.

(b) A sailing pilot vessel when engaged on pilotage duty and underway:

(1) Shall carry a white light at the masthead visible all round the horizon at a distance of at least 3 miles.

(2) Shall be provided with the sidelights prescribed in paragraph (a) (2) of this section or the portable lanterns prescribed by Great Lakes Rule 8 (33 U.S.C. 257), as appropriate, and shall, on the near approach of or to other vessels, have such lights ready for use, and shall show them at short intervals to indicate the direction in which the pilot vessel is heading, but the green light shall not be shown on the port side nor the red light on the starboard side. The vessel shall also carry the stern light prescribed in paragraph (a) (2) of this section.

(3) Shall show one or more flareup lights at intervals not exceeding 10 minutes.

(c) A pilot vessel when engaged on pilotage duty and not under way shall carry the lights and show the flares prescribed in paragraph (a) (1) and (3) or (b) (1) and (3) of this section, as appropriate, and if at anchor shall also carry the anchor lights prescribed in Great Lakes Rule 9 (33 U.S.C. 253).

(d) A pilot vessel when not engaged on pilotage duty shall show the lights or shapes for a similar vessel of the same length.

PART 95—PILOT RULES FOR WESTERN RIVERS

4. The Note immediately preceding § 95.51 and following the centerhead after § 95.45 entitled "Lights and Day Signals for Vessels, Dredges of All Types, and Vessels Workin on Wrecks and Obstructions, Etc." is deleted.

Effective date. March 29, 1974.

Dated: March 22, 1974.

C. R. BENDER,
Admiral, U.S. Coast Guard,
Commandant.

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[CGD 73-124 R]

PART 110—ANCHORAGE REGULATIONS
Special Anchorage Area, Basin Point,
Potts Harbor, Maine

This amendment to the Anchorage regulations is based on a notice of pro-

posed rulemaking published in the June 19, 1973, issue of the FEDERAL REGISTER (38 FR 15970). The amendment establishes a special anchorage area in the vicinity of Basin Point in Potts Harbor near South Harpswell, Maine. In special anchorage areas, vessels under 65 feet in length, when at anchor, are not required to carry or exhibit anchor lights.

The establishment of a special anchorage area merely relaxes the lighting requirements of vessels at anchor, and does not impact on the use of the area in any other way.

Twelve comments were received as a result of the proposal. Eight of the comments expressed no objection to the proposal.

The United States Environmental Protection Agency, Boston, Massachusetts, recommended that the applicant be advised that he must conform at all times with applicable State and Federal Water Quality Standards. The Coast Guard issued a notice of proposed rulemaking on March 1, 1974 (39 FR 8038) concerning rules governing the design, construction, installation, and operation of marine sanitation devices. Comments were requested to be submitted prior to May 14, 1974. Under section 312 of the Federal Water Pollution Control Act (FWPCA), the Environmental Protection Agency (EPA) has promulgated Federal standards of performance for marine sanitation devices, which are required by the Act to be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities.

Another comment was received objecting to the proposal on the grounds that more boats in the area would mean more pollution and more gas and oil spilled. The requirement of the Marine Sanitation Devices will overcome the pollution problem. There is a federal law which prohibits the discharge of gas and oil into the navigable waters of the United States.

The State of Maine, Department of Inland Fisheries and Game voiced no objection to the proposal provided no dredging is conducted. Any dredging planned in the area would require the approval of the Corps of Engineers and require an Environmental Impact Statement.

One person questioned the description of the anchorage and also suggested that opinions of the property owners in the vicinity of the special anchorage area be obtained. The individual also stated that he was not in favor of having a marina controlling waters beyond its land boundaries. The Commander, First Coast Guard District replied to the commenter explaining the description of the proposed anchorage area. The individual was further advised that the local control and administration of the anchorage would lie with the town of Harpswell Harbor Master and not with the local marina.

With respect to the opinions of local property owners, the Commander, First