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CFR SUPPLEMENTS

(For use during 1955)

The following Supplements are now available:

Title 7: Part 900 to end (\$2.25)
Title 8 (\$0.45)

Previously announced: Title 3, 1954 Supp. (\$1.75); Title 7: Parts 1-209 (\$0.60); Title 9 (\$0.65); Titles 10-13 (\$0.50); Title 14: Parts 1-399 (\$2.25); Part 400 to end (\$0.65); Title 16 (\$1.25); Title 18 (\$0.50); Title 19 (\$0.40); Title 20 (\$0.75); Titles 22-23 (\$0.75); Title 24 (\$0.75); Title 25 (\$0.50); Titles 28-29 (\$1.25); Titles 30-31 (\$1.25); Titles 35-37 (\$0.75); Titles 40-42 (\$0.50); Titles 44-45 (\$0.75); Title 49: Parts 1-70 (\$0.60); Parts 71-90 (\$0.75); Parts 91-164 (\$0.50); Part 165 to end (\$0.60)

Order from Superintendent of Documents, Government Printing Office, Washington 25, D. C.

CONTENTS—Continued

Commodity Credit Corporation	Page
Rules and regulations:	
Grain Sorghums Loan and Purchase Agreement Program, 1955-Crop.....	3701
Defense Department	
Rules and regulations:	
Armed Services Procurement Regulations; miscellaneous amendments.....	3727

CONTENTS—Continued

Federal Communications Commission	Page
Notices:	
Bartlett and Reed Management and Blackhills Video Co.; designation of applications for hearing.....	3779
Chief Hearing Examiner; delegation of certain authorities presently delegated to Motions Commissioner and Hearing Examiner.....	3779
Federal Power Commission	
Notices:	
Hearings, etc.:	
El Paso Electric Co.....	3780
Eugene, Oreg.....	3781
Josey, Lenoir M., Inc., et al.....	3781
Luz y Fuerza de Reynosa S. A. and Central Power and Light Co.....	3780
Transcontinental Gas Pipeline Corp.....	3780
Federal Trade Commission	
Proposed rule making:	
Corset, brassiere and allied products industry; hearing..	3778
Indian Affairs Bureau	
Rules and regulations:	
Siletz Indians, enrollment of Confederated Tribes of.....	3738
Interior Department	
See Indian Affairs Bureau; Land Management Bureau.	
Internal Revenue Service	
Proposed rule making:	
Contract coverage of employees of foreign subsidiaries.....	3738
Interstate Commerce Commission	
Notices:	
Fourth section applications for relief.....	3781
Rules and regulations:	
Special rules of practice governing procedure of Board of Suspension and Fourth Section Board.....	3701
Justice Department	
See Alien Property Office.	
Land Management Bureau	
Rules and regulations:	
Public land orders:	
Alaska.....	3701
New York.....	3701
Maritime Administration	
Notices:	
Pacific Far East Line, Inc.; application.....	3779
Railroad Retirement Board	
Rules and regulations:	
Miscellaneous amendments to chapter.....	3706
Securities and Exchange Commission	
Notices:	
Maine Central Railroad Co.; application to withdraw from listing and registration, and of opportunity for hearing....	3782

CONTENTS—Continued

Treasury Department	Page
See also Internal Revenue Service.	
Proposed rule making:	
Gold regulations; record retention requirement.....	3744
CODIFICATION GUIDE	
A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.	
Title 3	Page
Chapter II (Executive orders):	
7941 (revoked by PLO 1152)....	3701
10614.....	3699
Title 6	
Chapter IV:	
Part 421.....	3701
Title 7	
Chapter I:	
Part 201 (proposed).....	3745
Chapter IX:	
Part 945 (proposed).....	3760
Part 1003 (proposed).....	3777
Title 14	
Chapter I:	
Part 4b (proposed).....	3777
Part 40 (proposed).....	3777
Part 41 (proposed).....	3777
Part 42 (proposed).....	3777
Part 43 (proposed).....	3777
Part 45 (proposed).....	3777
Chapter II:	
Part 609.....	3733
Title 16	
Chapter I (proposed).....	3778
Title 20	
Chapter II:	
Part 203.....	3706
Part 204.....	3706
Part 208.....	3706
Part 209.....	3707
Part 210.....	3707
Part 214.....	3708
Part 217.....	3708
Part 220.....	3708
Part 222.....	3709
Part 225.....	3710
Part 232.....	3711
Part 234.....	3712
Part 236.....	3713
Part 237.....	3713
Part 238.....	3723
Part 239.....	3724
Part 240.....	3725
Part 262.....	3726
Part 266.....	3727
Title 25	
Chapter I:	
Part 57.....	3738
Title 26 (1954)	
Chapter I:	
Part 1 (proposed).....	3738
Part 36 (proposed).....	3738
Title 31	
Chapter I:	
Part 54 (proposed).....	3744
Title 32	
Chapter I:	
Part 3.....	3727
Part 4.....	3731
Part 5.....	3731

CODIFICATION GUIDE—Con.

TITLE 32—Continued	Page
Chapter I—Continued	
Part 7-----	3732
Part 8-----	3732
Title 43	
Chapter I (Public land orders):	
255 (see PLO 1153)-----	3701
1152-----	3701
1153-----	3701
Title 49	
Chapter I:	
Part 1-----	3701

the employee's general-average contribution shall not exceed the proportion that the applicable limitation, by weight or volume, bears to the total quantity, by weight or volume, of the household goods shipped.

SEC. 4. *Effective date.* This order shall be effective in any case in which the loss involved occurs, or has occurred, on or after June 4, 1954.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
May 25, 1955.

[F. R. Doc. 55-4341; Filed, May 26, 1955;
8:22 a. m.]

RULES AND REGULATIONS

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix C—Public Land Orders
[Public Land Order 1152]

NEW YORK

REVOCATION OF EXECUTIVE ORDER NO. 7941, OF AUGUST 2, 1938, ESTABLISHING THE FORT TYLER MIGRATORY BIRD REFUGE

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Executive Order No. 7941, of August 2, 1938, reserving the following-described area, on Gardiners Island, Suffolk County, New York, for use of the Department of Agriculture as a refuge and breeding ground for migratory birds and other wildlife, to be known as the Fort Tyler Migratory Bird Refuge, is hereby revoked:

The property known as the Fort Tyler Military reservation bounding on Gardiners Bay, and more definitely described as follows:

All that part of the north point of Gardiners Island lying northwest of a line described and running as follows: Starting from a stake on a sand ridge and running thence north 56 degrees east, and south 56 degrees west, to the waters on each side of said point, or beach, respectively, and bounded north, east, and west by the waters

of Gardiners Bay, and southeasterly by the beach at the aforesaid line.

The area as described contains approximately 14 acres.

The land has been transferred by the General Services Administration to the Department of the Navy pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, 41 U. S. C. sup. 211) as amended.

FRED G. AANDAHL,

Assistant Secretary of the Interior.

MAY 23, 1955.

[F. R. Doc. 55-4289; Filed, May 26, 1955;
8:46 a. m.]

[Public Land Order 1153]

ALASKA

WITHDRAWING PUBLIC LANDS FOR USE OF THE DEPARTMENT OF THE ARMY FOR MILITARY PURPOSES

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and the mineral-leasing laws, and reserved for the use of the Department of the Army in connection with the lands withdrawn by Public Land Order No. 255 of December 15, 1944:

Beginning at U. S. C. & G. S. Station "Big Delta Airport"; thence N. 4° 55' 47.300" E., 11,997.64 feet; thence East 10,560.00 feet; thence South 18,680.00 feet to the True Point of beginning, thence, east 1,000 feet; south 7,000 feet; west 1,000 feet; north 7,000 feet.

The tract described contains 160 acres.

FRED G. AANDAHL,

Assistant Secretary of the Interior.

MAY 23, 1955.

[F. R. Doc. 55-4288; Filed, May 26, 1955;
8:46 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

PART 1—GENERAL RULES OF PRACTICE

SPECIAL RULES OF PRACTICE GOVERNING PROCEDURE OF BOARD OF SUSPENSION AND FOURTH SECTION BOARD

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 16th day of May A. D. 1955.

There being under consideration § 1.200 *Special rules of practice governing the procedure of the Board of Suspension and Fourth Section Board*: It is ordered, that said section be amended as follows:

1. After the first sentence of § 1.200 (b) add the following sentence: "The original and six copies of every pleading, document, or paper permitted or required to be filed under this section shall be furnished for the use of the Commission."

2. As amended, § 1.200 (b) will read as follows:

(b) Petitions for reconsideration of the action of the Board of Suspension when tariffs or schedules have been suspended, and petitions for reconsideration of any action taken by the Fourth Section Board, may be filed by any interested party with the Commission for the attention of the designated appellate division within 30 days following receipt of notice of such action. The original and six copies of every pleading, document, or paper permitted or required to be filed under this section shall be furnished for the use of the Commission. In all other respects, such petitions and the answers thereto will be governed by the Commission's general rules of practice.

Notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission, Washington, D. C., and by filing a copy with the Director, Division of the Federal Register.

(Secs. 12, 17, 24 Stat. 383, as amended, 385, as amended, 49 Stat. 546, as amended, 548, as amended, sec. 201, 54 Stat. 933, sec. 1, 56 Stat. 285; 49 U. S. C. 12, 17, 304, 305, 904, 1003)

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 55-4298; Filed, May 26, 1955;
8:48 a. m.]

TITLE 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

Subchapter B—Loans, Purchases, and Other Operations

[1955 C. C. C. Grain Price Support Bulletin 1, Supp. 1, Grain Sorghums]

PART 421—GRAINS AND RELATED COMMODITIES

SUBPART—1955-CROP GRAIN SORGHUMS LOAN AND PURCHASE AGREEMENT PROGRAM

A price support program has been announced for the 1955 crop of grain sorghums. The 1955 C. C. C. Grain Price Support Bulletin 1 (20 F. R. 3017), issued by the Commodity Credit Corporation and containing the regulations of a general nature with respect to price support operations for grains and certain other commodities produced in 1955 is supplemented as follows:

Sec.	Purpose.
421.1226	Availability of price support.
421.1227	Eligible grain sorghums.
421.1228	Warehouse receipts.
421.1229	Determination of quantity.
421.1230	Determination of quality.
421.1231	Maturity of loans.
421.1232	Support rates.
421.1233	Warehouse charges.
421.1234	Settlement.

AUTHORITY: §§ 421.126 to 421.1235 issued under sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. 714b. Interpret or apply sec. 5, 62 Stat. 1072; secs. 301, 401, 63 Stat. 1053; 15 U. S. C. 714; 7 U. S. C. 1447, 1421.

§ 421.1226 *Purpose.* Sections 421.1226 to 421.1235 state additional specific regulations which, together with the general regulations contained in the 1955 C. C. C. Grain Price Support Bulletin 1, apply to loans and purchase agreements under the 1955 Crop Grain Sorghums Price Support Program.

§ 421.1227 *Availability of price support—(a) Method of support.* Price support will be made available through farm-storage and warehouse-storage loans and through purchase agreements.

(b) *Area.* Farm-storage and warehouse-storage loans and purchase agreements will be available wherever grain sorghums are grown in the continental United States, except that farm-storage loans will not be available in areas where the State committee determines that grain sorghums cannot be safely stored on the farm.

(c) *Where to apply.* Application for price support should be made at the office of the county committee which keeps the farm-program record for the farm.

(d) *When to apply.* Loans and purchase agreements will be available from the time of harvest through January 31, 1956 and the applicable documents must be signed by the producer and delivered to the county committee not later than such date. Applicable documents include the Producer's Note and Loan Agreement for warehouse-storage loans, the Producer's Note and Supplemental Loan Agreement and the Commodity Chattel Mortgage for farm-storage loans, and the Purchase Agreement for purchase agreements.

(e) *Eligible producer.* An eligible producer shall be an individual, partnership, association, corporation, estate, trust, or other business enterprise, or legal entity, and wherever applicable, a State, political subdivision of a State, or any agency thereof producing grain sorghums in 1955 as landowner, landlord, tenant, or sharecropper.

§ 421.1228 *Eligible grain sorghums.* At the time the grain sorghums are placed under loan or delivered under a purchase agreement, they must meet the following requirements:

(a) The grain sorghums must have been produced in the continental United States in 1955 by an eligible producer.

(b) (1) The beneficial interest in the grain sorghums must be in the eligible producer tendering the grain sorghums for loan or for delivery under a purchase agreement, and must always have been in him, or must have been in him and a former producer whom he succeeded before the grain sorghums were harvested.

(2) To meet the requirements of succession to a former producer, the rights, responsibilities and interest of the former producer with respect to the farming unit on which the grain sorghums were produced shall have been substantially assumed by the person claiming succession. Mere purchase of the crop prior to harvest, without acquisition of any additional interest in the farming unit, shall not constitute succession. The county committee shall determine whether the requirements with respect to succession have been met.

(c) Grain sorghums of any class grading No. 4 or better, or No. 4 "Smummy" or better, and containing not in excess of 13 percent moisture shall be eligible.

(d) Grain sorghums represented by warehouse receipts which indicate that the grain sorghums are ineligible because of moisture content only, will be eligible if the warehouseman certifies on the supplemental certificate or on a statement attached to the warehouse receipt that "the grain sorghums have been processed at the request of the eligible producer, and delivery will be made of eligible grain sorghums containing not in excess of 13 percent moisture content and no lien for processing will be claimed by the warehouseman from Commodity Credit Corporation or any subsequent holder of said warehouse receipt."

(e) The grain sorghums must not grade discolored, or weevily.

(f) If offered as security for a farm-storage loan, the grain sorghums must have been stored in the bin or granary at least 30 days prior to inspection for measurement, sampling, and sealing unless otherwise approved by the ASC State committee.

§ 421.1229 *Warehouse receipts.* Warehouse receipts, representing grain sorghums in approved warehouse storage to be placed under loan or delivered under a purchase agreement, must meet the following requirements:

(a) Warehouse receipts must be issued in the name of the producer, must be properly endorsed in blank so as to vest title in the holder and must be receipts issued on a warehouse approved by CCC under the Uniform Grain Storage Agreement which indicate that the grain sorghums are insured, or must be receipts issued on warehouses operated by Eastern common carriers under tariffs approved by the Interstate Commerce Commission for which custodian agreements are in effect.

(b) (1) Each warehouse receipt or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt must show (i) gross weight, (ii) class, (iii) grade (including special grades), (iv) test weight, (v) moisture, (vi) dockage, and (vii) any other grading factor(s) when such factor(s) and not test weight, determine the grade.

(2) The warehouse receipt or the warehouseman's supplemental certificate also must show whether the grain sorghums arrived by rail, truck or barge. In the case of warehouse receipts issued for grain sorghums delivered by rail or barge, the grading factors on the warehouse receipt must agree with the inbound inspection certificate for the car or barge when such certificate is issued.

(c) A separate warehouse receipt must be submitted for each grade, class, and subclass of grain sorghums.

(d) The warehouse receipt may be subject to liens for warehouse charges only to the extent indicated in § 421.1234.

(e) Warehouse receipts representing grain sorghums which have been shipped by rail or water from a country shipping point to a designated terminal point, or shipped by rail or water from a country shipping point and stored in transit to a designated terminal point must be ac-

companied by registered freight bills, or by a certificate containing similar information in a form prescribed by the CSS Commodity office which shall be signed by the warehousemen and which may be a part of the supplemental certificate.

(f) If the warehouseman has processed the grain sorghums as provided in § 421.1228 (d), the supplemental certificate must show the numerical grade and grading factors changed because of the grain sorghums being processed. When the grade and grading factors shown on the supplemental certificate do not agree with the warehouse receipt, the factors shown on the supplemental certificate shall take precedence.

§ 421.1230 *Determination of quantity.*

(a) The quantity of grain sorghums placed under farm-storage loan may be determined either by weight or by measurement. The quantity of grain sorghums placed under a warehouse storage loan or delivered under a farm-storage loan or under a purchase agreement shall be determined by weight.

(b) When a quantity is determined by weight, a unit of 100 pounds shall be determined to be 100 pounds of grain sorghums free of dockage. In determining the quantity of sacked grain sorghums by weight, a deduction of three-fourths of a pound for each sack shall be made.

(c) When the quantity of grain sorghums is determined by measurement, 100 pounds shall be 2.25 cubic feet of grain sorghums testing 56 pounds per bushel. The quantity determined by measurement of grain sorghums having a test weight of less than 56 pounds per bushel shall be adjusted by applying the applicable percentage as shown in the following table:

For grain sorghums testing:	Percent
56 pounds or over	100
55 pounds or over, but less than 56 pounds	98
54 pounds or over, but less than 55 pounds	96
53 pounds or over, but less than 54 pounds	95
52 pounds or over, but less than 53 pounds	93
51 pounds or over, but less than 52 pounds	91
50 pounds or over, but less than 51 pounds	89
49 pounds or over, but less than 50 pounds	87

(d) The percentage of dockage shall be determined and the weight of such dockage shall be deducted from the gross weight of the grain sorghums in determining the net quantity available for loan or purchase.

§ 421.1231 *Determination of quality.* The class, subclass, grade, grading factors, and all other quality factors shall be determined in accordance with the methods set forth in the Official Grain Standards of the United States for Grain Sorghums, whether or not such determinations are made on the basis of an official inspection.

§ 421.1232 *Maturity of loans.* Loans mature on demand but not later than March 31, 1956.

§ 421.1233 *Support rates.* Basic support rates for grain sorghums placed un-

der loan or delivered under a purchase agreement will be as set forth in this section.

(a) *Basic support rates at designated terminal markets.* (1) Basic support rates per 100 pounds for grain sorghums of the Classes I to IV inclusive, grading No. 2 or better, and containing not in excess of 13 percent moisture, stored in approved warehouses at the terminal markets listed below are as follows:

Terminal market:	Rate per 100 pounds
Omaha, Nebr.....	\$2.14
Sioux City, Iowa.....	2.14
Kansas City, Mo.....	2.22
St. Joseph, Mo.....	2.22
Corpus Christi, Tex.....	2.29
Galveston, Tex.....	2.29
Houston, Tex.....	2.29
New Orleans, La.....	2.29
Port Arthur, Tex.....	2.29
St. Louis, Mo.....	2.43
Memphis, Tenn.....	2.48
Los Angeles, Calif.....	2.63
San Francisco, Calif.....	2.63

(2) Grain sorghums eligible for loan or purchase at the support rates shown in the above schedule must have been shipped on a domestic interstate freight rate basis. On any grain sorghums shipped at other than the domestic interstate freight rate, the support rate at the designated terminal market shall be reduced by the difference between the rate of the freight paid (plus tax) and the domestic interstate freight rate (plus tax).

(3) The support rates established for designated terminal markets apply to grain sorghums which have been shipped by rail or water from a country shipping point to one of the designated terminal markets, as evidenced by paid freight bills duly registered for transit privileges: *Provided*, That in the event the amount of paid-in freight is insufficient to guarantee the minimum proportional domestic interstate freight rate from the terminal market, there shall be deducted from the applicable terminal support rate the difference between the amount of freight actually paid in and the amount required to be paid in to guarantee outbound movement at the minimum proportional domestic interstate freight rate.

(4) When shipped by rail or water and stored at any designated terminal market, grain sorghums for which neither registered freight bills nor registered freight certificates are presented to guarantee outbound movement at the minimum proportional domestic interstate freight rate, shall have a support rate equal to the terminal rate minus 14 cents per 100 pounds.

(5) For grain sorghums received by truck and stored at any designated terminal market, the support rate shall be determined by making a deduction from the terminal rate as follows:

Terminal market:	Amount of deduction (cents per 100 pounds)
Los Angeles, Calif., San Francisco, Calif.....	22
Omaha, Nebr., Sioux City, Iowa, Kansas City, Mo., St. Louis, Mo., Saint Joseph, Mo.....	23
Corpus Christi, Tex., Galveston, Tex., Houston, Tex., Port Arthur, Tex., New Orleans, La., Memphis, Tenn.....	25

(b) *Support rates for grain sorghums in approved warehouse storage at other than designated terminal markets.* (1) The support rates for grain sorghums stored in approved warehouses (other than those situated in the designated terminal markets) which are shipped by rail or water, shall be determined by deducting from the appropriate designated terminal market rate an amount equal to the transit balance, if any (plus tax) of the through-freight rate from point of origin for such grain sorghums to such terminal market: *Provided*, That on any grain sorghums shipped at other than the domestic interstate freight rate, the support rate shall be further reduced by the difference between the rate of freight paid (plus tax) and the domestic interstate freight rate (plus tax) from the point of origin of such grain sorghums to the point of storage: *And provided further*, That in the case of grain sorghums stored at any railroad transit point taking a penalty by reason of out-of-line movement, or any other reason to the appropriate designated market, there shall be added to such transit balance an amount equal to any out-of-line costs or other costs incurred in storing grain sorghums in such position.

(2) The warehouse receipts must be accompanied by the original paid freight bills or certificates of the warehouseman and other required documents as set forth in § 421.1229.

(c) *Basic county support rates.* (1) (i) The following basic county support rates are established per 100 pounds of grain sorghums of the Classes I to IV, inclusive, grading No. 2 or better and containing not in excess of 13 percent moisture. Both farm-storage and country warehouse-storage loans, except as otherwise provided in paragraph (b) of this section, will be based on the support rate established for the county in which the grain sorghums are stored.

(ii) If two or more warehouses are located in the same or adjoining towns, villages, or cities having the same domestic interstate freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point, and the same support rate shall apply even though such warehouses are not all located in the same county. Such support rate shall be the highest support rate of the counties involved.

ALABAMA	All counties.....	\$1.87
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ARIZONA			
County	Rate per hundred-weight	County	Rate per hundred-weight
Apache.....	\$1.60	Mohave.....	\$1.82
Cochise.....	1.96	Navajo.....	1.60
Cocoonino.....	1.60	Pima.....	2.04
Gila.....	1.62	Pinal.....	2.26
Graham.....	1.75	Santa Cruz.....	1.98
Greenlee.....	1.57	Yavapai.....	1.88
Maricopa.....	2.26	Yuma.....	2.31

ARKANSAS	All counties.....	\$1.57
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CALIFORNIA			
County	Rate per hundred-weight	County	Rate per hundred-weight
Alameda.....	\$2.41	Colusa.....	\$2.30
Amador.....	2.32	Contra Costa.....	2.41
Butte.....	2.28	El Dorado.....	2.27

CALIFORNIA—Continued

County	Rate per hundred-weight	County	Rate per hundred-weight
Fresno.....	\$2.29	San Bernar-	
Glenn.....	2.27	dino.....	\$2.35
Imperial.....	2.27	San Diego.....	2.31
Inyo.....	1.89	San Joaquin.....	2.37
Kern.....	2.30	San Luis.....	
Kings.....	2.29	Obispo.....	2.28
Lake.....	2.32	San Mateo.....	2.42
Lassen.....	2.04	Santa Barbara.....	2.29
Los Angeles.....	2.40	Santa Clara.....	2.40
Madera.....	2.33	Santa Cruz.....	2.34
Merced.....	2.35	Shasta.....	2.19
Modoc.....	1.95	Sierra.....	2.08
Mono.....	1.95	Siskiyou.....	2.05
Monterey.....	2.32	Solano.....	2.39
Napa.....	2.40	Stanislaus.....	2.35
Orange.....	2.37	Sutter.....	2.32
Placer.....	2.34	Tehama.....	2.25
Plumas.....	2.07	Tulare.....	2.29
Riverside.....	2.32	Ventura.....	2.39
Sacramento.....	2.36	Yola.....	2.35
San Benito.....	2.35	Yuba.....	2.33

COLORADO

Adams.....	\$1.63	Kiowa.....	\$1.65
Alamosa.....	1.47	Kit Carson.....	1.66
Arapahoe.....	1.63	La Plata.....	1.35
Archuleta.....	1.35	Larimer.....	1.63
Baca.....	1.65	Las Animas.....	1.62
Bent.....	1.64	Lincoln.....	1.63
Boulder.....	1.63	Logan.....	1.63
Chaffee.....	1.42	Mesa.....	1.35
Cheyenne.....	1.66	Moffat.....	1.35
Conejos.....	1.46	Montrose.....	1.35
Costilla.....	1.47	Morgan.....	1.63
Crowley.....	1.63	Otero.....	1.63
Custer.....	1.54	Ouray.....	1.35
Delta.....	1.35	Phillips.....	1.67
Denver.....	1.63	Pitkin.....	1.35
Dolores.....	1.35	Prowers.....	1.66
Douglas.....	1.63	Pueblo.....	1.63
Eagle.....	1.37	Rio Blanco.....	1.35
Elbert.....	1.63	Rio Grande.....	1.49
El Paso.....	1.63	Routt.....	1.35
Fremont.....	1.56	Saguache.....	1.48
Garfield.....	1.35	San Miguel.....	1.10
Grand.....	1.42	Sedgwick.....	1.63
Gunnison.....	1.35	Summit.....	1.42
Huerfano.....	1.60	Washington.....	1.63
Jackson.....	.90	Weid.....	1.63
Jefferson.....	1.63	Yuma.....	1.65

FLORIDA	All counties.....	\$1.72
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GEORGIA	All counties.....	\$1.77
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ILLINOIS	All counties.....	\$1.74
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INDIANA	All counties.....	\$1.92
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IOWA	All counties.....	\$1.87
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KANSAS			
County	Rate per hundred-weight	County	Rate per hundred-weight
Allen.....	\$1.87	Decatur.....	\$1.73
Anderson.....	1.89	Dickinson.....	1.80
Atchison.....	1.92	Doniphan.....	1.88
Barber.....	1.77	Douglas.....	1.92
Barton.....	1.77	Edwards.....	1.77
Bourbon.....	1.88	Elk.....	1.84
Brown.....	1.89	Ellis.....	1.77
Butler.....	1.80	Ellsworth.....	1.79
Chase.....	1.84	Finney.....	1.71
Chautauqua.....	1.84	Ford.....	1.74
Cherokee.....	1.86	Franklin.....	1.92
Cheyenne.....	1.70	Geary.....	1.84
Clark.....	1.71	Gove.....	1.73
Clay.....	1.82	Graham.....	1.78
Cloud.....	1.81	Grant.....	1.70
Coffey.....	1.87	Gray.....	1.73
Comanche.....	1.74	Greeley.....	1.70
Cowley.....	1.80	Greenwood.....	1.84
Crawford.....	1.87	Hamilton.....	1.70

RULES AND REGULATIONS

KANSAS—Continued

County	Rate per hundred-weight	County	Rate per hundred-weight
Harper	\$1.79	Pawnee	\$1.77
Harvey	1.80	Phillips	1.77
Haskell	1.71	Pottawatomie	1.87
Hodgeman	1.75	Pratt	1.77
Jackson	1.88	Rawlins	1.71
Jefferson	1.92	Reno	1.79
Jewell	1.80	Republic	1.81
Johnson	1.92	Rice	1.79
Kearny	1.70	Riley	1.88
Kingman	1.79	Rooks	1.77
Kiowa	1.77	Rush	1.77
Labette	1.86	Russell	1.77
Lane	1.73	Saline	1.80
Leavenworth	1.92	Scott	1.71
Lincoln	1.79	Sedgwick	1.80
Linn	1.88	Seward	1.69
Logan	1.71	Shawnee	1.88
Lyon	1.86	Sheridan	1.73
McPherson	1.79	Sherman	1.70
Marion	1.80	Smith	1.79
Marshall	1.86	Stafford	1.77
Meade	1.71	Stanton	1.69
Miami	1.92	Stevens	1.69
Mitchell	1.80	Sumner	1.80
Montgomery	1.86	Thomas	1.71
Morris	1.83	Trego	1.76
Morton	1.66	Wabaunsee	1.86
Nemaha	1.87	Wallace	1.70
Neosho	1.87	Washington	1.83
Ness	1.75	Wichita	1.70
Norton	1.76	Wilson	1.86
Osage	1.88	Woodson	1.87
Osborne	1.79	Wyandotte	1.92
Ottawa	1.80		

KENTUCKY

All counties..... \$1.87

LOUISIANA

All counties..... \$1.87

MINNESOTA

All counties..... \$1.67

MISSISSIPPI

All counties..... \$1.87

MISSOURI

All counties..... \$1.87

NEBRASKA

County	Rate per hundred-weight	County	Rate per hundred-weight
Adams	\$1.79	Garfield	\$1.74
Antelope	1.76	Gosper	1.75
Arthur	1.63	Grant	1.62
Banner	1.60	Greeley	1.77
Blaine	1.69	Hall	1.77
Boone	1.79	Hamilton	1.79
Box Butte	1.61	Harlan	1.77
Boyd	1.72	Hayes	1.68
Brown	1.68	Hitchcock	1.70
Buffalo	1.75	Holt	1.74
Burt	1.84	Hooker	1.65
Butler	1.83	Howard	1.77
Cass	1.85	Jefferson	1.84
Cedar	1.76	Johnson	1.85
Chase	1.67	Kearney	1.78
Cherry	1.65	Keith	1.63
Cheyenne	1.63	Keya Paha	1.69
Clay	1.80	Kimball	1.63
Colfax	1.83	Knox	1.74
Cuming	1.83	Lancaster	1.85
Custer	1.72	Lincoln	1.67
Dakota	1.80	Logan	1.69
Dawes	1.57	Loup	1.73
Dawson	1.72	McPherson	1.66
Deuel	1.63	Madison	1.79
Dixon	1.79	Merrick	1.79
Dodge	1.84	Morrill	1.59
Douglas	1.84	Nance	1.79
Dundy	1.67	Nemaha	1.85
Fillmore	1.83	Nuckolls	1.80
Franklin	1.77	Otoe	1.85
Frontier	1.73	Pawnee	1.86
Furnas	1.75	Perkins	1.68
Gage	1.85	Phelps	1.77
Garden	1.61	Pierce	1.78

NEBRASKA—Continued

County	Rate per hundred-weight	County	Rate per hundred-weight
Platte	\$1.81	Sioux	\$1.55
Polk	1.80	Stanton	1.80
Red Willow	1.73	Thayer	1.82
Richardson	1.87	Thomas	1.67
Rock	1.69	Thurston	1.82
Saline	1.84	Valley	1.74
Sarpy	1.84	Washington	1.84
Saunders	1.84	Wayne	1.77
Scotts Bluff	1.56	Webster	1.79
Seward	1.83	Wheeler	1.78
Sheridan	1.60	York	1.80
Sherman	1.75		

NEW MEXICO

County	Rate per hundred-weight	County	Rate per hundred-weight
Bernalillo	\$1.49	Mora	\$1.49
Catron	1.25	Otero	1.49
Chaves	1.61	Quay	1.61
Colfax	1.50	Rio Arriba	1.33
Curry	1.67	Roosevelt	1.64
De Baca	1.60	Sandoval	1.49
Dona Ana	1.49	San Juan	1.03
Eddy	1.59	San Miguel	1.49
Grant	1.23	Santa Fe	1.49
Guadalupe	1.49	Sierra	1.49
Harding	1.56	Socorro	1.49
Hidalgo	1.72	Taos	1.44
Lea	1.65	Torrance	1.49
Lincoln	1.49	Union	1.61
Luna	1.49	Valencia	1.49
McKinley	1.49		

NORTH CAROLINA

All counties..... \$1.92

NORTH DAKOTA

All counties..... \$1.62

OKLAHOMA

County	Rate per hundred-weight	County	Rate per hundred-weight
Adair	\$1.82	Le Flore	\$1.84
Alfalfa	1.74	Lincoln	1.74
Atoka	1.77	Logan	1.74
Beaver	1.65	Love	1.74
Beckham	1.70	McClain	1.74
Blaine	1.74	McCurtain	1.77
Bryan	1.75	McIntosh	1.81
Caddo	1.74	Major	1.74
Canadian	1.74	Marshall	1.74
Carter	1.74	Mayes	1.80
Cherokee	1.79	Murray	1.74
Choctaw	1.77	Muskogee	1.81
Cimarron	1.62	Noble	1.74
Cleveland	1.74	Nowata	1.83
Coal	1.77	Okfuskee	1.77
Comanche	1.74	Oklahoma	1.74
Cotton	1.74	Oklmulgee	1.77
Craig	1.83	Osage	1.77
Creek	1.75	Ottawa	1.83
Custer	1.73	Pawnee	1.75
Delaware	1.82	Payne	1.74
Dewey	1.71	Pittsburg	1.81
Ellis	1.70	Pontotoc	1.76
Garfield	1.74	Pottawatomie	1.74
Garvin	1.74	Pushmataha	1.81
Grady	1.74	Roger Mills	1.70
Grant	1.74	Rogers	1.80
Greer	1.70	Seminole	1.76
Harmon	1.70	Sequoyah	1.82
Harper	1.68	Stephens	1.74
Haskell	1.82	Texas	1.63
Hughes	1.77	Tillman	1.74
Jackson	1.74	Tulsa	1.79
Jefferson	1.74	Wagoner	1.78
Johnston	1.74	Washington	1.82
Kay	1.76	Washita	1.74
Kingfisher	1.74	Woods	1.73
Kiowa	1.74	Woodward	1.70
Latimer	1.82		

SOUTH CAROLINA

All counties..... \$1.92

SOUTH DAKOTA

All counties..... \$1.67

TENNESSEE

All counties..... \$1.87

TEXAS

County	Rate per hundred-weight	County	Rate per hundred-weight
Anderson	\$1.94	Goliad	\$2.01
Andrews	1.67	Gonzales	1.96
Angelina	1.98	Gray	1.69
Aransas	2.05	Grayson	1.79
Archer	1.70	Gregg	1.86
Armstrong	1.69	Grimes	2.01
Atascosa	1.98	Guadalupe	1.94
Austin	2.04	Hale	1.69
Bailey	1.69	Hall	1.69
Bandera	1.95	Hamilton	1.83
Bastrop	1.94	Hansford	1.64
Baylor	1.69	Hardeman	1.70
Bee	2.04	Hardin	1.99
Bell	1.93	Harris	2.06
Bexar	1.96	Harrison	1.83
Blanco	1.92	Hartley	1.64
Borden	1.69	Haskell	1.69
Bosque	1.87	Hays	1.94
Bowie	1.88	Hemphill	1.65
Brazoria	2.06	Henderson	1.89
Brazos	1.99	Hidalgo	1.93
Brewster	1.56	Hill	1.90
Briscoe	1.69	Hockley	1.69
Brooks	1.99	Hood	1.82
Brown	1.81	Hopkins	1.79
Burleson	1.98	Houston	1.98
Burnet	1.88	Howard	1.69
Caldwell	1.94	Hudspeth	1.50
Calhoun	1.99	Hunt	1.84
Callahan	1.75	Hutchinson	1.65
Cameron	1.92	Irion	1.58
Camp	1.83	Jack	1.77
Carson	1.69	Jackson	1.98
Cass	1.85	Jasper	1.98
Castro	1.69	Jeff Davis	1.50
Chambers	1.98	Jefferson	2.00
Cherokee	1.94	Jim Hogg	1.99
Childress	1.69	Jim Wells	2.04
Clay	1.74	Johnson	1.89
Cochran	1.69	Jones	1.71
Coke	1.69	Karnes	1.99
Coleman	1.77	Kaufman	1.87
Collin	1.85	Kendall	1.96
Collingsworth	1.69	Kenedy	2.03
Colorado	2.01	Kent	1.69
Comal	1.94	Kerr	1.95
Comanche	1.81	Kimble	1.78
Concho	1.77	King	1.69
Cooke	1.76	Kinney	1.87
Coryell	1.89	Kleberg	2.04
Cottle	1.69	Knox	1.69
Crane	1.59	Lamar	1.77
Crockett	1.57	Lamb	1.69
Crosby	1.69	Lampasas	1.89
Culberson	1.50	La Salle	1.92
Dallam	1.63	Lavaca	1.98
Dallas	1.85	Lee	1.98
Dawson	1.69	Leon	1.96
Deaf Smith	1.69	Liberty	2.04
Delta	1.78	Limestone	1.95
Denton	1.85	Lipscomb	1.64
De Witt	1.98	Live Oak	2.02
Dickens	1.69	Llano	1.87
Dimmit	1.87	Loving	1.52
Donley	1.69	Lubbock	1.69
Duval	2.02	Lynn	1.69
Eastland	1.78	McCulloch	1.79
Ector	1.65	McLennan	1.92
Edwards	1.62	McMullen	2.00
Ellis	1.89	Madison	1.99
El Paso	1.49	Marion	1.83
Erath	1.80	Martin	1.65
Falls	1.94	Mason	1.81
Fannin	1.79	Matagorda	2.00
Fayette	1.99	Maverick	1.86
Fisher	1.69	Medina	1.96
Floyd	1.69	Menard	1.77
Foard	1.69	Midland	1.65
Fort Bend	2.05	Milam	1.97
Franklin	1.83	Mills	1.89
Freestone	1.93	Mitchell	1.69
Frio	1.93	Montague	1.74
Gaines	1.69	Montgomery	2.04
Galveston	2.07	Moore	1.65
Garza	1.69	Morris	1.83
Gillespie	1.95	Motley	1.69
Glasscock	1.69	Nacogdoches	1.94

TEXAS—Continued

County	Rate per hundred-weight	County	Rate per hundred-weight
Navarro	\$1.91	Sherman	\$1.63
Newton	1.97	Smith	1.87
Nolan	1.69	Somervell	1.83
Nueces	2.07	Starr	1.91
Ochiltree	1.62	Stephens	1.75
Oldham	1.69	Sterling	1.59
Orange	1.99	Stonewall	1.69
Palo Pinto	1.77	Sutton	1.57
Panola	1.87	Swisher	1.69
Parker	1.82	Tarrant	1.86
Farmer	1.69	Taylor	1.72
Pecos	1.51	Terrell	1.69
Polk	2.01	Terry	1.69
Potter	1.69	Throckmorton	1.72
Fresidio	1.49	Titus	1.83
Rains	1.79	Tom Green	1.69
Randall	1.69	Travis	1.94
Reagan	1.57	Trinity	2.00
Real	1.92	Tyler	1.97
Red River	1.82	Upshur	1.85
Reeves	1.52	Upton	1.54
Refugio	2.01	Uvalde	1.92
Roberts	1.66	Val Verde	1.83
Robertson	1.95	Van Zandt	1.79
Rockwall	1.85	Victoria	2.00
Runnels	1.75	Walker	2.02
Rusk	1.87	Waller	2.04
Sabine	1.92	Ward	1.59
San Augustine	1.92	Washington	2.01
San Jacinto	2.03	Webb	1.95
San Patricio	2.07	Wharton	2.02
San Saba	1.81	Wheeler	1.69
Schleicher	1.59	Wichita	1.73
Scurry	1.69	Wilbarger	1.70
Shackelford	1.72	Willacy	1.93
Shelby	1.92	Williamson	1.95

TEXAS—Continued

County	Rate per hundred-weight	County	Rate per hundred-weight
Wilson	\$1.98	Yoakum	\$1.69
Winkler	1.65	Young	1.77
Wise	1.79	Zapata	1.91
Wood	1.81	Zavala	1.87
VIRGINIA			
All counties	\$1.92		
WASHINGTON			
All counties	\$1.81		
WYOMING			
All counties	\$1.67		

(2) Grain sorghums which grade "smutty" shall be discounted 5 cents per 100 pounds.

(3) The support rates for mixed grain sorghums (Class V) shall be 3 cents per 100 pounds less than the support rates for grain sorghums of the classes I to IV inclusive.

(4) The discounts in this paragraph shall be cumulative.

§ 421.1234 Warehouses charges. (a)

Warehouses receipts and the grain sorghums represented thereby stored in approved warehouses operating under the Uniform Grain Storage Agreement may be subject to liens for warehouse handling and storage charges at not to exceed the Uniform Grain Storage Agreement rates from the date the grain is deposited in the warehouse for storage. Where the date of deposit (the date of the warehouse receipt if the date of deposit is not shown) on warehouse receipts representing grain sorghums stored in warehouses operating under the Uniform Grain Storage Agreement is on or before March 31, 1956 there shall be deducted in computing the amount of the loan or purchase price the storage charges per hundredweight as shown in the following table unless written evidence is submitted with the warehouse receipt that all warehouse charges, except receiving and loading out charges have been prepaid through March 31, 1956:

(2) Where the State committee determines that State or district weed control laws affect the grain sorghums crop the support rate will be 15 cents per cwt. below the applicable county support rate set forth in the schedule in subparagraph (1) of this paragraph. If upon delivery of the grain sorghums to CCC, the producer supplies a certificate indicating that the grain sorghums comply with the weed control laws, the producer will be credited with the amount of the differential in determining the settlement value.

(d) Discounts. (1) The discount for grain sorghums which grade No. 3 and contain not in excess of 13 percent moisture shall be 8 cents per 100 pounds; and for grain sorghums which grade No. 4 and contain not in excess of 13 percent moisture, 16 cents per 100 pounds.

Amount of deduction (cents per hundred weight)	Date of deposit (all dates inclusive)				
	Area I ¹	Area II ²	Area III ³	Area IV ⁴	Area V ⁵
27		Prior to Apr. 16, 1955	Prior to May 1, 1955	Prior to May 11, 1955	Prior to May 21, 1955
26	Prior to Apr. 17, 1955	Apr. 16-May 1, 1955	May 1-May 10, 1955	May 11-May 26, 1955	May 21-June 5, 1955
25	Apr. 17-May 2, 1955	May 2-May 17, 1955	May 17-June 1, 1955	May 27-June 11, 1955	June 6-June 21, 1955
24	May 3-May 18, 1955	May 18-June 2, 1955	June 2-June 17, 1955	June 12-June 27, 1955	June 22-July 7, 1955
23	May 19-June 3, 1955	June 3-June 18, 1955	June 18-July 3, 1955	June 28-July 13, 1955	July 8-July 18, 1955
22	June 4-June 19, 1955	June 19-July 4, 1955	July 4-July 19, 1955	July 14-July 29, 1955	July 19-July 29, 1955
21	June 20-July 5, 1955	July 5-July 20, 1955	July 20-Aug. 4, 1955	July 30-Aug. 9, 1955	July 30-Aug. 9, 1955
20	July 6-July 21, 1955	July 21-Aug. 5, 1955	Aug. 5-Aug. 20, 1955	Aug. 10-Aug. 20, 1955	Aug. 10-Aug. 20, 1955
19	July 22-Aug. 6, 1955	Aug. 6-Aug. 21, 1955	Aug. 21-Aug. 31, 1955	Aug. 21-Aug. 31, 1955	Aug. 21-Aug. 31, 1955
18	Aug. 7-Aug. 22, 1955	Aug. 22-Sept. 6, 1955	Sept. 1-Sept. 11, 1955	Sept. 1-Sept. 11, 1955	Sept. 1-Sept. 11, 1955
17	Aug. 23-Sept. 7, 1955	Sept. 7-Sept. 22, 1955	Sept. 12-Sept. 22, 1955	Sept. 12-Sept. 22, 1955	Sept. 12-Sept. 22, 1955
16	Sept. 8-Sept. 23, 1955	Sept. 23-Oct. 3, 1955	Sept. 23-Oct. 3, 1955	Sept. 23-Oct. 3, 1955	Sept. 23-Oct. 3, 1955
15	Sept. 24-Oct. 9, 1955	Oct. 4-Oct. 14, 1955	Oct. 4-Oct. 14, 1955	Oct. 4-Oct. 14, 1955	Oct. 4-Oct. 14, 1955
14	Oct. 10-Oct. 25, 1955	Oct. 15-Oct. 25, 1955	Oct. 15-Oct. 25, 1955	Oct. 15-Oct. 25, 1955	Oct. 15-Oct. 25, 1955
13	Oct. 26-Nov. 5, 1955	Oct. 26-Nov. 5, 1955	Oct. 26-Nov. 5, 1955	Oct. 26-Nov. 5, 1955	Oct. 26-Nov. 5, 1955
12	Nov. 6-Nov. 16, 1955	Nov. 6-Nov. 16, 1955	Nov. 6-Nov. 16, 1955	Nov. 6-Nov. 16, 1955	Nov. 6-Nov. 16, 1955
11	Nov. 17-Nov. 27, 1955	Nov. 17-Nov. 27, 1955	Nov. 17-Nov. 27, 1955	Nov. 17-Nov. 27, 1955	Nov. 17-Nov. 27, 1955
10	Nov. 28-Dec. 8, 1955	Nov. 28-Dec. 8, 1955	Nov. 28-Dec. 8, 1955	Nov. 28-Dec. 8, 1955	Nov. 28-Dec. 8, 1955
9	Dec. 9-Dec. 19, 1955	Dec. 9-Dec. 19, 1955	Dec. 9-Dec. 19, 1955	Dec. 9-Dec. 19, 1955	Dec. 9-Dec. 19, 1955
8	Dec. 20-Dec. 30, 1955	Dec. 20-Dec. 30, 1955	Dec. 20-Dec. 30, 1955	Dec. 20-Dec. 30, 1955	Dec. 20-Dec. 30, 1955
7	Dec. 31, 1955-Jan. 10, 1956	Dec. 31, 1955-Jan. 10, 1956	Dec. 31, 1955-Jan. 10, 1956	Dec. 31, 1955-Jan. 10, 1956	Dec. 31, 1955-Jan. 10, 1956
6	Jan. 11-Jan. 21, 1956	Jan. 11-Jan. 21, 1956	Jan. 11-Jan. 21, 1956	Jan. 11-Jan. 21, 1956	Jan. 11-Jan. 21, 1956
5	Jan. 22-Feb. 1, 1956	Jan. 22-Feb. 1, 1956	Jan. 22-Feb. 1, 1956	Jan. 22-Feb. 1, 1956	Jan. 22-Feb. 1, 1956
4	Feb. 2-Feb. 12, 1956	Feb. 2-Feb. 12, 1956	Feb. 2-Feb. 12, 1956	Feb. 2-Feb. 12, 1956	Feb. 2-Feb. 12, 1956
3	Feb. 13-Feb. 23, 1956	Feb. 13-Feb. 23, 1956	Feb. 13-Feb. 23, 1956	Feb. 13-Feb. 23, 1956	Feb. 13-Feb. 23, 1956
2	Feb. 24-Mar. 5, 1956	Feb. 24-Mar. 5, 1956	Feb. 24-Mar. 5, 1956	Feb. 24-Mar. 5, 1956	Feb. 24-Mar. 5, 1956
1	Mar. 6-Mar. 31, 1956	Mar. 6-Mar. 31, 1956	Mar. 6-Mar. 31, 1956	Mar. 6-Mar. 31, 1956	Mar. 6-Mar. 31, 1956

¹ Area I includes: Arizona, California, Idaho, Nevada, Oregon, Utah, Washington.
² Area II includes: Minnesota, Montana, North Dakota, South Dakota (also Superior, Wisconsin).
³ Area III includes: Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, Wyoming, Wisconsin (except Superior).

⁴ Area IV includes: Arkansas, Connecticut, Delaware, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, West Virginia.
⁵ Area V includes: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee.

(b) Warehouse receipts and the grain sorghums represented thereby stored in approved warehouses operated by Eastern common carriers may be subject to liens for warehouse elevation (receiving and delivering) and storage charges from the date of deposit at rates approved by the Interstate Commerce Commission. There shall be deducted in computing the loan or purchase price, the amount of the approved tariff rate for storage (not including elevation), which will accumulate from the date of deposit through March 31, 1956 unless

written evidence is submitted with the warehouse receipt that the storage charges have been prepaid. The county committee shall request the CSS commodity office to determine the amount of such charges. Where the producer presents evidence showing that elevation charges have been prepaid, the amount of the storage charges to be deducted shall be reduced by the amount of the elevation charges prepaid by the producer.

§ 421.1235 Settlement—(a) Settlement value. (1) (i) In the case of eligi-

ble grain sorghums delivered to CCC from farm-storage under the loan program, settlement shall be made at the applicable support rate determined in accordance with §§ 421.1233 and 421.1018 (e). The support rate shall be for the grade and quality of the total quantity of grain sorghums eligible for delivery. (ii) If, upon delivery, the grain sorghums under farm-storage loans are of a grade and/or quality for which no support rate has been established, the settlement value shall be computed at the support rate established for the

grade and/or quality of the grain sorghums placed under loan, less the difference, if any, at the time of delivery, between the market price for the grade and/or quality placed under loan and the market price of the grain sorghums delivered, as determined by CCC: *Provided, however*, That if such grain sorghums are sold by CCC in order to determine their market price the settlement value shall not be less than such sales price.

(2) In the case of eligible grain sorghums delivered to CCC under purchase agreement, settlement shall be made at the applicable support rate determined in accordance with §§ 421.1233 and 421.1018 (e).

(b) *Storage deduction for early delivery.* Whenever farm-stored grain sorghums under loan or purchase agreement are delivered to CCC prior to March 31, 1956, a deduction for storage shall be made in accordance with the schedule of deductions for warehouse charges (§421.1234), except that no such deduction shall be made if such early delivery is made because the loan is called solely for the convenience of CCC, or if it is determined by CCC at the time of delivery that the grain sorghums will be sold rather than stored, or if CCC requires early delivery on an area basis.

(c) *Refund of prepaid handling charge.* In case a warehouseman charges the producer for the receiving or the receiving and loading out charges on grain sorghums under loan or purchase agreement stored in a warehouse under the Uniform Grain Storage Agreement, the producer shall, upon delivery of the grain sorghums to CCC be reimbursed or given credit by the county office for such prepaid charges in an amount not to exceed the charges authorized under the Uniform Grain Storage Agreement provided, the producer furnishes to the county committee written evidence signed by the warehouseman that such charges have been paid.

(d) *Track-loading.* A track-loading payment of 6 cents per 100 pounds will be made to the producer on grain sorghums delivered to CCC on track at a country point.

Issued this 19th day of May 1955.

[SEAL] WALTER C. BERGER,
Acting Executive Vice President,
Commodity Credit Corporation.

[F. R. Doc. 55-4234; Filed, May 26, 1955;
8:45 a. m.]

TITLE 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board

MISCELLANEOUS AMENDMENTS TO CHAPTERS

Pursuant to the general authority contained in section 10 of the act of June 24, 1937 (sec. 10 (b) 4, 50 Stat. 315; 45 U. S. C. 228j) §§ 203.6, 204.11, 208.1 (a), 208.7 (a), 208.27, 208.29, 208.31, 209.1 (k), 209.3, 209.12, 210.2 (a), 214.1, 214.2, 214.4, 214.6, 217.1, 217.2, 220.2, 220.3 (d), (e),

(f), (g), (h), (i), 222.1, 222.3, 222.4, 225.1, 225.5, 225.6, 225.7, 225.8, 225.9, 234.2, 236.2, 237.101, 237.102 (a), (d), 237.103, 237.201, 237.202 (b), 237.203, 237.301, 237.302, 237.303, 237.304, 237.305, 237.306, 237.307, 237.308, 237.401, 237.501, 237.502 (a), (c), 237.503 (a), (b), 237.504 (a), 237.601, 237.603, 237.604, 237.701, 237.702, 237.801, 237.806, 237.808, 237.901, 237.904, 237.905, 238.1, 238.2 (a), (d), 238.4, 239.1, 239.2, 239.2 (b), 239.3 (a), 239.5 (a), 239.6, 239.7, 239.8, 239.9, 239.10, 240.1, 240.3, 262.12, 262.15, 262.16 (c), (d), (f), (g), (j), 266.6 are amended; former §§ 237.402, 237.403, 237.404, 237.405 and 237.406 are redesignated §§ 237.406, 237.408, 237.409, 237.410 and 237.411, respectively, and amended; Part 232 and the following sections are added: §§ 209.13, 210.6, 225.11, 237.104, 237.204, 237.205, 237.404, 237.405, 237.407, 237.607, 262.6, 262.7; and §§ 262.22 and 262.24 are repealed by Board Order 55-89, dated March 16, 1955. The above amendments to the regulations of the Railroad Retirement Board under such act (4 F. R. 1477; 5 F. R. 297; 5 F. R. 772; 5 F. R. 3392; 5 F. R. 1194; 5 F. R. 4330; 5 F. R. 4735; 6 F. R. 298; 6 F. R. 5871; 7 F. R. 2811; 7 F. R. 5266; 8 F. R. 5701; 10 F. R. 7159; 10 F. R. 11284; 11 F. R. 6820; 11 F. R. 13866; 12 F. R. 466; 12 F. R. 859; 12 F. R. 1133; 12 F. R. 2017; 12 F. R. 2907; 13 F. R. 264; 13 F. R. 7239; 15 F. R. 796; 19 F. R. 2160; 20 F. R. 422) are as follows:

PART 203—EMPLOYEES UNDER THE ACT

§ 203.6 *Age, citizenship, and other factors.* The age, citizenship, or residence of an individual, or his designation as other than an "employee" shall not be controlling in determining whether or not such individual is an employee within the meaning of the act, except that an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required by the laws of the place where the service is performed to employ, in whole or in part, citizens or residents thereof and the laws in force therein on August 29, 1935, shall be deemed to have been in force at all times prior to that date.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interprets or applies sec. 1, 49 Stat. 967, as amended; 45 U. S. C. 228a)

PART 204—EMPLOYMENT RELATION

§ 204.11 *Evidence of disability.* The term "physical or mental disability" as used in this part relates to the ability of the individual to perform the duties of his regular occupation in accordance with the standards customarily recognized within the industry. Determinations of disability will be made on the basis of medical evidence furnished by the employer and by the employee as well as by other circumstances which are indicative of the individual's ability to render service in his usual occupation.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j)

PART 208—ELIGIBILITY FOR AN ANNUITY

§ 208.1 *Statutory provisions.*

(a) The following-described individuals, if they shall have been employees on or after the enactment date, and shall have completed ten years of service, shall, subject to the conditions set forth in subsections (b), (c), and (d), be eligible for annuities after they shall have ceased to render compensated service to any person, whether or not an employer as defined in section 1 (a) (but with the right to engage in other employment to the extent not prohibited by subsection (d)):

(5) Individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment.

Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph 4 or 5 and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains the age of sixty-five. If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains the age of sixty-five years, his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled. If before attaining the age of sixty-five an employee in receipt of an annuity under paragraph 4 or 5 is found by the Board to be no longer disabled as provided in said paragraphs his annuity shall cease upon the last day of the month in which he ceases to be so disabled. If after cessation of his disability annuity the employee will have acquired additional years of service, such additional years of service may be credited to him with the same effect as if no annuity had previously been awarded to him.

(b) An annuity shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer and of the person by whom he was last employed; but this requirement shall not apply to the individuals mentioned in subdivision 4 and subdivision 5 of subsection (a) prior to attaining age sixty-five.

(c) (2) Not more than twelve months before the filing of the application. (Sec. 2, 50 Stat. 309, 310, as amended; 45 U. S. C. 228b.)

§ 208.7 *Annuities for employees.* (a) Subject to the provisions of paragraphs (b) and (c) of this section, an individual who has been an employee on or after August 29, 1935, has completed 10 years of service, and has ceased to render service for compensation to any person, whether or not an employer under the act, is eligible for an annuity if:

(4) The physical or mental condition of the individual is such that he is unable to engage in any regular employment.

(b) No annuity shall be certified for payment to an individual until such time as he has filed with the Board a duly executed application form, has established by proof satisfactory to the Board that he possesses all the qualifications therefor, and, except for an individual whose eligibility for an annuity is determined in accordance with paragraph (a) (3) or (4) of this section, has relinquished rights to return to service as

required by Part 216 of this chapter. In no case shall an annuity begin to accrue earlier than (1) twelve months prior to the date upon which the application therefor was filed with the Board, or (2) the day following the last day of the applicant's compensated service: *Provided, however*, That where such date falls on the thirty-first day of any month the annuity shall begin to accrue on the first day of the following month. An individual whose eligibility for an annuity is determined in accordance with paragraph (a) (3) or (4) of this section, shall relinquish rights to return to service as required by Part 216 of this chapter upon his attainment of age 65.

(c) Except as provided in § 208.31 and in section 407 of the 1946 amendments to the Railroad Retirement Act, enacted as Public Law 572, 79th Cong., after an annuity has been awarded to an individual, he shall not be eligible for a new or additional annuity, by reason of acquiring, after the annuity awarded him began to accrue, any additional eligibility qualifications.

§ 208.27 *Disability annuitant to notify of recovery from disability, and of performance of service for hire and of self-employment.* It shall be the duty of an individual awarded an annuity upon the basis of total and permanent disability for regular employment for hire, or upon the basis of permanent disability for work in his regular occupation, to notify the Board before he attains age 65 of his recovery from such disability and of any service for hire and self-employment in a period and to the extent described in § 208.29 (c).

§ 208.29 *Cessation or non-payment of disability annuities.* (a) An annuity awarded to an individual upon the basis of his having become totally and permanently disabled for regular employment for hire, or upon the basis of his having become permanently disabled for work in his regular occupation, shall cease before the individual attains age 65 as of the last day of:

(1) The month in which he recovers from such disability; or

(2) The month preceding the month in which he dies, regardless of his age; or

(3) The month following the month in which a notice was mailed to him requiring him to furnish additional proof of the continuance of his disability, if he failed to comply with such notice; or

(4) The month in which the Board receives notice of his failure to appear for, or submit to, a required examination; or

(5) The month in which he was required to furnish the Board with any information relating to employment, earnings and his physical or mental condition, if he failed to furnish such information.

(b) The annuity of an individual, based upon either the disability described in § 208.7 (a) (3) or (4) who fails to relinquish rights to return to service in accordance with Part 216 of this chapter shall be suspended as of the end of the month in which he attains age 65. Annuity payments which ceased by reason of noncompliance with the pro-

visions of one or more of paragraph (a) (3) to (5) of this section shall be restored if within a reasonable time the annuitant shows good cause for such noncompliance.

(c) The annuity of an individual based upon either the disability described in § 208.7 (a) (3) or (4) shall not be paid with respect to any month in which the individual is under age 65 and is paid more than \$100 in earnings from employment and self-employment of any form. Any such individual under the age of 65 shall report to the Board any such payment of earnings for such employment and self-employment before receipt and acceptance of an annuity for the second month following the month of such payment: *Provided*, That the Board may at any time require compliance with § 208.25.

§ 208.31 *Cessation or non-payment of disability annuity not prejudicial to further eligibility.* The cessation or non-payment pursuant to § 208.29 of a disability annuity shall not prejudice any rights of the individual, formerly in receipt of such annuity, to any annuity to which he may thereafter become entitled; and for such purpose, years of service acquired by such an individual whose annuity shall have so ceased or shall not have been paid prior to age 65 may be credited with the same effect as if no annuity had previously been awarded.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interpret or apply sec. 2, 49 Stat. 968, as amended; 45 U. S. C. 228b)

PART 209—MILITARY SERVICE

§ 209.1 *Statutory provisions.* * * *

(k) No person shall be entitled to an annuity, or to an increase in an annuity, based on military service unless a specific claim for credit for military service is filed with the Board by the individual who rendered such military service, and in no case shall an annuity, or an increase in an annuity, based on military service begin to accrue earlier than six months prior to the date on which such claim for credit for military service was filed with the Board nor before October 8, 1940: *Provided*, That this subsection shall not be construed to prevent payment of annuities with respect to accruals, not based on military service, prior to the date on which an annuity based on military service began to accrue.

§ 209.3 *Application for annuities based on military service.* No individual shall be entitled to an annuity, or to an increase in an annuity, based on military service unless he has in the manner provided in Part 210 of this chapter, filed an application claiming credit for military service, in such form as the Board may prescribe. The application shall be filed within twelve months from the date on which such annuity or increase in an annuity is to begin to accrue, and may be filed by any individual, including individuals whose claims for annuities not based on military service have theretofore been granted or denied. In no event shall an annuity or increase in an annuity based on military service begin to accrue before October 8, 1940.

§ 209.12 *War service period.* A war service period includes, with respect to any individual:

(a) Any period during which the individual was required by call of the President, or by any act of Congress or regulation, order, or proclamation pursuant thereto, to enter and continue in military service, and

(b) Any period of military service in a war period, providing the individual entered military service in such war period, and

(c) Any period of military service immediately following a war period, whether or not such service was entered upon voluntarily, and prior to discharge from such service or reenlistment therein, providing the individual entered military service in such war period, and

(d) Any period after September 7, 1939, with respect to which a state of national emergency was duly declared to exist which requires a strengthening of the national defense.

§ 209.13 *War period.* A war period begins on the date on which the Congress of the United States declared war, or on the date as of which the Congress of the United States declared a state of war to have existed, or on the date on which war was declared by one or more foreign states against the United States, or on the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states, or on the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government, whichever date is the earliest. A war period ends on the date on which hostilities shall have ceased.

(a) *Spanish-American War.* The war period of the Spanish-American War began April 21, 1898, and ended August 13, 1898.

(b) *Philippine Insurrection.* The war period of the Philippine Insurrection began February 4, 1899, and ended April 27, 1902.

(c) *World War I.* The war period of the World War began April 6, 1917, and ended November 11, 1918.

(d) *World War II.* The war period of World War II began December 7, 1941, and ended December 31, 1946.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interpret or apply sec. 3, 49 Stat. 969, as amended; 45 U. S. C. 228c)

PART 210—EXECUTION AND FILING OF AN APPLICATION FOR AN ANNUITY

§ 210.2 *Application to be filed.* (a) No individual, irrespective of his qualifications, shall receive an annuity unless he has, on or before the date of his death, either (1) filed with an office of the Board a duly executed application, upon such form as the Board may from time to time prescribe, or (2) delivered for the purpose of transmission to the Board's main office in Chicago, Ill., such a duly executed application to any field agent of the Board specifically authorized by a regional director to receive custody thereof in the district where

delivery is made: *Provided, however,* That a claim or application filed with the Social Security Administration, whether before or after the adoption of this section, for a lump-sum payment under section 204 (a) of Title II of the Social Security Act, as approved August 14, 1935, or for old-age insurance benefits under section 202 (a) of the Social Security Act, as amended to September 1, 1950, based in whole or in part on service with an employer under the Railroad Retirement Act, shall be considered an application for an annuity duly filed with the Railroad Retirement Board.

§ 210.6 *Application filed with the Social Security Administration.* The date on which an individual files a claim or application with the Social Security Administration for old-age insurance benefits based on less than ten years (120 months) of railroad service shall be considered the date on which an application is filed with the Railroad Retirement Board if the individual subsequently acquires 120 months of railroad service. In any such case, receipt of the following information from the Social Security Administration shall denote the filing of an application under the Railroad Retirement Act: the name and address of the applicant; the name of each employer involved who may be covered by the Railroad Retirement Act; the amount of benefits, if any, paid by the Social Security Administration on the basis of service with such employers; and the date the claim or application was filed with the Social Security Administration. In determining the date on which a claim or application was filed with the Social Security Administration, the provisions of the proviso in § 210.3 shall be applied. The payments made by the Social Security Administration on the basis of compensation which had been used as wages are not erroneous for months prior to the time the individual acquired his 120th month of railroad service; such payments, however, if any, made for and subsequent to the individual's 120th month of railroad service are to be recovered from accrued annuities under the Railroad Retirement Act.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interpret or apply sec. 2, 49 Stat. 968, as amended; 45 U. S. C. 228b)

PART 214—ANNUITY BEGINNING DATE

§ 214.1 *Statutory provisions.*

An annuity shall begin to accrue as of a date to be specified in a written application (to be made in such manner and form as may be prescribed by the Board and to be signed by the individual entitled thereto), but—

(1) Not before the date following the last day of compensated service of the applicant, and

(2) Not more than twelve months before the filing of the application. (Section 2 (c), 50 Stat. 310, as amended; 45 U. S. C. 228b).

Any individual who, prior to the date of the enactment of this Act, relinquished all rights to return to the service of a carrier as defined in the Railroad Retirement Act of 1935 or ceased to be an employee representative as defined in such Act, and who is not eligible for an annuity under that Act but who would have been eligible for

an annuity under the Railroad Retirement Act of 1937 had such Act been in force from and after August 29, 1935, shall have his right to an annuity adjudicated under the Railroad Retirement Act of 1937: *Provided, however,* That no such annuity shall begin prior to the date of the enactment of this Act. (Section 203, 50 Stat. 318; 45 U. S. C. 215 Note.)

§ 214.2 *Annuity beginning date.* An annuity shall begin to accrue as of the date specified in the application: *Provided,* That such date is not earlier than that permitted by sections 2 (c) (1), 2 (c) (2), and 203 of the act quoted in § 214.1, nor prior to the date upon which the applicant attains eligibility for an annuity: *Provided further,* That no joint and survivor annuity shall begin to accrue prior to the date on which a joint and survivor annuity election was made in accordance with Part 230 of this chapter. The filing of an application in accordance with the proviso contained in § 210.2 of this chapter shall be the specification, as an annuity beginning date, of the date following the last day of compensated service, or of the date twelve months prior to the filing date, whichever date is the later: *Provided, however,* That where such date falls on the thirty-first day of any month the annuity shall begin to accrue on the first day of the following month; and that where an application is filed on February 28 or 29 the annuity may begin as early as February 28 of the preceding year.

§ 214.4 *Clarification of beginning date.* In any case wherein an applicant has made an unintelligible designation of the beginning date of his annuity, he shall be notified of the earliest beginning date permitted by law. Non-action in response to the notification from the Board of the earliest permissible beginning date for a period of 30 days after the date of the notification shall operate to designate the earliest permissible date specified in such notification.

§ 214.6 *Beginning date following cancellation of application.* In the event an annuity beginning date is designated and, because of a cancellation of the application, such date becomes ineffective, the annuity thereafter cannot begin to accrue earlier than twelve months prior to the receipt of the request to renew the application, nor until the date following the last day of compensated service, whichever date is later: *Provided, however,* That the applicant may, in renewing such application, designate a later date.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j)

PART 217—LOSS OF ANNUITY FOR ANY MONTH BY REASON OF COMPENSATED SERVICE

§ 217.1 *Statutory provisions.*

No annuity shall be paid with respect to any month in which an individual in receipt of an annuity hereunder shall render compensated service to an employer or to the last person by whom he was employed prior to the date on which the annuity began to accrue. Individuals receiving annuities shall report to the Board immediately all such compensated service. No annuity un-

der paragraph 4 or 5 of subsection (a) of this section shall be paid to an individual with respect to any month in which the individual is under age sixty-five and is paid more than \$100 in earnings from employment or self-employment of any form: *Provided,* That for purposes of this paragraph, if a payment in any one calendar month is for accruals in more than one calendar month, such payment shall be deemed to have been paid in each of the months in which accrued to the extent accrued in such month. Any such individual under the age of sixty-five shall report to the Board any such payment of earnings for such employment or self-employment before receipt and acceptance of an annuity for the second month following the month of such payment. A deduction shall be imposed, with respect to any such individual who fails to make such report, in the annuity or annuities otherwise due the individual, in an amount equal to the amount of the annuity for each month in which he is paid such earnings in such employment or self-employment, except that the first deduction imposed pursuant to this sentence shall in no case exceed an amount equal to the amount of the annuity otherwise due for the first month with respect to which the deduction is imposed. (Sec. 2 (d), 50 Stat. 310, as amended; 45 U. S. C. 228b)

§ 217.2 *Loss of annuity for month in which compensated service is rendered.* If an individual in receipt of an annuity renders compensated service, he shall not be paid an annuity with respect to any month in which such service is rendered to:

- (a) An employer;
 - (b) Any person whether or not an employer by whom he was most recently employed when his annuity begins to accrue;
 - (c) Any person with whom he held, at the time the annuity begins to accrue, any rights to return to service;
 - (d) Any person with whom he ceased service in order to have his annuity begin to accrue.
- (See also § 208.29 (c) of this chapter.)

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interpret or apply sec. 2, 49 Stat. 968, as amended; 45 U. S. C. 228b)

PART 220—DEFINITION AND CREDITABILITY OF SERVICE

§ 220.2 *What constitutes a month and a year of service.* Any calendar month in which an individual renders service for compensation or for which he receives remuneration for time lost as an employee constitutes a month of service, irrespective of the amount of such service or of the amount of time for which such remuneration is received. Twelve such months, consecutive or otherwise, shall be a year of service: *Provided, however,* That in totaling the service of an employee who has performed 126 months or more of creditable service, an ultimate fraction of 6 months or more shall constitute a year of service. In all other cases, ultimate fractions shall be taken at their actual value.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interprets or applies sec. 1, 45 U. S. C. 228a)

§ 220.3 *Creditability of service. * * **
(d) *Service prior to January 1, 1937.* If an individual was not an employee on August 29, 1935, no service prior to January 1, 1937, shall be creditable.

(e) *Service prior to January 1, 1937, where individual was employee on August 29, 1935.* Service performed prior to January 1, 1937, by an individual who was an employee on August 29, 1935, shall be creditable in the manner and to the extent provided in paragraph (f) of this section but not so as to cause the total years of service to exceed 30: *Provided, however,* That with respect to any such individual who rendered service to any employer after January 1, 1937, and who on August 29, 1935, was not an employee of an employer conducting the principal part of its business in the United States no greater proportion of his service rendered prior to January 1, 1937, shall be included in his "years of service" than the proportion which his total compensation (without regard to any limitation on the amount of compensation otherwise provided in the act) for service after January 1, 1937, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (without regard to any limitation on the amount of compensation otherwise provided in the act) for service rendered anywhere to an employer after January 1, 1937.

(f) *Service subsequent to December 31, 1936.* All service rendered as an employee after December 31, 1936, including service performed after age 65 is attained, shall be creditable even in excess of 30 years: *Provided, however,* That in any case in which both service prior to January 1, 1937, and service subsequent to December 31, 1936, are to be credited, all service subsequent to December 31, 1936, shall first be credited, and if it be less than 30 years, then service prior to January 1, 1937, shall be included, but only to an extent sufficient to bring the total of all years of service to 30: *Provided further,* That whenever service prior to January 1, 1937, is to be included it shall be taken in reverse order.

(g) *Service performed subsequent to the beginning date of an annuity.* Service rendered as an employee after the beginning date of an annuity shall be creditable toward any annuity under Part 208 of this chapter, and such annuity may be recomputed because of such additional service: *Provided,* That an application for recomputation is filed as prescribed in § 225.11 (a) of this chapter: *Provided further,* That such recomputation will not result in a decrease in such annuity. If such annuity was granted upon the basis of disability and the disability annuity ceased before the annuitant attained age 65, an application for recomputation shall not be required.

(h) *Service as employee representative.* Service rendered as an employee representative, as defined in § 205.2 of this chapter, shall be creditable in the same manner and to the same extent as though the organization by which he was employed were an employer.

(i) *Service after December 31, 1936, to a local lodge or division.* Service rendered in any month after December 31, 1936, to a local lodge or division of a railway-labor-organization employer

with respect to which service an individual would be an employee within the meaning of § 203.7 of this chapter shall not be creditable unless rendered for compensation which is creditable within the provisions of Part 222 of this chapter, and particularly § 222.3 (d) of this chapter.

(Sec. 10, 49 Stat. 973, as amended; 15 U. S. C. 228j. Interprets or applies secs. 1, 3, 49 Stat. 967, 969, as amended; 45 U. S. C. 228a, 228c)

PART 222—DEFINITION AND CREDITABILITY OF COMPENSATION

§ 222.1 Statutory provisions.

The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of any tax now or hereafter imposed with respect to the compensation of such employee. For the purposes of determining monthly compensation and years of service and for the purposes of subsections (a), (c), and (d) of section 2 and subsection (a) of section 5 of this Act, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than \$3 and (1) such compensation is earned between December 31, 1936, and April 1, 1940, and taxes thereon pursuant to section 2 (a) and 3 (a) of the Carriers Taxing Act of 1937 or sections 1500 and 1520 of the Internal Revenue Code are not paid prior to July 1, 1940; or (2) such compensation is earned after March 31, 1940. A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned. In determining the monthly compensation, the average monthly remuneration, and quarters of coverage of any employee, there shall be attributable as compensation paid to him in each calendar month in which he is in military service

creditable under section 4 the amount of \$160 in addition to the compensation, if any, paid to him with respect to such month. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining eligibility for and the amount of benefits pursuant to this Act if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service". (Section 1 (h), 50 Stat. 309, as amended; 45 U. S. C. 228a)

* * * In computing the monthly compensation, no part of any month's compensation in excess of \$300 for any month before July 1, 1954, or in excess of \$350 for any month after June 30, 1954, shall be recognized. If the employee earned compensation in service after June 30, 1937, and after the last day of the calendar year in which he attained age sixty-five, such compensation and service shall be disregarded in computing the monthly compensation if the result of taking such compensation into account in such computation would be to diminish his annuity. (Section 3 (c), 50 Stat. 311, as amended by 68 Stat. 1038; 45 U. S. C. 228c)

§ 222.3 *Creditability of compensation—(a) Maximum creditable compensation for one month.* In no case shall compensation in excess of \$300 for any month of service before July 1, 1954, or in excess of \$350 for any month of service after June 30, 1954, be recognized.

(b) *Compensation dependent upon creditability of service.* All compensation paid to an individual for service creditable in accordance with § 220.3 of this chapter, including compensation received for service performed after age 65, or after the beginning date of an annuity, shall be credited: *Provided, however,* That the crediting of such compensation shall be limited to the maximum prescribed in paragraph (a) of this section: *Provided further,* That if the individual earned compensation in service after June 30, 1937, and after the calendar year in which he attained age 65 such compensation and service shall be disregarded in computing the monthly compensation if the result of taking such compensation into account in such computation would be to diminish his annuity.

(c) *Employee representative compensation.* (1) If an individual occupies the position or office of employee representative as defined in section 1 (b) of the 1937 act and is paid remuneration in that position or office, all such remuneration is paid for services rendered as an employee representative within the meaning of section 1 (h) of the act, even though the individual performs either in connection with or outside of that position or office some services which are not related to the representation of employees in negotiations with employers regarding wages, hours, working conditions, etc. However, any other remuneration which the individual receives is not paid for service rendered as an employee representative within the meaning of section 1 (h).

(2) If an individual does not occupy the position or office of employees representative and is paid remuneration in another position or office, none of such remuneration is paid for services rendered as an employee representative

within the meaning of section 1 (h) of the 1937 act, even though the individual performs either in connection with or outside of the non-employee representative position some services which are related to the representation of employees in negotiations with employers regarding wages, hours, working conditions, etc. Likewise, if the individual does occupy the position or office of employee representative in addition to his other position or office, but is paid remuneration only in the non-employee representative position or office or for services not related to the representation of employees in negotiations with employers, none of such remuneration is paid for service rendered as an employee representative within the meaning of section 1 (h).

(d) *Compensation earned after December 31, 1936, for service rendered to a local lodge or division.* Compensation earned in any month after December 31, 1936, for service rendered to a local lodge or division of a railway-labor-organization employer shall be disregarded unless (1) it is \$3.00 or more, or (2) if less than \$3.00 it was earned prior to April 1, 1940, and with respect thereto the income and excise taxes prescribed in the Railroad Retirement Tax Act were paid prior to July 1, 1940.

(e) *Compensation for service as a delegate to a convention of a railway labor organization.* Compensation received on or after April 1, 1954, as a delegate to a national or international convention of a railway labor organization defined as an "employer" in section 1 (a) of the act shall be disregarded in determining an individual's eligibility for benefits and the amount of such benefits if the individual has not previously rendered service, other than as such a delegate, which may be included in his "years of service."

(f) *When compensation earned will be deemed compensation paid.* Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8 of the act, the period during which such compensation will have been earned.

(g) *Compensation; payment.* Compensation is deemed to be paid:

(1) When it is actually paid; or
 (2) When it is constructively paid, that is, credited to the account of or set apart for an employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and made available to him so that it may be drawn upon at any time and its payment brought within his own control and disposition.

(h) *Allowances in lieu of vacation.* Compensation shall include allowances in lieu of vacations. If an employee

dies, or ceases service for the purpose of receiving an annuity, and a vacation allowance is thereafter paid, the Board may, in the interest of the employee, credit the allowance to the last day of service or allocate the compensation to a period during his life following the last day of service equivalent to the entire vacation period.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interprets or applies sec. 1, 49 Stat. 967, as amended; 45 U. S. C. 228a)

§ 222.4 *Amount of compensation attributable to each calendar month of military service creditable.* In determining the "monthly compensation" of any employee who performed military service which is creditable under Part 209 of this chapter and section 4 of the act, there shall be attributable as compensation for each such month of creditable military service the amount of \$160 in addition to the compensation, if any, paid him with respect to such month: *Provided, however,* That the compensation so credited shall not exceed the maximum prescribed in § 222.3 (a).

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j)

PART 225—COMPUTATION OF ANNUITY

§ 225.1 *Formula for computing annuity.* The annuity shall be computed by multiplying an individual's "years of service" by the following percentages of his "monthly compensation": 2.76 percent of the first \$50; 2.07 percent of the next \$100; and 1.38 percent of the next \$200.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interprets or applies sec. 3, 49 Stat. 969, as amended; 45 U. S. C. 228c)

§ 225.5 *Minimum amount of annuity.* In the case of an individual having a current connection with the railroad industry as defined in section 1 (o) of the act and § 208.5 of this chapter, the minimum annuity payable for any month after October 1951 shall, except as provided in § 225.6 and prior to any reduction pursuant to §§ 225.7, 225.8, and 225.9, be whichever of the following is the least:

(a) \$4.14 multiplied by the number of the individual's "years of service," or
 (b) \$69, or

(c) The individual's "monthly compensation" as determined under § 225.3.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interprets or applies sec. 3, 49 Stat. 969, as amended; 45 U. S. C. 228c)

§ 225.6 *Over-all minimum based on Social Security Act formula.* (a) When the total amount of annuity payable to an individual for an entire month, before any reduction under §§ 225.7 and 225.8, plus the amount, if any, of the spouse's annuity payable for such month to the spouse of such individual, is less than the amount, or the additional amount, which would have been payable for such month under the Social Security Act to the individual, his spouse, and his children, if any, the amount of the annuity or annuities shall be increased proportionately to such amount or additional amount.

(b) For the purpose of this section, (1) the individual's service as an employee after 1936 shall be deemed to have been "employment" as that term is defined in the Social Security Act, (2) quarters of coverage shall be determined in accordance with section 5 (1) (4) of the Railroad Retirement Act (see § 237.101 of this chapter), and (c) the amount of any possible deductions for failure to report an event causing a deduction as provided in subsections (f) and (g) (2) of section 203 of the Social Security Act shall be disregarded.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interprets or applies sec. 3, 49 Stat. 969, as amended; 45 U. S. C. 228c)

§ 225.7 *Annuities subject to reduction where individual is under age 65.* Where eligibility for an annuity is based on age 60 to 65 and service, the amount of the annuity, as computed under §§ 225.1 to 225.6, shall in the case of male applicants be reduced by one one-hundred-and-eightieth for each calendar month during all of which the individual is less than 65 years of age when the annuity begins to accrue.

§ 225.8 *Effect of election of joint and survivor annuity.* If a joint and survivor election is operative, the value of the annuity, as computed under §§ 225.1 to 225.7, shall be applied to the payment of two annuities, a joint and survivor annuity to the individual during life, and a survivor annuity to the surviving spouse during life; the amounts of both annuities shall be such that their combined actuarial value as determined by the Board shall be the same as the actuarial value of the annuity computed under §§ 225.1 to 225.7: *Provided, however,* That such joint and survivor annuity shall upon revocation of the election or death of the spouse be increased to the amount that would have been payable had an election not been made, such increased annuity to begin to accrue, subject to the provisions of § 214.1 of this chapter, on the first of the calendar month following the calendar month in which the election was revoked or the spouse died, but not before November 1, 1951.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interprets or applies sec. 2, 49 Stat. 968, as amended; 45 U. S. C. 228b)

§ 225.9 *Reduction because of military service used for other benefits.* When any other gratuitous benefit is payable on a periodic basis under another act of Congress on the basis of military service included in an individual's years of service, the annuity of such individual for all or part of a month for which such other benefit is payable, shall be reduced by

(a) The proportion that the number of years of service by which such military service increases the years of service bears to the total years of service, or

(b) The aggregate amount of such other benefit for that month, whichever results in the smaller reduction; however, where eligibility for the annuity exists without the crediting of the military service on the basis of which such other benefit is payable, the annuity shall not be reduced below the amount which

would be payable without the crediting of the military service.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interprets or applies sec. 4, 49 Stat. 969, as amended; 45 U. S. C. 228c-1)

§ 225.10 [Reserved.]

§ 225.11 *Annuity subject to recomputation*—(a) *Recomputation of retirement annuity.* Subject to the provisions of paragraph (b) of this section, the retirement annuity of an individual shall be recomputed and recertified to include service rendered by such individual as an employee after such annuity began to accrue if the individual has, on or before the date of his death, filed with an office of the Board a duly executed application for such recomputation subject to the same conditions and limitations prescribed in § 210.2 of this chapter relating to the execution and filing of an application for an annuity. A recomputation under this section shall be made according to the provisions of section 3 of the act, as amended, and shall take into account all the individual's service rendered as an employee up to the date the application for recomputation is filed with the Board.

(b) *Cessation of service and relinquishment of rights as conditions for recomputation.* An individual shall be entitled to have his retirement annuity recomputed under paragraph (a) of this section only if he shall have ceased to render service for compensation to an employer as defined in Part 202 of this chapter, and shall have relinquished all rights which he may have had to return to the service of any such employer; but the requirement of relinquishment of rights shall not apply to an individual entitled to an annuity described in § 208.7 (a) (3) or (4) of this chapter, prior to attaining age 65.

(c) *Filing date of application for recomputation.* An application for recomputation of a retirement annuity, filed in the manner and form prescribed in paragraph (a) of this section and § 210.2 of this chapter, shall be considered filed as of the date prescribed in § 210.3 of this chapter.

(d) *Signature on application for recomputation.* An application for recomputation of a retirement annuity shall be signed in the manner prescribed in § 210.4 of this chapter. In addition, the conditions prescribed in that section with respect to re-executed or corrected applications shall also apply to such an application.

(e) *Presumptions from application; application where individual is incompetent; alteration; cancellation and effect of cancellation of application.* Sections 210.5, 210.7, 210.10, 210.11, and 210.12, respectively, of this chapter shall govern the presumptions which shall be made from a duly executed application for recomputation of a retirement annuity received on or prior to the date of death of the applicant, the execution and filing of such an application in the event the individual is mentally incompetent, the restrictions governing the alteration of such an application, the cancellation of such an application, and the effect of a cancellation.

(f) *Effective date of increase where retirement annuity is recomputed to include service rendered after annuity began to accrue.* Any increase in a retirement annuity resulting from a recomputation to include service rendered after the annuity has begun to accrue shall be effective as of the latest of the following dates: (1) twelve months before the filing date of the application for recomputation, or (2) the first day of the month following the last month in which the employee worked for an employer under the act: *Provided, however,* That no such increase in annuity shall be effective before November 1, 1951.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j. Interprets or applies sec. 3, 49 Stat. 969, as amended; 45 U. S. C. 228c)

PART 232—SPOUSES' ANNUITIES

Subpart A—Definitions

- Sec.
- 232.101 Statutory provisions.
- 232.102 Definition of "spouse".
- 232.103 Definition of "wife".
- 232.104 Definition of "husband".

Subpart B—Conditions of Entitlement

- 232.201 Statutory provisions.
- 232.202 Eligibility for an annuity.
- 232.203 Relinquishment of rights.
- 232.204 Filing of application.
- 232.205 Annuity beginning date.

Subpart C—Computation of Annuity

- 232.301 Statutory provisions.
- 232.302 Amount of annuity.
- 232.303 Reduction because of other benefits.

Subpart D—Payment of Annuities

- 232.401 Statutory provisions.
- 232.402 Loss of annuity with respect to any month.
- 232.403 Entitlement ends.

AUTHORITY: §§ 232.101 to 232.403 issued under sec. 10, 49 Stat. 753, as amended; 45 U. S. C. 228j.

SUBPART A—DEFINITIONS

§ 232.101 *Statutory provisions.*

For the purposes of this Act, the term "spouse" shall mean the wife or husband of a retirement annuitant or pensioner who (1) was married to such annuitant or pensioner for a period of not less than three years immediately preceding the day on which the application for a spouse's annuity is filed, or is the parent of such annuitant's or pensioner's son or daughter, if, as of the day on which the application for a spouse's annuity is filed, such wife or husband and such annuitant or pensioner were members of the same household, or such wife or husband was receiving regular contributions from such annuitant or pensioner toward her or his support, or such annuitant or pensioner has been ordered by any court to contribute to the support of such wife or husband; and (ii) in the case of a husband, was receiving at least one-half of his support from his wife at the time his wife's retirement annuity or pension began. (65 Stat. 684; 45 U. S. C. 228b)

§ 232.102 *Definition of "spouse."* The term "spouse" means a wife or husband of a retirement annuitant or pensioner as defined in section 2 of the act and in §§ 232.103 and 232.104.

§ 232.103 *Definition of "wife."* An individual is a "wife," as that term is used in section 2 of the act, when such an individual is the wife of a retirement

annuitant or pensioner under the law of the state of his domicile and when:

(a) She has been married to such annuitant or pensioner for at least 3 years preceding the date on which an application for a spouse's annuity is filed, or is the natural mother of his son or daughter, and

(b) As of the date on which an application for a spouse's annuity is filed, she was a member of the same household as such annuitant or pensioner, or he was contributing toward her support regularly, or he had been ordered by any court to contribute to the support of such wife.

§ 232.104 *Definition of "husband."* An individual is a "husband," as that term is used in section 2 of the act, when such individual is the husband of a retirement annuitant or pensioner under the law of the state of her domicile and when:

(a) He had been married to such annuitant or pensioner for at least 3 years preceding the date on which an application for a spouse's annuity is filed, or is the natural father of her son or daughter, and

(b) As of the date on which an application for a spouse's annuity is filed, he was a member of the same household as such annuitant or pensioner, or she was contributing toward his support regularly, or she had been ordered by any court to contribute to the support of such husband, and

(c) He was receiving at least one-half of his support from such annuitant or pensioner on the day her annuity or pension began to accrue.

SUBPART B—CONDITIONS OF ENTITLEMENT

§ 232.201 *Statutory provisions.*

The spouse of an individual, if—
(1) Such individual has been awarded an annuity under subsection (a) or a pension under section 6 and has attained the age of 65, and

(ii) Such spouse has attained the age of 65 or in the case of a wife, has in her care (individually or jointly with her husband) a child who, if her husband were then to die, would be entitled to a child's annuity under subsection (c) of section 5 of this Act. Shall be entitled to a spouse's annuity * * *

(65 Stat. 683; 45 U. S. C. 228b, 228f, 228e)
An annuity shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer and of the person by whom he was last employed * * * (Sec. 2 (b), 50 Stat. 310; 45 U. S. C. 228b)

An annuity shall begin to accrue as of a date to be specified in a written application (to be made in such manner and form as may be prescribed by the Board and to be signed by the individual entitled thereto), but—

(1) Not before the date following the last day of compensated service of the applicant, and

(2) Not more than twelve months before the filing of the application.

(Sec. 2 (c), 50 Stat. 310, as amended; 45 U. S. C. 228b)

§ 232.202 *Eligibility for an annuity.* The spouse of a retirement annuitant or pensioner shall be eligible for a spouse's annuity when such annuitant or pensioner has attained the age of 65 if:

(a) The spouse has also attained the age of 65, or

(b) The spouse is a woman under age 65 who has in her care, individually or jointly with her husband, a child, who if the annuitant or pensioner were then to die, would be entitled to a child's insurance annuity under section 5 (c) of the act.

§ 232.203 *Relinquishment of rights.* A spouse's annuity may not be certified for payment until the applicant has established to the satisfaction of the Board that he or she has relinquished all rights which such applicant may have had to return to the service of:

(a) An employer;

(b) Any person whether or not an employer by whom he or she was most recently employed when the annuity begins to accrue;

(c) Any person with whom he or she held, at the time the annuity begins to accrue, any rights to return to service;

(d) Any person with whom he or she ceased service in order to have the annuity begin to accrue.

§ 232.204 *Filing of application.* (a) No spouse, irrespective of his or her qualifications, shall receive an annuity unless he or she has, on or before the date of his or her death, filed with an office of the Board a duly executed application, upon such form as the Board may from time to time prescribe.

(b) An application shall be considered filed with the Board as of the date that it is received at an office of the Board, or the date that it is delivered into the custody of a duly authorized field agent: *Provided, however,* That where it is determined that the applicant died on a Sunday or a day observed by the Board as a legal holiday and the application is received through the mails at an office of the Board on the first business day following such Sunday or such legal holiday, the application shall be deemed to have been filed with the Board on such Sunday or such legal holiday, if it is established to the satisfaction of the Board that the application was mailed in sufficient time to have been received by the Board in the ordinary course of the mails on such Sunday or such legal holiday had it been a business day.

§ 232.205 *Annuity beginning date.* (a) A spouse's annuity shall begin to accrue as of the date specified in the application: *Provided, however,* That such date is not earlier than the latest of the following dates:

(1) November 1, 1951.

(2) The date following the last day of compensated service.

(3) The date on which all eligibility requirements are met.

(4) Twelve months prior to the filing date of the application.

(5) September 1, 1954, if the entitlement of a wife is based on having in her care a disabled child 18 years of age or older.

(b) Where the date on which the annuity could otherwise begin falls on the thirty-first day of any month, the annuity shall begin to accrue on the first day of the following month.

SUBPART C—COMPUTATION OF ANNUITY

§ 232.301 *Statutory provisions.*

The spouse of an individual, * * * shall be entitled to a spouse's annuity equal to one-half of such individual's annuity or pension, but not more than \$40: *Provided, however,* That if the annuity of the individual is awarded under paragraph 3 of subsection (a), the spouse's annuity shall be computed or recomputed as though such individual had been awarded the annuity to which he would have been entitled under paragraph 1 of said subsection: *Provided further,* That, if the annuity of the individual is awarded pursuant to a joint and survivor election, the spouse's annuity shall be computed or recomputed as though such individual had not made a joint and survivor election: *And provided further,* That any spouse's annuity shall be reduced by the amount of any annuity and the amount of any monthly insurance benefit, other than a wife's or husband's insurance benefit, to which such spouse is entitled, or on proper application would be entitled, under subsection (a) of this section or subsection (d) of section 5 of this Act or section 202 of the Social Security Act; except that if such spouse is disentitled to a wife's or husband's insurance benefit, or has had such benefit reduced, by reason of subsection (k) of section 202 of the Social Security Act, the reduction pursuant to this third proviso shall be only in the amount by which such spouse's monthly insurance benefit under said Act exceeds the wife's or husband's insurance benefit to which such spouse would have been entitled under that Act but for said subsection (k). (65 Stat. 683; 45 U. S. C. 228b)

§ 232.302 *Amount of annuity.* (a) A spouse's annuity for a month shall be equal to one-half of the annuity or pension of the retired employee up to a maximum of \$40: *Provided, however,* That the maximum may be exceeded where the employee's annuity is computed as prescribed in § 225.6 of this chapter.

(b) Where the annuity of the retired employee was awarded on a reduced basis because such individual had not attained the age of 65, the spouse's annuity shall be computed as though the employee's annuity had been awarded under section 2 (a) 1 of the act after such annuitant had attained age 65.

(c) Where the annuity of the retired employee was awarded and reduced pursuant to a joint and survivor election, the spouse's annuity shall be computed as though such joint and survivor election had not been made.

§ 232.303 *Reduction because of other benefits.* The spouse's annuity of an individual who is entitled, or upon application would be entitled, to a retirement annuity or parent's insurance annuity under the Railroad Retirement Act, or to any benefit under the Social Security Act, other than a wife's or husband's benefit, shall be reduced by the amount of such other benefits: *Provided, however,* That where the entitlement to an old-age insurance benefit or to a parent's benefit under the Social Security Act causes disentanglement to a wife's or husband's benefit to which such individual would otherwise be entitled, the reduction shall be limited to the amount by

which such old-age insurance benefit or parent's benefit exceeds the wife's or husband's benefit to which the spouse would otherwise be entitled.

SUBPART D—PAYMENT OF ANNUITIES

§ 232.401 *Statutory provisions.*

The spouse's annuity provided in subsection (e) shall, with respect to any month, be subject to the same provisions of subsection (d) as the individual's annuity, and, in addition, the spouse's annuity shall not be payable for any month if the individual's annuity is not payable for such month (or, in the case of a pensioner, would not be payable if the pension were an annuity) by reason of the provisions of said subsection (d). Such spouse's annuity shall cease at the end of the month preceding the month in which (i) the spouse or the individual dies, (ii) the spouse and the individual are absolutely divorced, or (iii), in the case of a wife under age 65, she no longer has in her care a child who, if her husband were then to die, would be entitled to an annuity under subsection (c) of section 5 of this Act. (65 Stat. 684; 45 U. S. C. 228b)

§ 232.402 *Loss of annuity with respect to any month.* A spouse's annuity shall not be paid with respect to any month in which an individual in receipt of an annuity under section 2 (e) of the act shall:

(a) Render compensated service to an employer or to the last person by whom such spouse annuitant was employed prior to the date on which the annuity began to accrue, or

(b) The retirement annuity of the employee annuitant is not payable, or in the case of a pensioner such pension would not be payable if it were an annuity subject to the provisions of section 2 (d) of the act.

§ 232.403 *Entitlement ends.* Entitlement to a spouse's annuity awarded under section 2 (e) of the act shall cease at the end of the month preceding the month in which any of the following events occur:

(a) The spouse annuitant dies.

(b) The wife or husband of the spouse annuitant dies.

(c) The marriage of the spouse annuitant and the annuitant or pensioner is ended by absolute divorce.

(d) A spouse annuitant under age 65 no longer has in her care a child who, if her husband were then to die, would be entitled to an annuity under section 5 (c) of the act.

PART 234—ANNUITIES DUE BUT UNPAID AT DEATH

§ 234.2 *Annuities due but unpaid at death; to whom payable.* Employee annuities, survivor annuities, and insurance annuities which will have become due an individual but will not yet have been paid at death, if such death shall have occurred on or after January 1, 1947, shall be paid to the following person (or if more than one there shall be distributed among them) whose relationship to the deceased employee will have been determined by the Board, and who will have been living on the date

of such determination: To the widow or widower; if no such widow or widower be then living, to any child or children and to any other person or persons who, under the intestacy law of the State where the deceased will have been domiciled, will have been entitled to share as distributees with such children, in such proportions as are provided by such law; if no such widow, widower, child or other person be then living, to parent or parents in equal shares; and if no such widow, widower, child, other person or parent be then living, to brothers and sisters in equal shares. If none of the persons described above be living on the date of such determination, accrued and unpaid employee annuities shall be paid to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of the employee. If there be no individual to whom payment can thus be made, such accrued employee annuity payments shall escheat to the credit of the Railroad Retirement Account. Accrued spouse's annuities which will have become due a spouse but will not yet have been paid at death shall be paid to the employee if he or she is living on the date payment is to be made. If the employee is not living on the date payment is to be made, the accrued spouse's annuities shall be paid to the person or persons described above who would be entitled to any amount due but unpaid at the death of the employee. A person who has paid an employee's burial expenses is not equitably entitled to any accrued survivor and insurance annuities, and if no person or persons of the relationship described above to the employee were living on the date of such determination, any accrued survivor and insurance annuities shall escheat under the last sentence of section 3 (f) of the act.

(Sec. 10, 49 Stat. 753, as amended; 45 U. S. C. 228). Interprets or applies sec. 3, 49 Stat. 969, as amended; 45 U. S. C. 228c)

PART 236—PAYMENTS OF BENEFITS OF \$1,000 OR LESS

§ 236.2 *Waiver and release by creditor.* If, in the judgment of the Board, any creditor of the estate of the deceased possesses rights superior to those of his surviving spouse or kindred, payment shall not be made without formal administration unless and until such creditor has, on a form prescribed by the Board, waived and released his claim against such estate with the same effect as if it had heretofore been paid and fully satisfied; *Provided, however,* That payment may be made to a creditor or creditors, on a proportionate basis, for burial expenses or medical expenses of the last illness of the deceased in the order of priority under the applicable law: *Provided further,* That where several persons are creditors by virtue of having contributed small amounts of \$25 or less each to a fund administered by a custodian for payment of the burial expenses of the deceased, payment may be made

to such custodian without requiring formal assignments or waivers signed by each such person.

(Sec. 10, 49 Stat. 753, as amended; 45 U. S. C. 228j)

PART 237—INSURANCE ANNUITIES AND LUMP SUMS FOR SURVIVORS

SUBPART A—INSURED STATUS

§ 237.101 *Statutory provisions.*

An employee will have been "completely insured" if it appears to the satisfaction of the Board that at the time of his death, whether before or after the enactment of this section, he will have completed ten years of service and will have had the qualifications set forth in any one of the following paragraphs:

(i) A current connection with the railroad industry; and a number of quarters of coverage, not less than six, and at least equal to one-half of the number of quarters, elapsing in the period after 1936, or after the quarter in which he will have attained the age of twenty-one, whichever is later, and up to but excluding the quarter in which he will have attained the age of sixty-five years or died, whichever will first have occurred (excluding from the elapsed quarters any quarter which is not a quarter of coverage and during any part of which a retirement annuity will have been payable to him); and if the number of such elapsed quarters is an odd number such number shall be reduced by one; or

(ii) A current connection with the railroad industry; and forty or more quarters of coverage; or

(iii) A pension will have been payable to him; or a retirement annuity based on service of not less than ten years (as computed in awarding the annuity) will have begun to accrue to him before 1948. (60 Stat. 734; 45 U. S. C. 228e)

An individual shall be deemed to have "a current connection with the railroad industry" at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under section 2 begins to accrue to him (or the month in which he dies if that first occurs), he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer in the period before such month and after the end of such thirty months. For the purposes of section 5 only, an individual shall be deemed also to have a "current connection with the railroad industry" if he is in all other respects completely insured but would not be fully insured under the Social Security Act, or if he is in all other respects partially insured but would be neither fully nor currently insured under the Social Security Act, or if he has no wage quarters of coverage. (60 Stat. 726; 45 U. S. C. 228a)

The term "quarter of coverage" shall mean a compensation quarter of coverage or a wage quarter of coverage, and the term "quarters of coverage" shall mean compensation quarters of coverage, or wage quarters of coverage, or both: *Provided,* That there shall be for a single employee no more than four quarters of coverage for a single calendar year. (60 Stat. 733; 45 U. S. C. 228e)

The term "compensation quarter of coverage" shall mean any quarter of coverage computed with respect to compensation paid to an employee after 1936 in accordance with the following table:

Months of service in a calendar year	Total compensation paid in the calendar year				
	Less than \$50	\$50 but less than \$100	\$100 but less than \$150	\$150 but less than \$200	\$200 or more
1-3	0	1	1	1	1
4-6	0	1	2	2	2
7-9	0	1	2	3	3
10-12	0	1	2	3	4

If upon computation of the compensation quarters of coverage in accordance with the above table an employee is found to lack a completely or partially insured status which he would have if compensation paid in a calendar year were presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in service as an employee, such presumption shall be made. (60 Stat. 733; 45 U. S. C. 228e)

The term "wage quarter of coverage" shall mean any quarter of coverage determined in accordance with the provisions of title II of the Social Security Act. (60 Stat. 734; 45 U. S. C. 228e)

§ 237.102 *Completely insured status—*

(a) *Payments based upon, and existence of, completely insured status.* (1) All insurance annuities and lump sums for survivors are conditioned upon an employee's insured status. This status is determined by his service, compensation, and wage history. Unless an employee was completely insured at death, his widow cannot become entitled to a widow's insurance annuity, her widower cannot become entitled to a widower's insurance annuity, and his surviving parent cannot become entitled to a parent's insurance annuity, on the basis of his earnings. For the purpose of determining whether an employee was completely insured at death, it is immaterial whether his death occurred before, on, or after the enactment date of section 5 of the act.

(2) An employee was completely insured at death if (i) he had completed 10 years of service, had acquired the number of quarters of coverage specified in paragraph (d) of this section and had a current connection with the railroad industry at the time of his death, or (ii) there had been payable to him a pension under section 6 of the act, or (iii) there had begun to accrue to him, before 1948, a retirement annuity based on not less than 10 years of service (as computed in awarding the annuity).

(d) *Determination of completely insured status on basis of quarters of coverage and current connection.* An employee, whether or not he was completely insured at death by virtue of having been a pensioner or an annuitant, could have been completely insured at the time of his death if at that time he had completed 10 years of service, had a current connection with the railroad industry, and had at least 40 quarters of coverage. Even if he had less than 40 quarters of coverage, he could have been completely insured at the time of his death if at that time he had completed 10 years of service, had a current connection with

the railroad industry, and had a required number of quarters of coverage, not less than six, as provided in this paragraph. If such an employee did not have, at the time of his death, a current connection with the railroad industry, or if he had less than six quarters of coverage, he was not a completely insured employee under the provisions of this paragraph. In the case of an employee who, at the time of his death, had completed 10 years of service, had a current connection with the railroad industry, and had at least six, but less than 40, quarters of coverage, the determination of whether he had a completely insured status under the provisions of this paragraph is made as follows:

(1) *Elapsed quarters.* Take the number of calendar quarters which have elapsed after 1936, or after the quarter in which the employee attained the age of 21 if he attained such age after 1936, and up to but excluding the quarter in which the employee attained the age of 65 or died, whichever occurred first. Subtract from that number of elapsed quarters the number of such quarters which is not a wage quarter of coverage and during any part of which a retirement annuity was payable to the employee. If the resulting number of elapsed quarters is an odd number, subtract one. Take one-half of the number of elapsed quarters thus obtained, and the resulting number, if six or more, is the number of quarters of coverage required; if the resulting number is less than six, the number of quarters of coverage required is six.

§ 237.103 *Partially insured status.*—
(a) *Payments based upon partially insured status.* An employee who was not completely insured at death may nevertheless have had a service, compensation, and wage history which, upon his death, will give him the status of a partially insured employee. Unless he was either completely insured or partially insured at death, his widow cannot become entitled to a widow's current insurance annuity, his surviving child cannot become entitled to a child's insurance annuity, and no person can become entitled to a lump-sum payment under section 5 (f) (1) of the act, on the basis of his earnings. For the purpose of determining whether an employee was a partially insured employee at death it is immaterial whether his death occurred before, on, or after the enactment date of section 5 of the act.

(b) *Determination of partially insured status.* (1) An employee was a partially insured employee at death if he had completed 10 years of service, had a current connection with the railroad industry, and had at least six quarters of coverage in a prescribed period. That period consists of the three calendar years preceding the year in which the employee died or in which a retirement annuity will have begun to accrue to him, and those calendar quarters of the year in which such event occurs.

(2) Quarters of coverage need not be consecutive and no particular order of their acquisition is required.

§ 237.104 *Alternative method of determining insured status.* Where application of the table in section 5 (1) (4) of the act (see § 237.101) does not result in an employee's having a completely or partially insured status, it shall be presumed that the compensation paid him in a calendar year was paid in equal proportions with respect to all months in the year and at last line of the table applied to the result. This alternative method shall be applied to the most recent calendar year in which the employee received compensation and each preceding calendar year until an insured status is obtained, if at all, but not beyond 1937. This alternative method is to be applied only with respect to benefits accruing under the 1951 amendments, that is, in determining the insured status of a deceased employee and in determining whether a child would be otherwise entitled to a child's insurance annuity.

SUBPART B—BASIC COMPUTATION

§ 237.201 *Statutory provisions.*

The term "basic amount" shall mean—

(i) For an employee who will have been partially insured, or completely insured solely by virtue of paragraph (7) (i) or (7) (ii) or both: the sum of (A) 40 per centum of his average monthly remuneration, up to and including \$75; plus (B) 10 per centum of such average monthly remuneration exceeding \$75 and up to and including \$350, plus (C) 1 per centum of the sum of (A) plus (B) multiplied by the number of years after 1936 in each of which the compensation, wages, or both, paid to him will have been equal to \$200 or more; if the basic amount, thus computed, is less than \$14 it shall be increased to \$14;

(ii) For an employee who will have been completely insured solely by virtue of paragraph (7) (iii): the sum of 40 per centum of his monthly compensation if an annuity will have been payable to him, or, if a pension will have been payable to him, 40 per centum of the average monthly earnings on which such pension was computed, up to and including \$75, plus 10 per centum of such compensation or earnings exceeding \$75 and up to and including \$300. If the average monthly earnings on which a pension payable to him was computed are not ascertainable from the records in the possession of the Board, the amount computed under this subdivision shall be \$33.33, except that if the pension payable to him was less than \$25, such amount shall be four-thirds of the amount of the pension or \$13.33, whichever is greater. The term "monthly compensation" shall, for the purposes of this subdivision, mean the monthly compensation used in computing the annuity;

(iii) For an employee who will have been completely insured under paragraph (7) (iii) and either (7) (i) or (7) (ii): the higher of the two amounts computed in accordance with subdivisions (i) and (ii). (60 Stat. 734; 45 U. S. C. 228e)

An employee's "average monthly remuneration" shall mean the quotient obtained by dividing (A) the sum of (i) the compensation paid to him after 1936 and before the quarter in which he will have died, eliminating any excess over \$300 for any calendar month before July 1, 1954, and any excess over \$350 for any calendar month after June 30, 1954, and (ii) if such compensation for any calendar year is less than \$3,600 and the average monthly remuneration computed on compensation alone is less than \$350 and the employee has earned in such calendar year "wages" as defined in paragraph (6) hereof,

such wages, in an amount not to exceed the difference between the compensation for such year and \$4,200, by (B) three times the number of quarters elapsing after 1936 and before the quarter in which he will have died; *Provided*, That for the period prior to and including the calendar year in which he will have attained the age of twenty-two there shall be included in the divisor not more than three times the number of quarters of coverage in such period; *Provided, further*, That there shall be excluded from the divisor any calendar quarter which is not a quarter of coverage and during any part of which a retirement annuity will have been payable to him; *And provided further*, That if the exclusion from the divisor of all quarters beginning with the first quarter in which the employee was completely insured and had attained the age of sixty-five and the exclusion from the dividend of all compensation and wages with respect to such quarters would result in a higher average monthly remuneration, such quarters, compensation and wages shall be so excluded.

With respect to an employee who will have been awarded a retirement annuity, the term "compensation" shall, for the purposes of this paragraph, mean the compensation on which such annuity will have been based. (60 Stat. 734; 45 U. S. C. 228e)

The term "wages" shall mean wages as defined in section 209 of the Social Security Act (except that for the purposes of section 5 (1) (1) (ii) of this Act such wages shall be determined without regard to subsection (a) of said section 209). In addition, the term shall include (i) "self-employment income" as defined in section 211 (b) of the Social Security Act (and in determining "self-employment income" the "net earnings from self-employment" shall be determined as provided in section 211 (a) of such Act and charged to correspond with the provisions of section 203 (e) of such Act), and (ii) wages deemed to have been paid under section 217 (a) or (e) of the Social Security Act on account of military service which is not creditable under section 4 of this Act. (60 Stat. 734; 45 U. S. C. 228e. 64 Stat. 492, 42 U. S. C. 409)

§ 237.202 *Basic amount.* * * *

(b) *Computation of basic amount.*

(1) *Employee partially insured, or completely insured solely because of current connection and quarters of coverage.* In these cases:

(i) If the employee's average monthly remuneration does not exceed \$75, take 40 percent of such average monthly remuneration. If the average monthly remuneration exceeds \$75, take 40 percent of \$75 and add thereto 10 percent of the amount by which the average monthly remuneration exceeds \$75 and does not exceed \$350.

(iii) Add the figure computed under subdivision (i) of this subparagraph and the figure computed under subdivision (ii) of this subparagraph. The sum so obtained is the basic amount. If such sum is less than \$14, it is increased to \$14.

(2) *Employee completely insured solely because of being a pensioner.* In these cases:

(i) If the average monthly earnings on which the pension was computed are ascertainable from the records in the possession of the Board, and if such average monthly earnings do not exceed \$75, take 40 percent of such average monthly earnings. If such average monthly earnings exceed \$75, take 40

percent of \$75 and add thereto 10 percent of the amount by which the average monthly earnings exceed \$75 and do not exceed \$300. This sum is the basic amount.

(ii) If the average monthly earnings on which the pension was computed are not ascertainable from the records in the possession of the Board, and if the pension was \$25 or more, the basic amount is \$33.33, but if the pension was less than \$25, the basic amount is four-thirds of the amount of the pension which was payable before July 1948, or \$13.33, whichever is greater.

(3) *Employee completely insured solely because of being an annuitant.* In these cases: If the employee's monthly compensation does not exceed \$75, take 40 percent of such monthly compensation. If the monthly compensation exceeds \$75, take 40 percent of \$75 and add thereto 10 percent of the amount by which the monthly compensation exceeds \$75 and does not exceed \$300. This sum is the basic amount. For the purposes of this subparagraph, "monthly compensation" means the monthly compensation which was used in computing the employee's annuity.

§ 237.203 *Average monthly remuneration.* A deceased employee's average monthly remuneration is computed by dividing his total compensation and wages by three times the number of his divisor quarters. The total compensation and wages and the number of divisor quarters are determined as follows:

(a) *Total compensation and wages.* (1) All compensation paid to the employee, including compensation attributable to military service, after 1936 and before the quarter of computation, excluding any excess over \$300 for any calendar month before July 1, 1954, and any excess over \$350 for any calendar month after June 30, 1954.

(2) Where the compensation, including compensation attributable to military service, for any calendar year after 1936 and through 1954 and before the quarter of computation is less than \$3,600, wages as defined in section 5 (1) (6) of the act in an amount not to exceed the difference between such compensation for a year and \$3,600 are to be included. Where such compensation for any calendar year after 1954 and before the quarter of computation is less than \$4,200, such wages in an amount not to exceed the difference between such compensation for a year and \$4,200 are to be included.

(b) *Divisor quarters.* Take the number of calendar quarters which have elapsed after 1936 or after the year in which the employee attained age 22, whichever is later, and before the quarter of computation. Add to such elapsed quarters the number of quarters of coverage credited the employee before the year in which he attained age 23. Subtract from the number of quarters thus arrived at the number of such quarters which is not a wage quarter of coverage and during any part of which a retirement annuity was payable to the employee. The result is the divisor quarters. If the exclusion from the divisor

of all quarters beginning with the first quarter in which the employee was completely insured and had attained the age of 65 and the exclusion from the dividend of all compensation and wages with respect to such quarters would result in a higher average monthly remuneration, such quarters, compensation, and wages shall be so excluded.

§ 237.204 *Quarter of computation.* (a) Where the employee attained age 65 and was completely insured before the quarter of death, the basic amount is computed as of:

(1) The first calendar quarter in which the employee was completely insured and had attained age 65, and

(2) The calendar quarter in which the employee died.

The award is based on the highest basic amount computed.

(b) Where the employee had not attained age 65 and/or was not completely insured prior to the quarter of death, the basic amount is computed as of the calendar quarter in which the employee died.

§ 237.205 *Reduction because of military service used for other benefits.* When any other gratuitous benefit is payable on a periodic basis under another act of Congress on the basis of military service which has been credited in determining the quarters of coverage of an individual, a survivor insurance annuity, based on the insured status of the individual, which is payable for all or part of a month for which such other benefit is payable, shall be reduced by

(a) The proportion which the increase, by reason of the inclusion of military service, in the quarters of coverage used in determining the amount of benefits bears to the total of such quarters, or

(b) The aggregate amount of such other benefit for that month, whichever results in the smaller reduction; however, where eligibility for the insurance annuity exists without the crediting of the military service on the basis of which such other benefit is payable, the insurance annuity shall not be reduced below the amount which would be payable without the crediting of the military service.

SUBPART C—FAMILY RELATIONSHIPS

§ 237.301 *Statutory provisions.*

For the purposes of this section * * *

(1) The qualifications for "widow," "widower," "child," and "parent" shall be, except for the purposes of subsection (f), those set forth in section 216 (c), (e), and (g), and section 202 (h) (3) of the Social Security Act, respectively; and in addition—

(i) A "widow" or "widower" shall have been living with the employee at the time of the employee's death; a widower shall have received at least one-half of his support from his wife employee at the time of her death or he shall have received at least one-half of his support from his wife employee at the time her retirement annuity or pension began. (60 Stat. 733, as amended; 45 U. S. C. 228e)

(ii) A "child" shall have been dependent upon its parent employee at the time of his death; shall not be adopted after such death by other than a step parent, grand parent, aunt, or uncle; shall be unmarried; and shall be less than eighteen years of age, or shall have a permanent physical or mental

condition which is such that he is unable to engage in any regular employment: *Provided*, That such disability began before the child attains age eighteen; and (60 Stat. 733, as amended; 45 U. S. C. 228e)

(iii) A "parent" shall have received, at the time of the death of the employee to whom the relationship of parent is claimed, at least one-half of his support from such employee. (60 Stat. 733, as amended; 45 U. S. C. 228e)

A "widow" or "widower" shall be deemed to have been living with the employee if the conditions set forth in section 216 (h) (2) or (3), whichever is applicable, of the Social Security Act are fulfilled. A "child" shall be deemed to have been dependent upon a parent if the conditions set forth in section 202 (d) (3), (4), or (5) of the Social Security Act are fulfilled (a partially insured mother being deemed currently insured). In determining for purposes of this section and subsection (f) of section 2 whether an applicant is the wife, husband, widow, widower, child, or parent of an employee as claimed, the rules set forth in section 216 (h) (1) of the Social Security Act shall be applied. Such satisfactory proof shall be made from time to time, as prescribed by the Board, of the disability provided in clause (1) of this paragraph and of the continuance, in accordance with regulations prescribed by the Board, of such disability. If the individual fails to comply with the requirements prescribed by the Board as to the proof of the continuance of the disability his right to an annuity shall, except for good cause shown to the Board, cease. (60 Stat. 433, as amended; 45 U. S. C. 228e)

The term "widow" (except when used in section 202 (1)) means the surviving wife of an individual, but only if she (1) is the mother of his son or daughter, (2) legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (3) was married to him at the time both of them legally adopted a child under the age of eighteen, or (4) was married to him for a period of not less than one year immediately prior to the day on which he died. (Section 216 (c), 64 Stat. 510; 42 U. S. C. 416)

The term "child" means (1) the child of an individual, and (2) in the case of a living individual, a stepchild or adopted child who has been such stepchild or adopted child for not less than three years immediately preceding the day on which application for child's benefits is filed, and (3) in the case of a deceased individual, (A) an adopted child, or (B) a stepchild who has been such stepchild for not less than one year immediately preceding the day on which such individual died. In determining whether an adopted child has met the length of time requirement in clause (2), time spent in the relationship of stepchild shall be counted as time spent in the relationship of adopted child. (Section 216 (e), 64 Stat. 511; 42 U. S. C. 416)

The term "widower" (except when used in section 202 (1)) means the surviving husband of an individual, but only if he (1) is the father of her son or daughter, (2) legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (3) was married to her at the time both of them legally adopted a child under the age of eighteen, or (4) was married to her for a period of not less than one year immediately prior to the day on which she died. (Section 216 (g), 64 Stat. 511; 42 U. S. C. 416)

As used in this subsection, the term "parent" means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen. (Section 202 (h) (3), 64 Stat. 487; 42 U. S. C. 402)

In determining whether an applicant is the wife, husband, widow, widower, child, or parent of a fully insured or currently insured individual for purposes of this title, the Administrator shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a wife, husband, widow, widower, child, or parent shall be deemed such. (Section 216 (h) (1), 64 Stat. 511; 42 U. S. C. 416)

* * * a widow shall be deemed to have been living with her husband at the time of his death if they were both members of the same household on the date of his death, or she was receiving regular contributions from him toward her support on such date, or he had been ordered by any court to contribute to her support. (Section 216 (h) (2), 64 Stat. 511; 42 U. S. C. 416)

* * * a widower shall be deemed to have been living with his wife at the time of her death if they were both members of the same household on the date of her death, or he was receiving regular contributions from her toward his support on such date, or she had been ordered by any court to contribute to his support. (Section 216 (h) (3), 64 Stat. 512; 42 U. S. C. 416)

A child shall be deemed dependent upon his father or adopting father * * * unless * * * such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child had been adopted by some other individual, or

(C) such child was living with and was receiving more than one-half of his support from his stepfather. (Section 202 (d) (3), 64 Stat. 484; 42 U. S. C. 402)

A child shall be deemed dependent upon his stepfather * * * if * * * the child was living with or was receiving at least one-half of his support from such stepfather. (Section 202 (d) (4), 64 Stat. 484; 42 U. S. C. 402)

A child shall be deemed dependent upon his natural or adopting mother * * * if such mother or adopting mother was a currently insured individual. A child shall also be deemed dependent upon his natural or adopting mother, or upon his stepmother, * * * if * * * (A) she was living with or contributing to the support of such child, and (B) either (1) such child was neither living with nor receiving contributions from his father or adopting father, or (ii) such child was receiving at least one-half of his support from her. (Section 202 (d) (5), 64 Stat. 484; 42 U. S. C. 402)

§ 237.302 *Applicable state law and status*—(a) *Applicable state law defined.* "Applicable state law" is the law which the courts of the domicile of the deceased employee, on the basis of whose insured status an individual claims an insurance annuity or lump sum under this part, would apply in deciding who is a widow, widower, child, or parent, when determining the devolution of intestate personal property. The deceased employee's domicile is determined as of the time of his death. If the deceased employee was not domiciled in any state, applicable state law is the law which the courts of the District of Columbia would apply when determining the devolution of such property.

(b) *Status under applicable state law.* An individual who is not a widow, widower, child, or parent under applicable state law, but who is treated as such under such law for the purpose of determining the devolution of intestate personal property, has the same "status" as a widow, widower, child, or parent. For example, under the law of some states, an individual who is not a widow because her supposed marriage was void, may nevertheless be treated as a widow under such law, under certain strictly limited conditions. Such an individual has the "status" of a widow.

§ 237.303 *Definition of "widow."* An individual is the "widow" of an employee, as that term is used in section 5 of the act (except as stated in § 237.504 (b) under section 5 (f) of the act), if she meets the following requirements:

(a) She is the widow of the employee, or has the same status as a widow, under applicable state law, and

(b) She either (1) is the mother of the deceased employee's son or daughter, or (2) was married to the employee (became his wife, or acquired the status as such, under applicable state law) for a period of not less than 1 year immediately prior to the day on which he died, or (3) legally adopted the deceased employee's son or daughter while she was married to him and before the child attained age 18, or (4) was married to the deceased employee at the time both of them legally adopted a child under 18 (an individual is the mother of a deceased employee's son or daughter, within the meaning of this paragraph, if a son or daughter was born to her and such deceased employee, even though such son or daughter died before an application was filed which involved the determination of whether such individual is a "widow," and even though such son or daughter was born after the death of such employee), and

(c) She was living with her husband employee at the time of his death.

§ 237.304 *Definition of "widower."* An individual is the "widower" of an employee, as that term is used in section 5 of the act (except as stated in § 237.504 (b) under section 5 (f) of the act), if he meets the following requirements:

(a) He is the widower of the employee, or has the same status as a widower, under applicable state law, and

(b) He either (1) is the natural father of the deceased employee's son or daughter, or (2) was married to the employee (became her husband, or acquired the status as such, under applicable state law) for a period of not less than 1 year immediately prior to the day on which she died, or (3) legally adopted the deceased employee's son or daughter while he was married to her and before the child attained age 18, or (4) was married to the deceased employee at the time both of them legally adopted a child under 18 (an individual is the father of a deceased employee's son or daughter, within the meaning of this paragraph, if a son or daughter was born to him and such deceased employee, even though such son or daughter died before an application was filed which involved

the determination of whether such individual is a "widower"), and

(c) He was living with his wife employee at the time of her death, and

(d) He was receiving at least one-half of his support from his wife employee at the time of her death or at the time her retirement annuity or pension began.

§ 237.305 *Definition of "living with."* A widow shall be deemed to have been living with her husband at the time of his death and a widower living with his wife at the time of her death if, at such time, any one of the three following conditions existed:

(a) If the husband and wife were at such time members of the same household.

A husband and wife were members of the same household if they were living together, and customarily lived together, in the same place of abode.

A husband and wife who customarily lived together in the same place of abode but who were not actually doing so at such time, may nevertheless be members of the same household, if they were apart only temporarily and intended to resume living together in the same place of abode.

(b) If, at such time, the wife was receiving regular contributions from her husband toward her support or the husband receiving regular contributions from his wife toward his support.

Contributions must be substantial, and may be made in cash or other medium. In determining the sufficiency of contributions under this paragraph, the surrounding circumstances with respect to both the time when contributions are made and the amount thereof shall be taken into consideration.

(c) If, at such time, the husband had been ordered by any court to contribute to his wife's support or the wife ordered by any court to contribute to her husband's support.

This condition is met if the husband was legally obligated to contribute to the support of his wife or the wife to the support of her husband at such time by virtue of any order, judgment, or decree of a court of competent jurisdiction, regardless of whether he or she actually made any such contribution. In determining the existence of such a legal obligation, any such order, judgment, or decree shall be considered as in full force and effect unless it had expired or had been vacated.

§ 237.306 *Definition of "child."* An individual is a "child," as that term is used in section 5 of the act (except as stated in § 237.504 (b) under section 5 (f) of the act), if he falls in one of the three classes described in paragraph (a) of this section, and if he meets all four of the requirements set out in paragraph (b) of this section.

(a) *Classes.* For the purposes of this section, individuals are classified as follows:

(1) *Children.* A son or daughter (by blood) of a deceased employee, who is the child of such deceased employee, or has the same status as a child, under applicable state law, is a "child" of such employee.

(2) *Stepchildren.* An individual who is the stepchild of a deceased employee by virtue of a marriage valid under applicable state law, which was contracted not less than 1 year immediately preceding the day on which the employee died, is a "child" of such employee.

(3) *Adopted children.* An individual who was legally adopted by a deceased employee, in accordance with applicable state law, is a "child" of such employee.

(b) *Requirements.* An individual must meet all four of the following requirements in order to be a "child" for the purposes of this section:

(1) The individual must have been dependent upon his parent employee at the time of the employee's death.

(2) The individual shall not have been adopted after the employee's death by other than a stepparent, grandparent, aunt, or uncle.

(3) The individual shall be unmarried.

(4) The individual shall be less than 18 years of age, or shall have a permanent physical or mental condition which is such that he is unable to engage in any regular employment: *Provided*, That such disability began before the child attains age 18.

§ 237.307 *Definition of "dependent upon"*—(a) *Dependency upon a father or adopting father.* (1) An individual who has filed an application for a child's insurance annuity based on the insured status of a deceased father or adopting father, who was an employee, is deemed to have been dependent upon such employee at the time of the employee's death if, at such time, such employee was either living with or contributing to the support of such individual.

(2) Even though the employee was not living with or contributing to the support of the individual at the time of the employee's death, the individual is deemed to have been dependent upon such employee at such time if the individual:

(i) Was either the legitimate or adopted child of such employee; and
(ii) Was not then the adopted child of someone else; and
(iii) Was not living with and receiving more than one-half his support from his stepfather.

(b) *Dependency upon a mother, adopting mother, or stepmother.* An individual who has filed an application for a child's insurance annuity based on the insured status of a deceased mother, adopting mother, or stepmother, who was an employee, is deemed to have been dependent upon such employee at the time of the employee's death if, at such time:

(1) The employee contributed one-half of the child's support; or

(2) The employee was living with or contributing to the support of the child and the child was neither living with nor receiving contributions from his natural or adopting father; or

(3) The employee, if the child's natural or adopting mother, was a partially insured individual.

(c) *Dependency upon a stepfather.* An individual who has filed an application for a child's insurance annuity based

on the insured status of a deceased stepfather, who was an employee, is deemed to have been dependent upon such employee at the time of the employee's death if, at such time, the individual was either living with or receiving at least one-half of his support from such employee.

§ 237.308 *Definition of "parent."* An individual is a "parent," as that term is used in section 5 of the act (except as stated in § 237.504 (b) under section 5 (f) of the act), if he falls in one of the three classes described in paragraph (a) of this section, and if he meets the requirement set out in paragraph (b) of this section.

(a) *Classes.* For the purposes of this section, individuals are classified as follows:

(1) *Parents.* A mother or father (by blood) of a deceased employee, who is the parent of such employee, or has the same status as a parent, under applicable state law, is a "parent" of such employee.

(2) *Stepparents.* An individual who is a stepparent of a deceased employee by reason of a marriage valid under applicable state law, which was contracted before such employee attained the age of 16, is a "parent" of such employee.

(3) *Adopting parents.* An individual by whom a deceased employee was legally adopted, in accordance with applicable state law, before the employee attained the age of 16, is a "parent" of such employee.

(b) *Requirement.* An individual, to be entitled to parent's insurance annuity payments, must have received, at the time of the employee's death, at least one-half of his support from such employee.

SUBPART D—INSURANCE ANNUITY PAYMENTS TO SURVIVORS

§ 237.401 *Statutory provisions.*

Widow's and widower's insurance annuity. A widow or widower of a completely insured employee, who will have attained the age of sixty, shall be entitled during the remainder of her or his life or, if she or he remarries, then until remarriage to an annuity for each month equal to such employee's basic amount: *Provided, however*, That if in the month preceding the employee's death the spouse of such employee was entitled to a spouse's annuity under subsection (e) of section 2 in an amount greater than the widow's or widower's insurance annuity, the widow's or widower's insurance annuity shall be increased to such greater amount. (60 Stat. 729, as amended; 45 U. S. C. 228e)

Widow's current insurance annuity. A widow of a completely or partially insured employee, who is not entitled to an annuity under subsection (a) and who at the time of filing an application for an annuity under this subsection will have in her care a child of such employee entitled to receive an annuity under subsection (c) shall be entitled to an annuity for each month equal to the employee's basic amount. Such annuity shall cease upon her death, upon her remarriage, when she becomes entitled to an annuity under subsection (a), or when no child of the deceased employee is entitled to receive an annuity under subsection (c), whichever occurs first: *Provided, however*, That if in the month preceding the employee's death the spouse of such employee was entitled to a spouse's annuity under subsection (e) of section 2 in an amount greater than the widow's current insurance annuity, the widow's current insurance

annuity shall be increased to such greater amount. (60 Stat. 729, as amended; 45 U. S. C. 228e.)

Child's insurance annuity. Every child of an employee who will have died completely or partially insured shall be entitled, for so long as such child lives and meets the qualifications set forth in paragraph (1) of subsection (1), to an annuity for each month equal to two-thirds of the employee's basic amount. (60 Stat. 729, as amended; 45 U. S. C. 228e)

Parent's insurance annuity. Each parent, sixty years of age or over, of a completely insured employee, who will have died leaving no widow, no widower, and no child, shall be entitled, for life, or, if such parent remarries after the employee's death, then until such remarriage, to an annuity for each month equal to two-thirds of the employee's basic amount. (60 Stat. 729, as amended, 45 U. S. C. 228e)

When there is more than one employee with respect to whose death a parent or child is entitled to an annuity for a month, such annuity shall be two-thirds of whichever employee's basic amount is greatest. (60 Stat. 729, as amended; 45 U. S. C. 228e)

Correlation of payments. (1) An individual, entitled on applying therefor to receive for a month before January 1, 1947, an insurance benefit under the Social Security Act on the basis of an employee's wages, which benefit is greater in amount than would be an annuity for such individual under this section with respect to the death of such employee, shall not be entitled to such annuity. An individual, entitled on applying therefor to any annuity or lump sum under this section with respect to the death of an employee, shall not be entitled to a lump-sum death payment or, for a month beginning on or after January 1, 1947, to any insurance benefits under the Social Security Act on the basis of the wages of the same employee.

(2) If an individual is entitled to more than one annuity for a month under this section, such individual shall be entitled only to that one of such annuities for a month which is equal to or exceeds any other such annuity. If an individual is entitled to an annuity for a month under this section and is entitled, or would be so entitled on proper application therefor, for such month to an insurance benefit under section 202 of the Social Security Act, the annuity of such individual for such month under this section shall be only in the amount by which it exceeds such insurance benefit.

(3) In the case of any individual receiving or entitled to receive an annuity under this section on the day prior to the date of enactment of the provisions of this paragraph, the application of paragraph (2) of this subsection to such individual shall not operate to reduce the sum of (A) the annuity under this section of such individual, (B) the retirement annuity, if any, of such individual, and (C) the benefits under the Social Security Act which such individual receives or is entitled to receive, to an amount less than such sum was before the enactment of the provisions of this paragraph. (60 Stat. 730; 45 U. S. C. 228e)

When annuities begin and end. No individual shall be entitled to receive an annuity under this section for any month before January 1, 1947. An application for any payment under this section shall be made and filed in such manner and form as the Board prescribes. An annuity under this section for an individual otherwise entitled thereto shall begin with the month in which eligibility therefor was otherwise acquired, but not earlier than the first day of the twelfth month before the month in which the application was filed. No application for an annuity under this section filed prior to three months before the first month for which the applicant becomes otherwise

entitled to receive such annuity shall be accepted. No annuity shall be payable for the month in which the recipient thereof ceases to be qualified therefor. (60 Stat. 732; 45 U. S. C. 228e)

§ 237.404 *Only one insurance annuity to an individual.* If an individual is entitled to more than one kind of insurance annuity for a month, he shall be entitled to only one of such annuities. The amount of the annuity to which such individual is entitled shall not be less than any other insurance annuity to which he would be entitled except for this section.

§ 237.405 *Where individual is entitled to an insurance benefit.* (a) If an individual is entitled to an insurance annuity and is or upon application would be entitled to an insurance benefit under the Social Security Act for the same month or months, such insurance annuity shall be only in the amount, if any, by which it exceeds such insurance benefit.

(b) Where an individual was receiving or entitled to receive on October 29, 1951, an insurance annuity, retirement annuity, if any, and insurance benefit, paragraph (a) of this section shall not operate to reduce the sum of such annuities and benefit to an amount less than such sum was before October 30, 1951. For this purpose, a survivor is considered "entitled to receive" an insurance annuity, retirement annuity, or insurance benefit on October 29, 1951, if (1) an actual payment thereof is made for that day or month, or would be made except for the work restriction or other circumstances requiring a temporary suspension of payments, and (2) an application therefor was filed before October 30, 1951.

§ 237.406 *Widow's insurance annuity—(a) Conditions of entitlement.* Subject to the provisions of § 237.411, an individual is entitled to a widow's insurance annuity if she:

(1) Is the widow, as defined in § 237.303, of an employee who, at the time of his death, was completely insured; and

(2) Was not entitled, and would not have been entitled even if she had applied therefor, to receive, for a month before January 1, 1947, an insurance benefit under the Social Security Act based on the deceased employee's wages and in an amount greater than the widow's insurance annuity would be; and

(3) Has attained the age of 60; and

(4) Has not remarried.

(b) *Duration of annuity.* Subject to the provisions of § 237.411, an individual is entitled to a widow's insurance annuity for each month beginning with the first month after December 1946 in which all of the conditions of entitlement are satisfied. The last month for which she is entitled to such annuity is the month immediately preceding the first month in which either of the following events occurs:

(1) She remarries; or

(2) She dies.

(c) *Rate of annuity.* A widow's insurance annuity for a month is equal to the basic amount of the deceased em-

ployee, except that if in the month preceding the employee's death she was entitled to a spouse's annuity which, before any increase under § 225.6 of this chapter, was in an amount greater than her insurance annuity, her insurance annuity shall be increased to such greater amount. The rate shall be adjusted as provided in §§ 237.205 and 237.404 and Subpart F of this part.

§ 237.407 *Widower's insurance annuity—(a) Conditions of entitlement.* Subject to the provisions of § 237.411, an individual is entitled to a widower's insurance annuity if he:

(1) Is the widower, as defined in § 237.304, of an employee who, at the time of her death, was completely insured; and

(2) Has attained the age of 60; and

(3) Has not remarried.

(b) *Duration of annuity.* Subject to the provisions of § 237.411, an individual is entitled to a widower's insurance annuity for each month beginning with the first month after October 1951 in which all of the conditions of entitlement are satisfied. The last month for which he is entitled to such annuity is the month immediately preceding the first month in which either of the following events occurs:

(1) He remarries; or

(2) He dies.

(c) *Rate of annuity.* A widower's insurance annuity for a month is equal to the basic amount of the deceased employee, except that if in the month preceding the employee's death he was entitled to a spouse's annuity which, before any increase under § 225.6 of this chapter, was in an amount greater than his insurance annuity, his insurance annuity shall be increased to such greater amount. The rate shall be adjusted as provided in §§ 237.205 and 237.404 and Subpart F of this part.

§ 237.408 *Widow's current insurance annuity—(a) Conditions of entitlement.* Subject to the provisions of § 237.411, an individual is entitled to a widow's current insurance annuity if she:

(1) Is the widow, as defined in § 237.303, of an employee who, at the time of his death, was completely insured or partially insured; and

(2) Was not entitled, and would not have been entitled even if she had applied therefor, to receive, for a month before January 1, 1947, an insurance benefit under the Social Security Act based on the deceased employee's wages and in an amount greater than the widow's current insurance annuity would be; and

(3) Has not remarried; and

(4) Is not entitled to a widow's insurance annuity; and

(5) Has in her care, at the time of filing her application, a child of her deceased husband entitled to receive a child's insurance annuity.

(b) *Duration of annuity.* Subject to the provisions of § 237.411, an individual is entitled to a widow's current insurance annuity for each month beginning with the first month after December 1946 in which all of the conditions of entitlement are satisfied. The last month for which she is entitled to such annuity is the month immediately preceding the first

month in which any of the following events occurs:

(1) No child or her deceased husband is entitled to a child's insurance annuity; or

(2) She becomes entitled to a widow's insurance annuity; or

(3) She remarries; or

(4) She dies.

(c) *Rate of annuity.* A widow's current insurance annuity for a month is equal to the basic amount of the deceased employee, except that if in the month preceding the employee's death she was entitled to a spouse's annuity which, before any increase under § 225.6 of this chapter, was in an amount greater than her insurance annuity, her insurance annuity shall be increased to such greater amount. The rate shall be adjusted as provided in §§ 237.205 and 237.404 and Subpart F of this part.

(d) *Meaning of "in her care."* A widow has a child "in her care" within the meaning of paragraph (a) (5) of this section if she takes parental responsibility for the welfare and care of such child, even though she does not live in the same home with the child.

§ 237.409 *Child's insurance annuity—(a) Conditions of entitlement.* Subject to the provisions of § 237.411, an individual is entitled to a child's insurance annuity if he:

(1) Is a child, as defined in § 237.306, of an employee who, at the time of his death, was completely insured or partially insured; and

(2) Was not entitled, and would not have been entitled even if he had applied therefor, to receive, for a month before January 1, 1947, an insurance benefit under the Social Security Act based on the deceased employee's wages and in an amount greater than the child's insurance annuity would be.

(b) *Duration of annuity.* Subject to the provisions of § 237.411, an individual is entitled to a child's insurance annuity for each month beginning with the first month after December 1946 in which all of the conditions of entitlement are satisfied. If the child is born after the death of the employee on whose insured status the child's insurance annuity is based, the first for which the child may be entitled to such an annuity is the month in which such child is born. The last month for which an individual is entitled to a child's insurance annuity is the month immediately preceding the first month in which any of the following events occur:

(1) He marries; or

(2) He is adopted by other than a stepparent, grandparent, aunt, or uncle; or

(3) He attains age 18, unless he shall have a permanent physical or mental condition which is such that he is unable to engage in any regular employment and which condition began before he became age 18; or

(4) He dies.

(c) *Rate of annuity.* A child's insurance annuity for a month is equal to two-thirds of the basic amount of the deceased employee. If the child is entitled to a child's insurance annuity with respect to more than one deceased em-

ployee, his child's insurance annuity shall be two-thirds of the basic amount of whichever employee's basic amount is greatest. The rate shall be adjusted in accordance with §§ 237.205 and 237.404 and Subpart F of this part.

§ 237.410 *Parent's insurance annuity—(a) Conditions of entitlement.* Subject to the provisions of § 237.411, an individual is entitled to a parent's insurance annuity if such individual:

(1) Is the parent, as defined in § 237.308, of an employee who, at the time of his death, was completely insured and was not survived by a widow, a widower, or a child as defined in §§ 237.303, 237.304, 237.306, respectively; and

(2) Was not entitled, and would not have been entitled even if he had applied therefor, to receive, for a month before January 1, 1947, an insurance benefit under the Social Security Act based on the deceased employee's wages and in an amount greater than the parent's insurance annuity would be; and

(3) Has attained the age of 60; and

(4) Has not remarried since the death of the deceased employee.

Each parent of a deceased employee who had a completely insured status may become entitled to insurance annuities under this section.

(b) *Duration of annuity.* Subject to the provisions of § 237.411, an individual is entitled to a parent's insurance annuity for each month beginning with the first month after December 1946 in which all of the conditions of entitlement are satisfied. The last month for which such individual is entitled to such annuity is the month immediately preceding the first month in which either of the following events occurs:

(1) He remarries; or

(2) He dies.

(c) *Rate of annuity.* A parent's insurance annuity for a month is equal to two-thirds of the basic amount of the deceased employee. If the parent is entitled to a parent's insurance annuity with respect to more than one deceased employee, his parent's insurance annuity shall be two-thirds of whichever employee's basic amount is greatest. The rate shall be adjusted in accordance with §§ 237.205 and 237.404 and Subpart F of this part.

§ 237.411 *Beginning and ending of insurance annuities—(a) Beginning.* An insurance annuity under this subpart shall begin with the first month after December 1946, or in the case of a widower's insurance annuity with the first month after October 1951, with respect to which all of the conditions of entitlement for such annuity, as set out in the preceding sections of this subpart, are satisfied, if the individual shall have filed an application for such annuity, as prescribed in Subpart H of this part:

(1) In such month; or

(2) In the 3 months immediately preceding such month; or

(3) In the 12 months immediately succeeding such month.

Otherwise, such annuity shall begin with the month after December 1946, or after October 1951 in the case of a wid-

ower's insurance annuity, in which the individual files an application therefor, as prescribed in Subpart H of this part, and with respect to which month all the conditions of entitlement for such annuity, as set out in the preceding sections of this subpart, are satisfied.

(b) *Ending.* No insurance annuity under this subpart shall be payable for the month in which the conditions of entitlement for such annuity, as set out in the preceding sections of this subpart, cease to be satisfied.

SUBPART E—LUMP-SUM DEATH PAYMENTS

§ 237.501 *Statutory provisions.*

Lump-sum payment. Upon the death, on or after January 1, 1947, of a completely or partially insured employee who will have died leaving no widow, widower, child, or parent who would on proper application therefor be entitled to receive an annuity under this section for the month in which such death occurred, there shall be paid a lump sum of ten times the employee's basic amount to the following person (or if more than one there shall be distributed among them) whose relationship to the deceased employee will have been determined by the Board, and who will have been living on the date of such determination: to the widow or widower of the deceased; or, if no such widow or widower be then living, to any child or children of the deceased and to any other person or persons who, under the intestacy law of the State where the deceased will have been domiciled, will have been entitled to share as distributees with such children of the deceased, in such proportions as is provided by such law; or, if no widow or widower and no such child and no such other person be then living, to the parent or parents of the deceased, in equal shares. A person who is entitled to share as distributed with an above-named relative of the deceased shall not be precluded from receiving a payment under this paragraph by reason of the fact that no such named relative will have survived the deceased or of the fact that no such named relative of the deceased will have been living on the date of such determination. If none of the persons described in this paragraph be living on the date of such determination such amount shall be paid to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid the expenses of burial of the deceased. If a lump sum would be payable to a widow, widower, child, or parent under this paragraph except for the fact that a survivor will have been entitled to receive an annuity for the month in which the employee will have died, but within one year after the employee's death there will not have accrued to survivors of the employee, by reason of his death annuities which, after all deductions pursuant to paragraph (1) of subsection (i) will have been made, are equal to such lump, a payment to any then surviving widow, widower, children, or parents shall nevertheless be made under this paragraph equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions. No payment shall be made to any person under this paragraph, unless application therefor shall have been filed, by or on behalf of any such person (whether or not legally competent), prior to the expiration of two years after the date of death of the deceased employee, except that if the deceased employee is a person to whom section 2 of the Act of March 7, 1942 (56 Stat. 143, 144), is applicable such two years shall run from the date on which the deceased employee, pursuant to said Act, is determined to be dead, and for all other purposes of this section such employee,

so long as it does not appear that he is in fact alive, shall be deemed to have died on the date determined pursuant to said Act to be the date or presumptive date of death. (60 Stat. 312, as amended; 45 U. S. C. 228e)

§ 237.502 *Lump-sum death payments—(a) Conditions of payment.* * * *

(2) Such deceased employee was not survived by a widow, widower, child, or parent (see § 237.504 (a)), who, upon application therefor, would be entitled to receive a widow's insurance annuity, a widower's insurance annuity, a widow's current insurance annuity, a child's insurance annuity, or a parent's insurance annuity, upon the basis of the insured status of such employee, for the month in which such employee died; and

(c) *Amount of payment.* The lump sum to which a widow, widower, child (or distributee with a child), or parent, is entitled under paragraph (b) of this section is an amount equal to ten times the basic amount of the deceased employee. Where there is more than one child or person entitled to share as distributee with a child, the lump sum shall be divided among them in the proportions provided by the intestacy laws of the state where the deceased employee was domiciled. Where there is more than one parent the lump sum shall be divided equally between such parents.

Where an applicant (other than a person named in paragraph (b) (1) of this section) is equitably entitled to a lump sum under paragraph (b) (2) of this section, the amount payable to him will be determined as follows:

(1) If no person other than such applicant is, or becomes, equitably entitled under paragraph (b) (2) of this section, the amount payable will be an amount equal to the amount of burial expenses paid by the applicant, or ten times the basic amount of the deceased, whichever is less.

(2) If two or more persons are, or become, equitably entitled under paragraph (b) (2) of this section, the amount payable to any such applicant is an amount equal to that proportion of ten times the basic amount of the deceased which the amount of burial expenses paid by such applicant bears to the total amount of burial expenses paid by all persons equitably entitled, but in no event shall the amount paid to such applicant exceed the amount of burial expenses paid by him.

§ 237.503 *Payment when lump sum exceeds insurance annuities accrued—(a) Conditions of payment.* * * *

(1) A lump sum would have been payable to a widow, widower, child, or parent (see § 237.504 (b)) under § 237.502, except for the fact that a survivor was entitled to receive an insurance annuity for the month in which the employee died (see § 237.502 (a) (2)); and

(b) *Persons entitled to receive payment.* The payment provided for in this section shall be made to the widow, widower, children, or parents of the deceased employee surviving at the expiration of 1 year after the employee's death.

§ 237.504 *Meaning of terms.* (a) The terms "widow," "widower," "child," and "parent" as they first appear in section 5 (f) of the act (see § 237.502 (a) (2)), are used as defined in §§ 237.303, 237.304, 237.306, and 237.308, respectively.

SUBPART F—MAXIMUM AND MINIMUM
INSURANCE ANNUITY TOTALS

§ 237.601 *Statutory provisions.*

Maximum and minimum annuity totals. Whenever according to the provisions of this section as to annuities, payable for a month with respect to the death of an employee, the total of annuities is more than \$30 and exceeds either (a) \$160, or (b) an amount equal to two and two-thirds times such employee's basic amount, whichever of such amounts is the lesser, such total of annuities shall, prior to any deductions under subsection (1), be reduced to such lesser amount or to \$30, whichever is greater. Whenever such total of annuities is less than \$14, such total shall, prior to any deductions under subsection (1), be increased to \$14. (60 Stat. 731, as amended; 45 U. S. C. 228e)

In the case of an individual having a current connection with the railroad industry, * * * if for any entire month * * * the total of survivor annuities under this Act deriving from the same employee, is less than the amount, or the additional amount, which would have been payable to all persons for such month under the Social Security Act (deeming completely and partially insured individuals to be fully and currently insured, respectively, individuals entitled to insurance annuities under subsections (a) and (d) of section 5 to have attained age sixty-five, and individuals entitled to insurance annuities under subsection (c) of section 5 on the basis of disability to be less than eighteen years of age, and disregarding any possible deductions under subsections (f) and (g) (2) of section 203 of the Social Security Act) if such employee's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act and quarters of coverage were determined in accordance with section 5 (1) (4) of this Act, such annuity or annuities, shall be increased proportionately to a total of such amount or such additional amount. (Section 3 (e), 50 Stat. 311, as amended; 45 U. S. C. 228c)

§ 237.603 *Reduction*—(a) *Conditions requiring reduction.* Reductions are made only when there are two or more insurance annuities for a month based upon the insured status of a deceased employee, and when the total amount of such annuities for such month, as calculated under Subpart D of this part, is more than \$30 and exceeds either (1) \$160, or (2) an amount equal to two and two-thirds times the basic amount of the employee.

(b) *Amount of reduction.* If the conditions described in paragraph (a) of this section exist, each of the insurance annuities must be proportionately reduced so that the total of the insurance annuities will be whichever is the least of the amounts stated in paragraph (a) (1) and (2) of this section. If, however, such least amount is under \$30, the total is reduced only to \$30.

§ 237.604 *Increase*—(a) *Conditions requiring increase.* An increase is made when the insurance annuity or total of insurance annuities for a month calculated under Subpart D of this part on the basis of the insured status of a deceased employee is less than \$14.

(b) *Amount of increase.* If the condition described in paragraph (a) of this section exists, the insurance annuity or total of insurance annuities is increased to \$14.

§ 237.607 *Over-all minimum based on the Social Security Act formula.* (a) When the total amount of insurance annuities payable for an entire month, based on the insured status of a deceased individual, is less than the total amount of insurance benefits which would be payable for that month under the Social Security Act if the individual's service as an employee after 1936 were included with "employment" as defined in the Social Security Act, the amount of such insurance annuities shall be increased proportionately to the total of such greater amount.

(b) In making determinations under this section, (1) quarters of coverage shall be determined in accordance with section 5 (1) (4) of the Railroad Retirement Act (see § 237.101); (2) completely an partially insured individuals shall be deemed to be fully and currently insured, respectively, under the Social Security Act; (3) an individual who has attained the age of 60 but not the age of 65 and is entitled to a widow's, widower's or parent's insurance annuity shall be deemed to have attained the age of 65; (4) an individual entitled to a child's insurance annuity when 18 years of age or over shall be deemed to be less than 18 years of age; and (5) the amount of any deduction which would be applied under subsections (f) and (g) (2) of section 203 of the Social Security Act for failure to report an event which would cause a deduction under that act shall be disregarded.

SUBPART G—DEDUCTIONS

§ 237.701 *Statutory provisions.*

Deductions from annuities. (1) Deductions shall be made from any payments under this section to which an individual is entitled, until the total of such deductions equals such individual's annuity or annuities under this section for any month in which such individual—

(i) Will have rendered compensated service within or without the United States to an employer;

(ii) Will have been under the age of seventy-two and for which month he is charged with any earnings under section 203 (e) of the Social Security Act or in which month he engaged on seven or more different calendar days in noncovered remunerative activity outside the United States (as defined in section 203 (k) of the Social Security Act); and for purposes of this subdivision the Board shall have the authority to make such determinations and such suspensions of payment of benefits in the manner and to the extent that the Secretary of Health, Education, and Welfare would be authorized to do so under section 203 (g) (3) of the Social Security Act if the individuals to whom this subdivision applies were entitled to benefits under section 202 of such Act; or

(iii) If a widow otherwise entitled to an annuity under subsection (b) will not have had in her care a child of the deceased employee entitled to receive an annuity under subsection (c);

(2) The total of deductions for all events described in paragraph (1) occurring in the same month shall be limited to the amount of such individual's annuity or annuities for that month. Such individual (or anyone

in receipt of an annuity in his behalf) shall report to the Board the occurrence of any event described in paragraph (1).

(3) Deductions shall also be made from any payments under this section with respect to the death of an employee until such deductions total—

(i) any death benefit, paid with respect to the death of such employee, under sections 5 of the Retirement Acts (other than a survivor annuity pursuant to an election);

(ii) any lump sum paid, with respect to the death of such employee, under title II of the Social Security Act, or under section 203 of the Social Security Act in force prior to the date of the Social Security Act Amendments of 1939;

(iii) any lump sum paid to such employee under section 204 of the Social Security Act in force prior to the date of the enactment of the Social Security Act Amendments of 1939, provided such lump sum will not previously have been deducted from any insurance benefit paid under the Social Security Act; and

(iv) an amount equal to 1 per centum of any wages paid to such employee for services performed in 1939, and subsequent to his attaining age sixty-five, with respect to which the taxes imposed by section 1400 of the Internal Revenue Code will not have been deducted by his employer from his wages or paid by such employer, provided such amount will not previously have been deducted from any insurance benefit paid under the Social Security Act.

(4) The deductions provided in this subsection shall be made in such amounts and at such time or times as the Board shall determine. Decreases or increases in the total of annuities payable for a month with respect to the death of an employee shall be equally apportioned among all annuities in such total. * * *

(60 Stat. 731; 45 U. S. C. 228e)

§ 237.702 *Deductions because an individual works or a widow fails to have a child in her care.* Section 5 (i) (1) of the act provides for deductions from an individual's insurance annuity or annuities upon the occurrence of certain events, which are enumerated in paragraphs (a), (b), and (c) of this section.

(a) *Employer service.* Deductions are to be made from any annuity or annuities payable to an individual under this part for any month in which such individual renders compensated service (see Parts 220 and 222 of this chapter) within or without the United States to an "employer" (see Part 202 of this chapter). The amount to be deducted is equal to the amount of such individual's insurance annuity or annuities for the month in which the compensated service was rendered.

(b) *Work other than employer service*—(1) *When deductions imposed.* Deductions are to be made from any annuity or annuities payable to an individual under this part for any month:

(i) After October 1951 and prior to September 1952, in which such individual renders services for wages, as defined in section 209 of the Social Security Act, of not less than \$50; or

(ii) After August 1952 and prior to the first month of the individual's first taxable year beginning after 1954, in which such individual renders services for wages, as defined in section 209 of the Social Security Act, of more than \$75; or

(iii) In which such individual is charged, in accordance with the pro-

visions of subparagraph (3) of this paragraph, with net earnings from self-employment of more than \$50 or \$75, as the case may be; or

(iv) In which such individual is charged, in accordance with the provisions of subparagraph (3) of this paragraph, with earnings; or

(v) After December 1954, in which such individual is under age 72 and on seven or more different calendar days in which he is engaged in noncovered remunerative activity outside the United States (see subparagraph (7) of this paragraph).

For the purposes of determining whether under subdivision (i) or (ii) of this subparagraph an individual has rendered services for wages of not less than \$50 or more than \$75, whichever is applicable, the provisions of section 209 of the Social Security Act which, for other purposes, limits the wages in a calendar year prior to 1951 to \$3,000, after 1950 and prior to 1955 to \$3,600, and after 1954 to \$4,200, do not apply.

(2) *Amount of deductions.* The amount to be deducted shall be equal to the annuity or total of annuities payable to the individual in the month in which the event specified in any of the subdivisions of subparagraph (1) of this paragraph occurred.

(3) *Charging of earnings and net earnings from self-employment.* Prior to the amendment of section 5 (i) (1) (ii) of the Railroad Retirement Act by section 401 (d) of Public Law 761, 83d Congress, an individual was charged only on the basis of his "net earnings from self-employment" as that term is defined in section 211 (a) of the Social Security Act. Enactment of such amendment eliminated such charging and provided for charging on the basis of his "earnings" which term is defined in subparagraph (6) of this paragraph.

Subdivisions (i), (ii), and (iii) of this subparagraph provide the method by which an individual will be charged with either earnings or net earnings from self-employment, as the case may be.

(i) *For taxable years ending prior to September 1952.* The following rules will apply in determining the amount of an individual's net earnings from self-employment that are to be charged to a particular month for purposes of deductions under this section with respect to taxable years ending prior to September 1952:

(a) If the individual's net earnings from self-employment for the taxable year are not more than \$50 times the number of months in such taxable year, each month in such year shall be charged with \$50 or less; or

(b) If his net earnings from self-employment exceed that amount, each month of such year is first charged with \$50. The first \$50 of the excess (or the whole of the excess if it is less than \$50) is charged to the latest month of the taxable year. The next \$50 of the excess, if any (or the whole of the excess if it is less than \$50), is charged to the next preceding month and so forth until all of the excess is charged or every month to which a portion of the excess is chargeable has been charged with a part of such excess.

(ii) *For taxable years ending after August 1952 and prior to the beginning of the individual's first taxable year after 1954.* The rules for charging net earnings from self-employment appearing in subdivision (i) of this subparagraph shall apply with respect to taxable years ending after August 1952 and prior to the beginning of the first taxable year after 1954, except that such charging shall be on the basis of \$75 per month rather than \$50 per month. Where an individual's taxable year ends in 1955 (other than the taxable year ending on December 31, 1955) and he has net earnings from self-employment by reason of section 101 (g) (1), (2), or (4) or section 101 (d) of the Social Security Amendments of 1954, his net earnings from self-employment for his taxable year ending in 1955 shall be credited equally to the last quarter of such taxable year and the three preceding quarters. Only that amount of net earnings from self-employment credited to quarters after 1954 shall be chargeable under this subdivision, but in no event will such net earnings from self-employment be charged to months prior to 1955.

(iii) *For taxable years beginning after 1954.* With respect to taxable years beginning after 1954 and for purposes of deductions under this section an individual will be charged only on the basis of his earnings and then only if such earnings in his taxable year exceed \$100 times the number of months in such year. Where there is such an excess, the first \$80 of such excess (or the whole of the excess if it is less than \$80) is charged to the latest month in the taxable year. The next \$80 of the excess, if any (or the whole of the excess if it is less than \$80), is charged to the next preceding month and so forth until all of the excess is charged or every month to which a portion of the excess is chargeable has been charged with a part of such excess.

(4) *Months to which earnings and net earnings from self-employment cannot be charged—(i) Net earnings from self-employment.* Notwithstanding the provisions of subparagraph (3) of this paragraph, net earnings from self-employment in excess of \$50 times the number of months in the taxable year, if such taxable year ended prior to September 1952, or \$75 times the number of months in the taxable year, if such taxable year ended after August 1952 and prior to the individual's first taxable year beginning after 1954 shall not be charged to any month:

(a) In which the individual was not entitled to an annuity;

(b) In which the individual performed employer service for which he suffered deductions under paragraph (a) of this section;

(c) In which the individual performed services for wages for which he suffered deductions under subparagraph (1) of this paragraph;

(d) In which the individual is a widow who suffered a deduction because of the occurrence of the event specified in paragraph (c) of this section;

(e) In which the individual was 72 years of age or over with respect to months after 1954; or

(f) In which the individual did not engage in self-employment.

(ii) *Earnings.* Notwithstanding the provisions of subparagraph (3) of this paragraph, earnings in excess of \$100 times the number of months in the individual's taxable year beginning after 1954 shall not be charged to any month:

(a) In which the individual was not entitled to an annuity;

(b) In which the individual performed employer service for which he suffered deductions under paragraph (a) of this section;

(c) In which the individual was engaged in noncovered remunerative activity outside the United States for which he suffered a deduction under subparagraph (1) of this paragraph;

(d) In which the individual is a widow who suffered a deduction because of the occurrence of the event specified in paragraph (c) of this section;

(e) In which the individual was 72 years of age or over; or

(f) In which the individual did not engage in self-employment and did not render services for wages, as defined in subparagraph (6) (ii) of this paragraph, of more than \$80.

An individual shall be deemed to have engaged in self-employment in any month if in such month he renders substantial services, as defined in subparagraph (5) of this paragraph, in operating a trade or business as owner or partner, even though there may be no earnings or net earnings from self-employment attributable to his services for such month. For purposes of subdivision (ii) (f) of this subparagraph, an individual will be presumed with respect to any month to have rendered services for wages, as defined in subparagraph (6) (ii) of this paragraph, of more than \$80 until it is shown to the satisfaction of the Board that such individual did not render services in such month for more than such amount.

(5) *Definition of "substantial services."* For the purposes of subparagraph (4) of this paragraph, an individual is presumed to have rendered substantial services in each month in his taxable year. However, he may submit evidence to establish that in any month in such taxable year he did not render substantial services with respect to any trade or business the net income or loss of which is includible in computing his net earnings from self-employment for any taxable year if such taxable year ends prior to his first taxable year beginning after 1954, or in computing his earnings (but without regard to subparagraph (6) (ii) of this paragraph) for any taxable year if such taxable year begins after 1954. In determining whether an individual has rendered such substantial services in a month, the particular facts in his case will be examined. The following factors, among others, will be considered in making the determination:

(i) The amount of time devoted to the trade or business;

(ii) The amount of capital invested in the trade or business;

(iii) The nature of the services rendered by the individual;

(iv) The seasonal nature of the trade or business;

(v) The presence or absence of a paid manager, a partner, or a family member who manages the business; and

(vi) The type of business establishment that is involved.

(6) *Definition of earnings.* When the term "earnings" is used in this paragraph and not as a part of the phrase "net earnings from self-employment," it shall mean an individual's earnings with respect to a taxable year beginning after 1954 and includes the sum of his wages, as defined in subdivision (ii) of this subparagraph, for services rendered in such year and his net earnings from self-employment, as defined in subdivision (i) of this subparagraph, for such year minus any net loss from self-employment, as defined in subdivision (i) of this subparagraph, for such year.

(i) *Net earnings from self-employment and net loss from self-employment.* An individual's net earnings from self-employment and his net loss from self-employment for the purposes of this subparagraph and subparagraph (5), shall be determined under the provisions of section 211 of the Social Security Act (but without regard to the provisions in paragraphs (1), (4), and (5) of subsections (c) of such section); any excess of income over deductions so resulting from such computation shall be his net earnings from self-employment and any excess of deductions over income so resulting shall be his net loss from self-employment.

(ii) *Wages.* For purposes of this subparagraph, and subparagraph (4) (ii) of this paragraph, an individual's wages shall be determined under section 209 of the Social Security Act (but without regard to the limitations as to amounts of remuneration specified in subsections (a), (g) (2), (g) (3), (h) (2) and (j) of such section); and in making such computation, services which do not constitute "employment" as that term is defined in section 210 of the Social Security Act performed within the United States by an individual as an employee shall be deemed to be employment as so defined if the remuneration for such services is not includible in computing his net earnings from self-employment or net loss from self-employment, as defined in subdivision (i) of this subparagraph.

(iii) *Presumptions concerning wages.* For purposes of this subparagraph, wages, as determined under subdivision (ii) of this subparagraph, which according to reports received by the Board are paid to an individual during a taxable year shall be presumed to have been paid to him for services rendered in such year until it is shown to the satisfaction of the Board that they were paid for services rendered in another taxable year. If such reports with respect to an individual show his wages for a calendar year, such individual's taxable year shall be presumed to be a calendar year for purposes of this section until it is shown to the satisfaction of the Board that his taxable year is not a calendar year.

(7) *Definition of noncovered remunerative activity outside the United States.* An individual shall be consid-

ered to be engaged in noncovered remunerative activity outside the United States if he performs services outside the United States as an employee and such services do not constitute "employment" as that term is defined in section 210 of the Social Security Act, or if he carries on a trade or business outside the United States (other than the performance of his services as an employee) the net income or loss of which is not includible in computing his net earnings from self-employment, as defined in section 211 (a) of the Social Security Act, for a taxable year and would not be excluded from net earnings from self-employment, if carried on in the United States by any of the numbered paragraphs of such section 211 (a). When used in the preceding sentence with respect to a trade or business (other than the performance of services as an employee) the term "United States" does not include Puerto Rico or the Virgin Islands in the case of an alien who is not a resident of the United States (including Puerto Rico and the Virgin Islands); and the term "trade or business" shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1954.

(c) *Failure of widow to have a child in her care.* (1) Deductions are to be made from any annuity or annuities payable to a widow under this part for any month in which such widow does not have in her care a child of her deceased husband entitled to a child's insurance annuity for such month. The amount to be deducted is equal to the amount of the widow's current insurance annuity to which she was entitled for the month in which she did not have such a child in her care.

(2) The fact that a child's insurance annuity for a particular month is withheld to effect a deduction under any of the other paragraphs of this section, or under § 237.703, or an adjustment under Part 255 of this chapter, does not affect the right of a widow, who has the child in her care, to a widow's current insurance annuity, since the child is nevertheless "entitled" to a child's insurance annuity.

(d) *Manner of making deductions.* (1) Deductions as provided for in this section are made by withholding insurance annuities in whole or in part, depending upon the amount to be deducted. If the amount to be deducted is not withheld from the insurance annuity or annuities for the month in which the event occurred which occasioned the deduction (if, for example, the occurrence has not been brought to the attention of the Board), such amount will be withheld from the insurance annuity or annuities for one or more subsequent months. The total amount to be deducted may, therefore, at the time of withholding, be greater or less than any insurance annuity or annuities for a month from which such amount is to be withheld.

(2) When it is determined that a deduction is required under paragraph (a), (b), or (c) of this section, no insurance annuity to which the individual in question is entitled for any month will be paid until a total amount equal to the amount to be deducted has been withheld. If

the amount of the required deduction is less than any such insurance annuity, or the total of such insurance annuities, for a month, the amount to be deducted will be withheld from such insurance annuity or annuities.

(e) *Deductions where more than one deduction event in a month occurs.* Section 5 (i) (2) of the act prevents duplication of deductions described in paragraphs (a), (b) and (c) of this section, by reason of the occurrence of more than one of the events enumerated in such paragraphs in a particular month. If more than one such event occurs in a month, the total amount of the deduction is the same as if only one such event had occurred. Section 5 (i) (2) of the act has no application to any other deductions or adjustments under the act (see paragraph (h) of this section).

(f) *Total amount to be deducted.* If, however, any of the events occasioning the deduction under paragraphs (a), (b), or (c) of this section occurs in more than one month, the total amount to be deducted is equal to the sum of the deductions for all months in which any such event occurred. With respect to net earnings from self-employment under paragraph (b) (1) (iii) of this section and earnings under paragraph (b) (1) (iv) of this section, a deduction event is deemed to have occurred in any month to which any excess of net earnings from self-employment or earnings, as the case may be, is charged (see paragraph (b) (3) of this section).

(g) *Relation to maximum and minimum insurance annuity totals.* In effecting a deduction, no amount can be considered as having been withheld from an insurance annuity for a particular month which is in excess of the amount of such insurance annuity as reduced or increased (if required) under section 5 (h) of the act (see Subpart F of this part). Likewise, the amount of an insurance annuity by which a deduction is measured (i. e., an insurance annuity for the month in which the event occasioning the deduction occurred) is the amount of such insurance annuity as so reduced or increased.

(h) *Relation to other provisions for deductions and adjustments.* A deduction required under section 5 (i) (1) of the act is made prior to and in addition to any deductions under section 5 (i) (3) of the act (see § 237.703), and prior to and in addition to any adjustments under Part 255 of this chapter.

(i) *Reports to the Board of certain events occasioning deductions.* Section 5 (i) (2) of the act imposes upon an individual the obligation to report to the Board the occurrence of any of the events enumerated in paragraph (a), (b), or (c) of this section if such individual is in receipt of an insurance annuity or annuities (on his own behalf or on behalf of another) from which a deduction is to be made under such paragraphs.

SUBPART H—APPLICATION FOR INSURANCE ANNUITIES AND LUMP SUMS FOR SURVIVORS

§ 237.801 *Statutory provisions.* (See section 5 (j) of the act, quoted in § 237.401, and the last sentence of section 5 (f) (1) of the act, quoted in § 237.501.)

§ 237.806 *Filing of application*—(a) *With Social Security Administration.* The claim or application of an individual, filed with the Social Security Administration on or after October 1, 1946, for an insurance benefit or a lump-sum death payment under subsection (c), (d), (e), (f), or (g) of section 202 of Title II of the Social Security Act, as amended August 10, 1946, based upon the death of an individual who has had service covered under the Railroad Retirement Act, as amended July 31, 1946, shall be deemed to be an application for the corresponding survivor benefit under subsection (a), (b), (c), (d), or (f) of section 5 of the Railroad Retirement Act, and shall be deemed filed with the Railroad Retirement Board on the date as of which the Social Security Administration certifies that such application is deemed filed with that agency.

(b) *At foreign service office.* Applications or written requests from individuals outside the United States will be given effect as of the time they are received in a United States foreign service office. The time of filing will be shown by a date-stamp or similar evidence of receipt in the foreign service office. If the claims material is not sent via a foreign service office, the date received by the Railroad Retirement Board will be the filing date.

§ 237.808 *Application by individual who was in receipt of a spouse's annuity or a widow's current insurance annuity.* The widow or widower of an employee shall be deemed to have filed an acceptable application for an annuity under §§ 237.406, 237.407, or 237.408, as the case may be, in accordance with §§ 237.802, 237.803, and 237.805, in the month in which the employee died, or, in the case of a widow in receipt of an annuity under § 237.408, in the month in which such widow attained age 60, if for the month next preceding such month the widow or widower will have been, on the basis of the employee's employment, in receipt of an annuity under Part 232 of this chapter or § 237.408 (disregarding the application of § 232.402 of this chapter or § 237.702): *Provided, however,* That the annuity shall not continue to be paid to the widow or widower for more than 6 months by reason of this section and her or his receipt of a spouse's annuity for the month preceding the employee's death.

SUBPART I—MISCELLANEOUS

§ 237.901 *Statutory provisions.* (See last sentence of section 5 (f) (1) of the act, quoted in § 237.501.)

* * * An annuity under this section which is not in excess of \$5 may, in the discretion of the Board, be paid in a lump sum equal to its commuted value as the Board shall determine. (60 Stat. 732; 45 U. S. C. 228e)

§ 237.904 *Meaning of "retirement annuity."* As used in this part, the term "retirement annuity" means an annuity under section 2 of the act awarded before or after its amendment, but not including an annuity to a survivor pursuant to an election of a joint and survivor annuity.

§ 237.905 *Proof of continuance of disability of child age 18 or over.* (a) A child age 18 or over whose entitlement to a child's insurance annuity is based, in part, on his having a permanent physical or mental condition which is such that he is unable to engage in any regular employment, which disability began before he attained age 18, shall, as and whenever notified by the Board, submit additional proof of the continuance of his disability.

(b) The Board may at any time or times, while the child is in receipt of such an annuity, require that he submit to an examination to be made by a physician, or physicians, or a board of physicians, designated by the Board.

(c) The Board may also at any time or times, while the child is in receipt of such an annuity, require that he submit information relating to his employment, including self-employment, and earnings therefrom.

(d) If, while in receipt of an annuity, such individual fails to comply with the requirements prescribed in paragraphs (a) and (b) of this section, his right to an annuity shall, except for good cause shown to the Board, cease.

(Sec. 10, 49 Stat. 923, as amended; 45 U. S. C. 228j. Interpret or apply sec. 3, 49 Stat. 969, as amended; 45 U. S. C. 228c)

PART 238—RESIDUAL LUMP-SUM PAYMENTS

§ 238.1 *Statutory provisions.*

Whenever it shall appear, with respect to the death of an employee on or after January 1, 1947, that no benefits, or no further benefits, other than benefits payable to a widow, widower, or parent upon attaining age sixty at a future date, will be payable under this section or, pursuant to subsection (k) of this section, upon attaining age sixty-five at a future date, will be payable under section 202 of the Social Security Act, as amended, there shall be paid to such person or persons as the deceased employee may have designated by a writing filed with the Board prior to his or her death, or if there be no designation, to the person or persons in the order provided in paragraph (1) of this subsection or, in the absence of such person or persons, to his or her estate, a lump sum in an amount equal to the sum of 4 per centum of his or her compensation paid after December 31, 1936, and prior to January 1, 1947, and 7 per centum of his or her compensation after December 31, 1946 (exclusive in both cases of compensation in excess of \$300 for any month before July 1, 1954, and in the latter case in excess of \$350 for any month after June 30, 1954), minus the sum of all benefits paid to him or her, and to others deriving from him or her, during his or her life, or to others by reason of his or her death, under this Act, and pursuant to subsection (k) of this section, under section 202 of the Social Security Act, as amended: *Provided, however,* That if the employee is survived by a widow, widower, or parent who may upon attaining age sixty be entitled to further benefits under this section, or pursuant to subsection (k) of this section, upon attaining age sixty-five be entitled to further benefits under section 202 of the Social Security Act, as amended, such lump sum shall not be paid unless such widow, widower, or parent makes and files with the Board an irrevocable election, in such form as the Board may prescribe, to have such lump sum paid in lieu of all benefits to which such widow, widower, or parent might otherwise

become entitled under this section or, pursuant to subsection (k) of this section, under section 202 of the Social Security Act, as amended. Such election shall be legally effective according to its terms. Nothing in this section shall operate to deprive a widow, widower, or parent making such election of any insurance benefits under section 202 of the Social Security Act, as amended, to which such widow, widower, or parent would have been entitled had this section not been enacted. The term "benefits" as used in this paragraph includes all annuities payable under this Act, lump sums payable under paragraph (1) of this subsection, and insurance benefits and lump-sum payments under section 202 of the Social Security Act, as amended, pursuant to subsection (k) of this section, except that the deductions of the benefits which, pursuant to subsection (k) (1) of this section, are paid under section 202 of the Social Security Act, during the life of the employee to him or to her and to others deriving from him or her, shall be limited to such portions of such benefits as are payable solely by reason of the inclusion of service as an employee in "employment" pursuant to said subsection (k) (1). (62 Stat. 577; 45 U. S. C. 228e)

§ 238.2 *Residual lump-sum payments*—(a) *Conditions of payment.*

(2) No benefits, or no further benefits, will, by reason of the employee's death, be payable (i) under Part 237 of this chapter, or (ii) under section 202 of the Social Security Act, as amended, on the basis of combined credits: *Provided, however,* That if the employee is survived by a widow, widower, or parent who may be entitled to such benefits under the Railroad Retirement Act upon attaining age 60 or under the Social Security Act upon attaining age 65, the residual lump sum may nevertheless be paid if such widow, widower, or parent files an election in accordance with the provisions of § 238.4; and

(d) *Meaning of terms.* As used in this section

(1) The term "percentage of compensation" means, with respect to an employee, the sum of the following:

(i) 4 per cent of the compensation paid him after December 31, 1936, and prior to January 1, 1947, exclusive of compensation in excess of \$300 for any month; and

(ii) 7 per cent of the compensation paid him after December 31, 1946, exclusive of compensation in excess of \$300 for any month before July 1, 1954, and in excess of \$350 for any month after June 30, 1954.

(2) The term "benefits deductible" means, with respect to an employee, the sum of the following:

(i) All benefits paid to the deceased employee and to others deriving from him during his lifetime under the Railroad Retirement Act, and under the Social Security Act to the extent that such benefits are based on his service in the railroad industry; and

(ii) All annuities or parts of annuities waived by the employee and/or others deriving from him under the Railroad Retirement Act; and

(iii) All benefits paid to others on account of his death under the Railroad Retirement Act, whether or not on the basis of combined railroad and social security service, and under the Social

Security Act if based on combined railroad and social security service.

§ 238.4 *Election to have residual lump-sum payment awarded*—(a) *Conditions of filing.* If an employee is survived by a widow, widower, or parent who may, upon attaining age 60, be entitled, by reason of the employee's death, to benefits, or further benefits, (1) under Part 237 of this chapter, or (2) upon attaining age 65, under section 202 of the Social Security Act, as amended, on the basis of combined credits, such widow, widower, or parent may file with the Board an election to have the residual lump-sum payment awarded, except that an election cannot be made by the widower of an employee who died before October 30, 1951.

(b) *Form and contents.* An election to have the residual lump-sum payment awarded must be made on the form prescribed by the Board for that purpose, and must contain an irrevocable election to have the residual lump sum paid in lieu of all the benefits specified in paragraph (a) of this section to which the widow, widower, or parent might otherwise become entitled.

(c) *Time of filing.* An election to have the residual lump-sum payment awarded must be filed before the widow, widower, or parent attains age 60, except that if a widow, widower or parent would be entitled to future benefits under the Social Security Act at age 65, instead of under the Railroad Retirement Act at age 60, the election must be filed before attainment of age 65.

(d) *Deterred from filing election.* Where an individual has notified the Board in writing, prior to his attaining age 60 or age 65, whichever is applicable, of his intention or desire to file an election to have the residual lump sum awarded, but has been deterred to his detriment by action of the Board or of its employees from filing an election upon the form prescribed by the Board, such writing of the individual shall be considered by the Board as a proper and sufficient election: *Provided, however,* That the action of the Board or of its employees in deterring the individual shall have consisted of failure to advise properly as to the necessity for filing an election on such prescribed form, or failure to furnish such prescribed form: *Provided further,* That the individual, upon being correctly advised by the Board as to the necessity for filing an election on the prescribed form and/or upon being furnished with such prescribed form, shall file said form with the Board during his lifetime and within 3 months after the date on which such correct advice was given him and/or such form was mailed to him (whichever is the later), or within such additional time as the Board may deem reasonable.

(e) *Effect.* An election to have the residual lump-sum payment awarded, filed in accordance with the provisions of this section, is legally effective according to its terms, and is not subject to revocation or to change in any respect. It does not affect any right which the widow, widower, or parent may otherwise have to benefits under section 202

of the Social Security Act, as amended, not based on combined credits.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228)

PART 239—PROOFS REQUIRED IN SUPPORT OF CLAIMS FOR BENEFITS

§ 239.1 *Proof of age.* (a) Except when the Board, on the basis of information in its records, is satisfied that the date of birth stated in the application is substantially correct, an applicant for an employee annuity shall file supporting evidence showing the date of his birth if his age is a condition of entitlement or is otherwise relevant to payment of benefits. Such evidence shall also be required by the Board as to the age of any other individual when such other individual's age is relevant to the determination of the applicant's entitlement. Evidence submitted to establish the age of a dependent (husband, wife and/or child as participants in a spouse's annuity) or of a survivor must have been recorded at least 5 years before the date of submission or the filing date of such dependent's or survivor's application, whichever occurred first, to be acceptable, except that evidence submitted to establish the age of a child under 5 years of age must have been recorded at or near the time of the child's birth to be acceptable.

(b) In determining the weight to be given to evidence offered to prove age, consideration shall be given to its general probative value and to its position in the following enumeration:

- (1) Civil record of birth;
- (2) Church record of birth or baptism;
- (3) Notification of registration of birth;
- (4) Hospital birth record or certificate;
- (5) Physician's or midwife's birth record;
- (6) Bible or other family record;
- (7) Naturalization record;
- (8) Immigration record;
- (9) Military record;
- (10) Passport;
- (11) School record;
- (12) Vaccination record;
- (13) Insurance record;
- (14) Labor union or fraternal record;
- (15) Employer's record;
- (16) Marriage record;
- (17) Census age record; or
- (18) Other evidence of probative value.

In lieu of the original of any record, except a Bible or other family record, there may be submitted a copy of such record or a statement as to the date of birth shown by such record, duly certified by the custodian of such record or by an individual designated by the Board. If the proof submitted is of recent origin or is not convincing, additional proof may be required.

If proof is not obtainable, the reason therefor should be stated and the applicant may submit the sworn statements of two other persons having knowledge of the age in question.

A date of birth may be fixed by the Board where proof to establish age or birth date cannot be obtained.

§ 239.2 *Proof of death.* An applicant for annuities due but unpaid at the death of an individual or for any benefit payable upon the death of an individual shall file proof of such individual's death and of the time and place of such death unless such proof has already been received by the Board. Such proof may also be required by the Board in the case of any other individual when such other individual's death is relevant to the determination of an applicant's entitlement. Such proof shall be of the following character:

(b) A certified copy of an official report or finding of death made by any agency or department of the United States which is authorized or requested to make such report or finding in the administration of any law of the United States: *Provided, however,* That a finding of presumptive death made pursuant to section 5 of Public Law 490, 77th Congress, shall be accepted only as proof of the fact of death and not of the date of death; or

§ 239.3 *Proof of marriage.* An applicant for any benefit as the spouse of a retirement annuitant or pensioner or as the widow or widower of a deceased employee, annuitant, or pensioner shall file proof as to marriage to such individual, and as to the time and place of marriage. Proof of marriage may also be required by the Board as to the marriage of any other individual when such a marriage is relevant to the determination of an applicant's entitlement.

(a) Proof of a ceremonial marriage shall be of the following character:

- (1) A copy of the public record of marriage, duly certified by the custodian of such record; or
- (2) A copy of the church record of marriage, duly certified by the custodian of such record; or
- (3) The original certificate of marriage.

If none of the proofs described in subparagraphs (1), (2), and (3) of this paragraph is obtainable, the reason therefor should be stated and the applicant may submit:

- (4) The sworn statement of the clergyman or official who performed the marriage ceremony; or
- (5) Other evidence of probative value.

§ 239.5 *Proof of relationship.* (a) An applicant for any benefit as the child of an individual shall submit proof of relationship as specified in this paragraph.

(1) If the relationship is by blood, one of the forms of documentary evidence described in § 239.1 (b) should be submitted (in the order of priority therein provided), showing the relationship between the parent and child in question: *Provided, however,* That a birth record which shows the name of the child but does not give the names of the parents and their relationship to the child may be accepted as supporting evidence of relationship if the surname of the child shown thereon is the same as that of the parent at the time of the birth of the

child, and if none of the information available or furnished to the Board is inconsistent with the existence of the relationship.

If no documentary type of evidence is obtainable, the reason therefor should be stated and the applicant may submit the sworn statements of two disinterested persons showing the name of the child and the name of the parent in question, and that to their own knowledge such person is the child of such parent, and stating the source of their knowledge.

(3) If the relationship is that of stepparent and stepchild and the child is the blood child of a parent to whom such a stepparent is married, one of the forms of documentary evidence described in § 239.1 (b) should be submitted (in the order of priority therein provided), showing the relationship between the child and such blood parent: *Provided, however,* That a birth record which shows the name of the child but does not give the names of the parents and their relationship to the child may be accepted as supporting evidence of relationship between the child and the child's blood parent to whom the stepparent is married if the surname of the child shown thereon is the same as that of the blood parent at the time of the birth of the child, and if none of the information available or furnished to the Board is inconsistent with the existence of the relationship. If the child is the adopted child of the parent to whom such stepparent is married, proof of adoption in accordance with subparagraph (2) of this paragraph shall be submitted. Proof shall be submitted as described in § 239.3 (in the order of priority therein provided) as to the marriage of the child's blood parent (or adopting parent) and such stepparent.

If no documentary proof of relationship of the applicant to the blood parent is available, the reason therefor should be stated and the applicant may submit the sworn statements of two disinterested persons showing the name of the child and the blood parent and that to their knowledge such person is the child of such parent, and stating the source of their knowledge.

239.6 Proof of "living with." A widow or widower who applies for an insurance annuity shall file proof that she or he was living with the employee at the time of the employee's death and a wife or husband who applies for a spouse's annuity shall file proof that she or he was living with the retirement annuitant or pensioner as of the day on which her or his application was filed. The proof shall be of the following character:

(a) A signed statement by the applicant for an insurance annuity or a spouse's annuity that at the time of the employee's death or as of the date on which spouse's application was filed, they were living together at the same place of abode. If they were temporarily living apart, the statement should state the places of residence of each at such time or date, the reason for their separation, the length of time they had been

separated, and the expected duration of the separation; or

(b) A signed statement by the applicant for an insurance annuity or a spouse's annuity that the deceased employee or retirement annuitant or pensioner was making regular contributions to her or his support, and describing the amount, time or times, and manner of making such contributions; or

(c) A certified copy of an order or decree of a court of competent jurisdiction directing the employee to contribute to his wife's or her husband's support and a certification by the proper official of the court that such order had not expired or had not been vacated prior to the death of the employee or prior to the date on which spouse's application was filed.

If any information required under paragraph (a) or (b) of this section, as the case may be, is not furnished in the application, it shall be submitted in the form of a sworn statement.

§ 239.7 Proof of having the care of a child. An applicant for a spouse's annuity who is under age 65 and an applicant for a widow's current insurance annuity shall file a signed statement as to whether she has in her care a child of the retirement annuitant or pensioner or of her deceased husband upon the basis of whose insured status she claims benefits. If such information is not furnished in the application, it shall be submitted in the form of a sworn statement. If the child is not living with the spouse or the widow, she shall also submit a sworn statement disclosing the reason for the separation, the present length and expected duration thereof, and how and to what extent she cares for the child, and upon request of the Board, a sworn statement by the individual with whom the child is living (or official of the institution where the child is living), which states the source of the child's support and how and to what extent the spouse or the widow has cared for the child.

§ 239.8 Proof of dependency of a child. An application for a child's insurance annuity shall be supported by proof as to the child's dependency upon the deceased employee, and an applicant under age 65 for a spouse's annuity shall submit proof of dependency of the child in her care upon the retirement annuitant or pensioner. Such proof shall be of the following character:

(a) If the deceased employee, retirement annuitant, or pensioner is the father or adopting father of such child, there shall be submitted a signed statement by a person having knowledge thereof, that at the time of the employee's death, or at the time application for a spouse's annuity was filed:

(1) The employee and the child were living together at a common place of abode, and giving the address of such place; or

(2) The employee was contributing to the support of the child, and describing the amount, time or times, and manner of making such contributions; or

(3) The child: (i) Was the legitimate or adopted child of such employee; and (ii) had not been adopted by another individual; and (iii) was not living with

and receiving more than one-half his support from his stepfather.

(b) If the deceased employee is the mother or the adopting mother, and she is not partially insured, or if she is the stepmother of the child, there shall be submitted a signed statement by a person having knowledge thereof, that at the time of the employee's death, the employee (1) was providing one-half the child's support, or (2) was living with the child or contributing to its support and that the child was not living with its father or adopting father and that no contributions in any medium were being made for the support of the child by such child's father or adopting father. If any contributions were being made by the father or adopting father, the time, amount, and manner of making such contributions should be stated.

(c) If the deceased employee, retirement annuitant, or pensioner is the stepfather of the child, there shall be submitted a signed statement by a person having knowledge thereof, that at the time of the employee's death, or at the time application for a spouse's annuity was filed, the child was either living with or receiving at least one-half his support from such employee.

If any information required under paragraph (a), (b), or (c) of this section, as the case may be, is not furnished in the application, it shall be submitted in the form of a sworn statement.

If the proof designated in paragraph (a), (b), or (c) of this section, as the case may be, is not obtainable, the reason therefor should be stated and the applicant may submit other evidence of probative value.

§ 239.9 Proof of support. A husband who claims to have received at least one-half of his support from his spouse at the time her retirement annuity or pension began, and a widower who claims to have received at least one-half of his support from the employee at the time of her death or at the time her retirement annuity or pension began, shall file proof of such support. The information shall be submitted in the form of a signed statement.

§ 239.10 Proof of the dependency of a parent. A parent who claims to have received at least one-half of his support from a deceased employee shall file proof of such support. The information shall be submitted in the form of a signed statement. The statement shall also describe any other income (including contributions from other children and relatives) received by the parent and the amount and source of such income.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j)

PART 240—PENSIONS

§ 240.1 Statutory provisions.

All pensions due in months following the first calendar month after the month of enactment hereof shall be increased by 15 per centum. (Public Law 234, 82nd Congress, 1st Session, approved October 30, 1951) (65 Stat. 691; 45 Stat. 228f)

Nothing in this Act or the Railroad Retirement Act of 1935 shall be taken as restricting or discouraging payment by employers to retired employees of pensions or

gratuities in addition to the annuities or pensions paid to such employees under such Acts, nor shall such Acts be taken as terminating any trust heretofore created for the payment of such pensions or gratuities. (50 Stat. 313; 45 U. S. C. 223g)

§ 240.3 *Rate and time at which pension is payable.* Any individual establishing the above qualifications shall be paid a monthly pension on the first day of July 1937, and on the first day of each calendar month thereafter during his lifetime, in the same amount as he was receiving, or would have received had he been on the pension or gratuity roll of his employer, on December 31, 1930, or on the earliest date that such rolls were commenced, whichever date shall be later: *Provided, however,* That if the pension or gratuity has been reduced by reason of a special (not general) reduction or readjustment made subsequent to December 31, 1930, the pension shall be at such reduced rate: *Provided further,* That a pension due in months after July 1948 and before December 1951 shall equal the amount of the pension paid on the first day of July 1937, plus 20 percent of such amount, and that a pension due in months after November 1951 shall equal the amount of the pension paid on the first day of August 1948, plus 15 percent of such amount: *And provided further,* That a pension payable under section 6 of the act shall in no case exceed \$120 when due in months prior to August 1948, or \$144 when due in months following July 1948 and prior to December 1951, or \$165.60 when due in months following November 1951. A pension payment does not accrue or become payable until the first day of a month, and only if the pensioner be alive on that date.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228j)

PART 262—MISCELLANEOUS

§ 262.6 *Waiver; statutory provisions.*

Any person awarded an annuity or pension under this Act may decline to accept all or any part of such annuity or pension by a waiver signed and filed with the Board. Such waiver may be revoked in writing at any time, but no payment of the annuity or pension waived shall be made covering the period during which such waiver was in effect. Such waiver shall have no effect on the amount of the spouse's annuity, or of a lump sum under section 5 (f) (2), which would otherwise be due, and it shall have no effect for purposes of the last sentence of section 5 (g) (1). (Section 20 of the act) (68 Stat. 1040; 45 U. S. C. 288s)

§ 262.7 *Waiver of annuity or pension payments.* (a) Any individual who has been awarded an annuity or pension under the act shall have the right to waive such annuity or pension in whole or in part by filing with the Board either a statement to that effect signed by him or a duly executed waiver form prescribed by the Board.

(b) Such a waiver shall be effective as of the date specified therein, but not before September 1, 1954: *Provided, however,* That if an annuity or pension has been awarded, a waiver shall not be effective before the first day of the month

in which the waiver form is received at an office of the Board.

(c) Covering the period during which a waiver is in effect, no payment of the amount of the annuity or pension waived can ever be made to any person. Such waiver in such period shall not, however, have any effect on the amount of a spouse's annuity otherwise payable or on a lump sum under section 5 (f) (2) of the act otherwise due, nor shall it serve to make such individual eligible for a lump-sum death benefit or any insurance benefits under the Social Security Act on the basis of the wages of the same deceased employee.

(d) A waiver once made shall continue in effect until such time as of which, but not earlier than the month in which, the annuitant or pensioner requests in a writing signed by him and filed with the Board that it be terminated.

§ 262.12 *Representatives of claimants—(a) Power of attorney.* A claimant shall not be required to hire, retain or utilize the services of an attorney, agent, or other representative in any claim filed with the Board. In the event a claimant desires to be represented by another person, he shall file with the Board prior to the time of such representation a power of attorney signed by him and naming such other person as the person authorized to represent the claimant with respect to matters in connection with his claim: *Provided, however,* That without requiring such power of attorney the Board may recognize as the duly authorized representative of the claimant a member of Congress or a person designated by the claimant's railway labor organization to act in behalf of members of that organization on such matters when it appears that such recognition is in the interest of the claimant.

(b) *Payment of claim.* The Board will not certify payment of any awarded claim to or through any person other than the claimant for the reason that a power of attorney for such person to represent such claimant has been filed.

§ 262.15 *Offices of the Board.* The Board hereby establishes as offices of the Board its main office in Chicago, Ill., all regional offices, all district offices, all branch offices, and all other offices maintained by the Board as necessary for the proper discharge of its functions under the Railroad Retirement Acts and the Railroad Unemployment Insurance Act.

§ 262.16 *Records and other papers of the Board; disclosure; service of process.*

(c) When any document described in paragraph (a) of this section is called for by a subpoena duces tecum or other judicial order upon the Board for production, inspection, or disclosure thereof, issued by a court of competent jurisdiction in a proceeding in which such document is relevant, a copy of such document, certified by the Secretary of the Board as a true copy, will be produced, disclosed or delivered, unless the Board finds that such production, disclosure, or delivery would be prejudicial to the public interest. In determining whether such

production, disclosure, or delivery would be prejudicial to the public interest, the Board will consider, together with such other considerations as it deems relevant, the probable effect of such production, disclosure, or delivery upon the furnishing of complete and accurate information requested by the Board.

(d) When pursuant to paragraph (c) of this section the Board determines that the production, disclosure, or delivery of any document described in paragraph (a) of this section would be prejudicial to the public interest, no member, officer, agent, or employee of the Board shall make any disclosure or testify with respect to such document. Refusal to make such disclosure or so to testify shall be based upon the authority of this section.

(f) No officer, agent, or employee of the Board is authorized to accept or receive service of subpoenas, summons, or other judicial process addressed to the Board except as the Board may from time to time delegate such authority by power of attorney. The Board has issued such power of attorney to the General Counsel and to no one else.

(g) Subject to the limitation expressed in paragraph (j) of this section, disclosure of documents and information is hereby authorized, in such manner as the Board may by instructions prescribe, in the following cases:

(1) To any employer, employee, applicant or prospective applicant for an annuity, pension, or death benefit under the 1937 act or the 1935 act, or his duly authorized representative, as to matters directly concerning such employer, employee, applicant or prospective applicant in the administration of such acts.

(2) To any employer, employee, applicant or prospective applicant for benefits under the Railroad Unemployment Insurance Act, or his duly authorized representative, as to matters directly concerning such employer, employee, applicant or prospective applicant in the administration of such act.

(3) To any officer or employee of the United States lawfully charged with the administration of the Railroad Retirement Tax Act, the Social Security Act, or acts or executive orders administered by the Veterans Administration, and for the purpose of such administration only.

(6) To any officer or employee of any state of the United States lawfully charged with the administration of any law of such state concerning unemployment compensation, as to the amounts payable to payees or beneficiaries under the Railroad Retirement Acts and the Railroad Unemployment Insurance Act.

(7) To any court of competent jurisdiction in which proceedings are pending which relate to the care of the person or estate of an incompetent individual, as to amounts payable under the Railroad Retirement Acts to such incompetent individual but only for the purpose of such proceedings.

(j) Notwithstanding any other provision of this section, no disclosure of information may be made by the Board

or any member, officer, agent, or employee of the Board, if the disclosure of such information is prohibited by law.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228]. Interprets or applies sec. 12, 52 Stat. 1107, as amended; 45 U. S. C. 362)

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228].

PART 266—INCOMPETENCE

§ 266.6 *Cases in which the Board shall recognize a person to act in behalf of another under section 19 (a) of the act.* In the absence of a written notice of the appointment of a guardian or other person legally vested with the care of the person or estate of an incompetent or minor, the Board shall, except where special circumstances appear, recognize a person to act in behalf of the incompetent or minor under the following circumstances: (a) When the individual has been adjudged mentally incompetent by a court having jurisdiction; (b) when the individual has been committed to a mental institution by a court having jurisdiction; (c) when the individual is an inmate of a mental institution; (d) when the individual has become physically or mentally disabled to handle his own affairs; (e) when the minor is less than 16 years of age; (f) when the minor is between 16 and 18 years of age and is in the care of any person and does not have capacity to act on his own behalf.

(Sec. 10, 49 Stat. 973, as amended; 45 U. S. C. 228].

Dated: May 20, 1955.

By authority of the Board.

MARY B. LINKINS,
Secretary of the Board.

[F. R. Doc. 55-4252; Filed, May 23, 1955; 8:45 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

Subchapter A—Armed Services Procurement Regulations

[Amdt. 4]

MISCELLANEOUS AMENDMENTS

This subchapter is amended as follows:

PART 3—PROCUREMENT BY NEGOTIATION

SUBPART C—DETERMINATIONS AND FINDINGS

The references in § 3.303 (b) and § 3.304 have been changed, as follows:

§ 3.303 *Determinations and findings by the head of a procuring activity signing as "a chief officer responsible for procurement".* * * *

(b) The determinations required by §§ 3.403-4, 3.404, 3.404-3 and 3.404-4 with respect to the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract.

§ 3.304 *Determinations and findings by a contracting officer.* To the extent that the authority has been or may be granted by procedures prescribed by each respective Department, the deter-

minations required by §§ 3.403-4, 3.404, 3.404-3, and 3.404-4 with respect to the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract may be made by a contracting officer; *Provided*, That any such determination shall be based upon written findings made by the Contracting Officer. Any other determinations or findings called for by this subchapter, but not required by this subchapter to be made by higher authority, may be made by a Contracting Officer in accordance with procedures prescribed by each respective Department.

(R. S. 161; 5 U. S. C. 22)

2. The following subpart has been revised in its entirety. It describes and defines approved types of contracts for procurement by negotiation, defines the areas of applicability in which each type of contract may be used appropriately and sets forth considerations and policies governing the choice of type of contract, and imposes conditions on the use of certain of the available types of contracts.

SUBPART D—TYPES OF CONTRACTS

Sec.	Scope of subpart.
3.400	Scope of subpart.
3.401	Types of contracts.
3.402	Selection of contract type.
3.403	Fixed-price-type contracts.
3.403-1	Firm fixed-price contract.
3.403-2	Fixed-price contract with escalation.
3.403-3	Fixed-price contract providing for the redetermination of price.
3.403-4	Fixed-price incentive contract.
3.404	Cost reimbursement-type contract.
3.404-1	Cost contract.
3.404-2	Cost-sharing contract.
3.404-3	Cost-plus-a-fixed-fee contract.
3.404-4	Cost-plus-incentive-fee contract.
3.405	Other types of contracts.
3.405-1	Time and materials contract.
3.405-2	Labor-hour contract.
3.405-3	Letter contract. [Reserved.]
3.405-4	Basic agreement.
3.405-5	Call contract. [Reserved.]
3.405-6	Open end contract. [Reserved.]

AUTHORITY: §§ 3.400 to 3.405-6 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. 151-161.

§ 3.400 *Scope of subpart.* This subpart (a) describes and defines approved types of contracts for procurement by negotiation, (b) defines the areas of applicability in which each type of contract may be used appropriately and sets forth considerations and policies governing the choice of type of contract, and (c) imposes conditions on the use of certain of the available types of contracts.

§ 3.401 *Types of contracts.* Pursuant to the authority of section 4 of the act, contracts negotiated under this part may be of any of the types or combination of types described herein, which will promote the best interests of the Government subject to the restrictions described below. The cost-plus-a-percentage-of-cost system of contracting shall not be used. In furtherance of this policy all prime cost-reimbursement type contracts, letter contracts, fixed-price type contracts providing for the redetermination of price and fixed-price incentive type contracts shall by an ap-

propriate clause prohibit cost-plus-a-percentage-of-cost subcontracts.

§ 3.402 *Selection of contract type.* (a) The firm fixed-price contracts shall be used unless, under the Applications and Limitations contained in this subpart, the use of another type of contract is more appropriate. However, the selection of contract type is generally a matter for negotiation. The proper selection of an appropriate type of contract is of primary importance in obtaining fair and reasonable prices under all of the circumstances. The type of contract therefore has a direct effect upon the resulting price or cost to the Government. Type of contract and pricing are interrelated and should be so considered together in negotiation.

(b) In determining the type of contract to be utilized consideration should be given to such factors as (1) type and complexity of the item; (2) urgency of the requirement; (3) the period of contract performance and the length of the production run; (4) degree of competition present; (5) difficulty of estimating performance costs due to such factors as the lack of firm specifications, the lack of production experience, or the instability of design; (6) availability of comparative price data, or lack of firm market prices or wage levels; (7) prior experience with the contractor; (8) extent and nature of subcontracting contemplated; (9) assumption of business risk; (10) technical capability and financial responsibility of the contractor; and (11) administrative costs of both parties. Early agreement should be reached between the Government and the contractor on the type of contract best suited to the procurement.

(c) Except in the case of a firm fixed-price contract, contract files shall include documentation to show the reasons why the particular contract type was utilized.

§ 3.403 *Fixed-price-type contracts.* The fixed-price-type contract generally provides for a firm price, or under appropriate circumstances may provide for an adjustable price, for the supplies or services which are being procured. Fixed-price contracts are of several types so designed as to facilitate proper pricing under varying circumstances.

§ 3.403-1 *Firm fixed-price contract—* (a) *Description.* The firm fixed-price contract provides for a price which is not subject to any adjustment by reason of the cost experience of the contractor in the performance of the contract. This type of contract, when appropriately applied as set forth in paragraph (b) of this section, places the maximum risk and responsibility upon the contractor and affords him the greatest incentive for efficient performance with the resultant benefits in earnings. Utilization of the firm fixed-price contract imposes a minimum administrative burden on the contracting parties.

(b) *Applicability.* The firm fixed-price contract is suitable for use in procurements when stable and reasonably definite specifications are available and when fair and reasonable pricing can be achieved, such as where (1) adequate

competition has made initial quotations effective; (2) prior purchases of the same or similar supplies or services provide reasonable price comparison; (3) experienced cost information or sound estimates of the probable cost of performance are available in the negotiation of contract prices; or (4) any other reliable basis for proper pricing can be utilized consistent with the purpose of this type of contract. The firm fixed-price contract is particularly suitable in the purchase of standard commercial items, modified commercial items, or military items for which adequate information on production and cost is available.

(c) *Limitation.* The firm fixed-price contract shall not be used when contingencies proposed in the contract price are considered unreasonable.

§ 3.403-2 *Fixed-price contract with escalation*—(a) *Description.* The fixed-price contract with escalation provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies which are specifically defined in the contract. These contingencies should be limited to those beyond the normal control of the contractor. The business risk of the contractor in a fixed-price contract is reduced by the inclusion of escalation provisions in which the Government agrees to revise the stated price upon the happening of the prescribed contingency. Where escalation is agreed upon, upward adjustments shall be limited by the establishment of a reasonable ceiling, and provisions will be included for downward adjustments in those instances where the prices or rates fall below the base levels provided in the contract. In the establishment of the base levels from which escalation will operate, contingency allowances shall be eliminated from the base to be set forth in the contract to the extent that escalation is provided for any particular contingency. Generally, escalation provisions are of two broad types:

(1) Price escalation provides for adjustment of the contract price on the basis of increases or decreases from an agreed upon level in published or established prices of specific items or in price levels of the contract end items.

(2) Labor and material escalation provides for adjustment of the contract price on the basis of increases or decreases from agreed standards or indices in wage rates, specific material costs, or both.

(b) *Applicability.* Use of this type of contract is appropriate where serious doubt exists as to the stability of market and labor conditions which will exist during an extended period of production and contingencies which would otherwise be included in a firm fixed-price contract are identifiable and can be covered separately by escalation. Its usefulness is limited by the difficulties inherent in its administration.

(1) Price escalation may be used under the conditions stated above when the items to which escalation will be applied are standard materials or articles normally sold at "established" or "published" prices in a competitive com-

mercial market or are modifications thereof the prices of which can be reasonably related to the prices of such standard materials or articles.

(2) Labor and material escalation generally is suitable for use when the types and kinds of labor and material that the contractor intends to use in the performance of a contract that covers an extended period of time prevents him from accepting the full risk of possible cost increases and the Government is unwilling to accept the proposed contingency factors.

(c) *Limitation.* Escalation shall not be used to provide protection against contingencies arising from the lack of accurate estimates of the quantities of labor or material required for performance of the contract.

§ 3.403.3 *Fixed-price contract providing for the redetermination of price*—

(a) *General*—(1) *Description.* The fixed-price contract providing for the redetermination of price calls for the subsequent negotiated adjustment, in whole or in part, of the initially negotiated (base) price. Consistent with the particular form of price redetermination clause selected, the contract price should be adjusted upward or downward at times prescribed in the contract or at the demand of either party either during or after the period of contract performance and such adjusted price may be prospective, retroactive, or both. Price redetermination clauses provide a contractual method for shifting certain risks from the contractor to the Government in order to eliminate or minimize the inclusion of contingency allowances in the price. Five types of redetermination clauses are available in accordance with the criteria for their use set forth in paragraph (b) of this section.

(2) *Applicability.* These price redetermination clauses are suitable for use in varying degrees in negotiated contracts where (i) adequate estimates of quantities of material and labor are not initially available; (ii) specifications adequate for a firm fixed-price are not initially available; (iii) sound initial estimates of total cost of performance cannot be made; (iv) effective competition or other reasonable justification of price is not available; or (v) where the use of price redetermination would otherwise materially assist in effecting fair and reasonable pricing.

(3) *Limitations.* This type of contract should not be used unless—

(i) It has been determined through negotiation that the particular type price redetermination contract fulfills more completely than any other type of contract the requirements established by the conditions surrounding the procurement.

(ii) There is at the outset, or will be available at a point early in contract performance, sufficient pricing information available to negotiate a prospective fixed or target price.

(iii) The initial price is substantially free of contingency allowances.

(iv) A firm fixed price can be established at a point substantially in advance of contract completion, except as to re-

troactive adjustment as provided in paragraph (b) (5) of this section.

(v) Reasonable assurance exists that contract price redetermination can be accomplished on a timely basis.

(vi) The contractor's accounting system is adequate for contract price redetermination purposes.

(vii) Cost of administration is not prohibitive.

(b) *Types of price redetermination clauses*—(1) *Prospective periodic price redeterminations at stated intervals*—

(i) *Description.* This clause provides for a firm fixed price for an initial period of contract deliveries or performance and for prospective price redeterminations either upward or downward at stated intervals during the performance of the contract.

(ii) *Applicability.* This clause is appropriate for use in procurements calling for quantity production or services where it is possible to negotiate fair and reasonable firm fixed prices for the initial period but not for subsequent stated periods of contract performance. This initial period should be reasonably long so as to include the maximum deliveries and cover the longest period of contract performance for which it is possible to establish fair and reasonable prices at the time of original negotiation. The length of the prospective pricing periods should depend on the circumstances of each case and should generally range from 6 to 12 months each.

(iii) *Limitations.* This clause should be used only when the prospective pricing periods can be made to conform with the operation of the contractor's accounting system. A price ceiling may be established for this type of contract in accordance with the policy set forth in paragraph (c) of this section when appropriate.

(2) *Prospective price redeterminations on request*—(i) *Description.* This clause provides for a fixed price for the entire contract subject to limited demands by either party for prospective price redetermination either upward or downward.

(ii) *Applicability.* This clause is appropriate for use in procurements calling for quantity production or service where it is possible to negotiate fair and reasonable firm fixed prices for the entire contract but the length of contract performance makes it desirable for the parties to reserve the option to adjust price prospectively due to unforeseen causes beyond the normal risks inherent in a firm fixed-price contract.

(iii) *Limitations.* This clause should be used only when (a) the procurement is susceptible of being firm fixed priced for the entire contract except for contingencies due to the length of contract performance; (b) the initially negotiated price shall remain in effect without change for a substantial period of performance, but only in exceptional cases shall this period be less than 6 months; and (c) the first redetermined price and any subsequent redetermined prices shall remain in effect for a substantial portion of the remaining period of contract performance but only in exceptional cases shall price redetermination requests be

provided for more frequently than every 6 months after the initial price redetermination. A price ceiling may be established for this type of contract in accordance with the policy set forth in paragraph (c) of this section when appropriate.

(3) *Retroactive and prospective price redetermination at a stated time prior to completion*—(i) *Description*. This clause provides for retroactive and prospective redetermination of prices either (a) upward or downward, or (b) downward only, at a designated time prior to completion of the contract, expressed in terms of deliveries, shop completion, a percentage of total contract performance on a cost incurred basis or any other reasonable basis. Generally, the time designated as the cutoff point for price redetermination purposes should be the earliest practicable and generally should not exceed 20 percent of deliveries, 20 percent of shop completion, or 40 percent of cost of performance on a cost incurred basis, as compared with the initial estimates. The redetermined price may apply to all supplies or services delivered under the contract.

(ii) *Applicability*. This clause is appropriate for use in contracts when it is impracticable to establish firm fixed prices at the time of contract negotiation but the contracting parties are reasonably certain that firm fixed prices can be negotiated prior to the performance of 60 percent of the contract on a cost incurred basis.

(iii) *Limitations*. This clause should be used only when (a) the initial negotiated price is a reasonable estimate sufficient to establish a billing price; (b) there is sufficient time of contract performance to accomplish the price redetermination prior to completion of 60 percent of the contract on a cost incurred basis, and (c) the estimated value of the procurement is in excess of \$100,000. A price ceiling shall be established for this type of contract in accordance with the policy set forth in paragraph (c) of this section.

(4) *Retroactive and prospective price redetermination including further prospective redetermination on request*—(i) *Description*. This clause provides all the features and is subject to the same repricing limitations of the clause described in subparagraph (3) of this paragraph with the additional provision for limited further prospective price redetermination upon written demand by either contractual party. Such further price redetermination is applicable only to supplies or services furnished after the effective date as specified in the request or the date of receipt of the request which ever is later. This clause also provides a limitation on the frequency of these additional requests.

(ii) *Applicability*. This clause is appropriate for use when it is impracticable to establish firm fixed prices at the time of contract negotiation, but when the contracting parties are reasonably certain that fair and reasonable firm fixed prices can be negotiated for the entire contract prior to the performance of 60 percent of the contract on a cost incurred basis.

(iii) *Limitations*. Subject to the same limitations contained in subparagraph (3) (iii) of this paragraph this clause should be used only when subsequent prospective price redeterminations may occur no more frequently than every 6 months after the initial price redetermination. Under this type of contract a price ceiling shall be provided for the period covered by the initial (i. e., retroactive and prospective) repricing action. After the initial repricing action the use of a price ceiling is optional. Any price ceiling shall be in accordance with the policy set forth in paragraph (c) of this section.

(5) *Retroactive price redetermination after completion*—(i) *Description*. This clause provides for a ceiling price and retroactive price redetermination after completion of the contract.

(ii) *Applicability*. This clause is designed for use in contracts where, but for special or unusual circumstances, a cost reimbursement type contract would normally be used. This clause should ordinarily be used only where the amount involved is relatively small or the time for performance is relatively short and then only after negotiation of an initial price as fair and reasonable as circumstances of the particular procurement will then permit.

(iii) *Limitation*. This clause shall only be used upon the written approval of (a) Headquarters, Air Materiel Command, for the Air Force; (b) Office of the Deputy Chief of Staff for Logistics, for the Army; and (c) Office of Naval Materiel, for the Navy. The criteria for the use and submitting of requests for approval within each respective Department shall be the responsibility of the aforementioned offices. A price ceiling shall be established for this type of contract in accordance with the policy set forth in paragraph (c) of this section.

(c) *Ceiling price provisions*. (1) Ceiling prices should be established at levels which provide reasonable risk assumption by the contractor. The ceiling to be used should be determined for each individual contract after giving consideration to such factors as the state of the art of the item being contracted for and the ability or inability to estimate accurately the labor or material costs involved in performance.

(2) The ceiling price so established is not to be construed as applying to price changes or adjustments which arise solely from the operation of the Changes clause of the contract.

§ 3.403-4 *Fixed-price incentive contract*—(a) *Description*. The fixed-price incentive contract is a fixed-price type of contract with provision for the adjustment of profit and price by a formula based on the relationship which final negotiated total cost bears to negotiated target cost.

(1) *Initially firm target*. Under this type of contract there is negotiated initially a firm target cost, a target profit, a price ceiling and a final profit and price adjustment formula. The formula may also include a ceiling on final profit. After performance of the contract, final cost is negotiated and a final price is then established in accordance with the for-

mula. Where the final negotiated cost is less than the firm target cost, the formula provides for an increase in final profit above target profit; conversely, where the final negotiated cost is more than the firm target cost, the formula provides for a decrease in final profit below target profit. This formula provides for a sharing between the contractor and the Government of both the cost savings below firm target cost and, within the total price ceiling, the excess of final negotiated cost above firm target cost. The increase or decrease in the actual profit included in the final price is thus designed to provide in advance a calculable incentive to the contractor for efficiency in performance.

(2) *Delayed firm target*. Under an alternate form of this type of contract there is negotiated at the outset an initial price, and a production point, generally prior to initial delivery or shop completion of the first item, at which time a firm target cost, target profit and a final profit-and-price adjustment formula and price ceiling will be negotiated.

(3) *Billing price*. In either of the above forms, provision is made for a billing price. The purpose of a billing price is to establish an interim basis for payment. This billing price may be adjusted within the ceiling limits upon request when it becomes apparent during the course of the performance that final negotiated costs will be substantially different from the target cost.

(b) *Applicability*. The fixed-price incentive type contract is appropriate for use only in those circumstances where targets reasonably free of contingencies and providing a fair and reasonable incentive can be established (1) at the time of initial contract negotiation, or (2) at an early point in the performance of the contract and in either case there is a sufficiently long period of performance thereafter to permit achievement of substantial cost reductions.

(c) *Limitations*. This type of contract should not be used unless the contractor's accounting system is adequate for price redetermination purposes and permits satisfactory application of the profit-and-price adjustment formula. In no case should this type of contract be used when (i) reliable cost estimates are not available at the time of initial contract negotiation or at a very early point in the production, or (ii) the sole or principal purpose is to shift substantially all of the risk of performance to the Government. Neither the target profit nor the profit-and-price adjustment formula shall be established prior to the establishment of the firm target cost. The fixed-price incentive contract shall be used only after a determination, in accordance with the requirements of Subpart C of this part, that:

(1) Such method of contracting is likely to be less costly than other methods, or

(2) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

§ 3.404 *Cost reimbursement-type contract*—(a) *Description*. The cost-reimbursement type of contract provides for

payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of (1) obligation of funds, and (2) establishing a ceiling which the contractor may not exceed (except at his own risk) without prior approval or subsequent ratification of the contracting officer. A cost-reimbursement type contract may also provide for predetermined fixed overhead rates, usually to be redetermined at stated intervals.

(b) *Applicability.* The cost-reimbursement type contract is suitable for use when the nature and complexity of the procurement is such that costs of performance cannot be estimated with reasonable accuracy. In addition, it is essential that (1) the contractor's cost accounting system is adequate for the determination of costs applicable to the contract and (2) appropriate surveillance by Government personnel during performance will give reasonable assurance that inefficient or wasteful methods are not being used. While cost-reimbursement contracts are particularly useful for procurements involving substantial amounts, i. e., estimated cost of \$25,000 or more, the Contracting Officer may determine in a given case to utilize this type of contract to cover transactions in which the estimated costs are less than \$25,000.

(c) *Limitations.* The cost-reimbursement type contract may be used only after a determination, in accordance with the requirements of Subpart C of this part, that:

(1) Such method of contracting is likely to be less costly than other methods, or

(2) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

§ 3.404-1 *Cost contract—(a) Description.* The cost contract is a cost-reimbursement type contract under which the contractor receives no fee.

(b) *Applicability.* The following are illustrative situations in which the use of this type of contract may be appropriate.

(1) Research and development work particularly with nonprofit educational institutions or other nonprofit organizations.

(2) Facilities contracts.

(3) Initial small quantity procurements of new items with anticipated subsequent large production runs.

§ 3.404-2 *Cost-sharing contract—(a) Description.* A cost-sharing contract is a cost-reimbursement type contract under which the contractor receives no fee but is reimbursed only for an agreed portion of its allowable costs.

(b) *Applicability.* A cost-sharing contract is suitable for use for those procurements which cover production or research projects which are jointly sponsored by the Government and the contractor with benefit to the contractor in lieu of full monetary reimbursement of costs. In consideration of this benefit, the contractor agrees to absorb

a portion of the costs of performance. The following are illustrative situations in which this type of contract is generally desirable.

(1) Jointly sponsored research and development work with nonprofit educational institutions or other nonprofit organizations.

(2) Other research and development work where the results of the contract may have commercial benefit to the contractor.

§ 3.404-3 *Cost-plus-a-fixed-fee contract—(a) Description.* The cost-plus-a-fixed-fee contract is a cost-reimbursement type of contract which provides for the payment of a fixed fee to the contractor. The fixed fee once negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract.

(b) *Applicability.* The cost-plus-a-fixed-fee contract is suitable for use when a cost-reimbursement type of contract is appropriate, as provided in § 3.404 (b), and when the parties agree that the procurement should be profit bearing in the form of a fixed fee. The following are illustrative situations in which this type of contract may be appropriate:

(1) Research and development work where the scope and nature thereof cannot be definitely specified.

(2) Definite specifications exist but the contractor lacks a valid basis for estimating costs because the supplies called for are not items regularly manufactured, or the services called for have not been previously performed, or partial experience will not reveal a proper pricing level for the remainder of the production.

(3) Production or construction contracts where the specifications are not complete or where major changes substantially affecting the scope of the work are expected.

(4) Work to be performed in a Government-owned plant with the use of Government-owned facilities.

(c) *Limitations.* Section 4 (b) of the act provides that in the case of a cost-plus-a-fixed-fee contract the fee shall not exceed 10 per centum of the estimated cost of the contract, exclusive of the fee, as determined by the Secretary of the Department concerned at the time of entering into such contract (except that a fee not in excess of 15 per centum of such estimated cost is authorized in any such contract for experimental, developmental, or research work and that a fee inclusive of the contractor's cost and not in excess of 6 per centum of the estimated cost, exclusive of fees, as determined by the Secretary of the Department concerned at the time of entering into the contract, of the project to which such fee is applicable is authorized in contracts for architectural or engineering services relating to any public works or utility projects). The Head of a procuring activity in the Departments of the Army and Navy and the Director of Procurement and Production of a Major Command in the Department of the Air Force or their duly authorized repre-

sentatives are authorized to approve fixed fees not in excess of (1) ten per centum (10) of the estimated costs, exclusive of fee, of any contract for experimental, developmental, or research work or (2) seven per centum (7) of the estimated cost, exclusive of fee, of any other contract except that in contracts for architectural or engineering services the fixed fee shall not exceed that authorized by the terms of the act as set forth above. In appropriate cases, fees above the prescribed limits in the authorizations granted herein but within the limitations of the Act may be authorized by the Secretary of the Department concerned or his designees.

§ 3.404-4 *Cost-plus-incentive-fee contract—(a) Description.* The cost-plus-incentive-fee contract is a cost-reimbursement-type contract with provision for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs. Under this type of contract, there is negotiated initially a target cost, a target fee, a minimum and maximum fee, and a fee adjustment formula. After performance of the contract, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. The provision for increase or decrease in the fee is designed as an incentive to the contractor to increase the efficiency of performance.

(b) *Applicability.* The cost-plus-incentive-fee contract is suitable for use where a cost-reimbursement-type of contract is found necessary and where there is a probability that its use will result in lower costs to the Government than other forms of cost-reimbursement-type contracts through cost reduction incentive to the contractor.

(c) *Limitation.* The target and the maximum fee shall be subject to the administrative limitations stated in § 3.404-3 (c).

§ 3.405 *Other types of contracts.*

§ 3.405-1 *Time and materials contract—(a) Description.* The time and materials type of contract provides for the procurement of supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead, and profit) and (2) material at cost. Material handling costs may be included in the charge for "material at cost," to the extent they are clearly excluded from any factor of the charge computed against direct labor hours. This type of contract may establish either a price ceiling, or a ceiling amount which the contractor may not exceed (except at his own risk).

(b) *Applicability.* The time and materials contract is used only in those situations where it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any substantial accuracy. Particular care should be exercised in the use of this type contract

since its nature does not encourage efficiency. Thus it is essential that this type of contract be used only where provision is made for adequate controls, including appropriate surveillance by Government personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. This type of contract may be used in the procurement of (1) engineering and design services in connection with the production of supplies; (2) the engineering, design and manufacture of dies, jigs, fixtures, gauges, and special machine tools; (3) repair, maintenance or overhaul work, and (4) work to be performed in emergency situations.

(c) *Limitation.* This type of contract may be used only after determination that no other type of contract will suitably serve.

§ 3.405-2 *Labor-hour contract*—(a) *Description.* The labor-hour type of contract is a variant of the time and materials type contract differing only in that materials are not involved in the contract or are not supplied by the contractor.

(b) *Applicability.* The labor-hour type of contract is applicable in those procurements described for the time and materials type contract, but in situations in which contractor-furnished materials are not involved.

(c) *Limitations.* This type of contract may be used only after determination that no other type of contract will suitably serve.

§ 3.405-3 *Letter contract.* [Reserved.]

§ 3.405-4 *Basic agreement*—(a) *Description.* A basic agreement is a written instrument of understanding executed between a Department or procuring activity and a contractor which sets forth the negotiated contract clauses which shall be applicable to future procurements entered into between the parties during the term of the basic agreement. The use of the basic agreement contemplates the coverage of a particular procurement by the execution of a formal contractual document which will provide for the scope of the work, price, delivery, and additional matters peculiar to the requirements of the specific procurement involved, and shall incorporate by reference or append the contract clauses agreed upon in the basic agreement, as required or applicable.

(b) *Applicability.* (1) Basic agreements are appropriate for use when (i) past experience and future plans indicate that a substantial number of separate contracts may be entered into with a contractor during the term of the basic agreement, and (ii) substantial recurring negotiating problems exist with a particular contractor.

(2) *Amendment or supersession.* A basic agreement shall be amended only by an amendment of the basic agreement itself and shall not be modified or superseded by individual contracts or purchase orders entered into under and subject to the terms of such basic agreement. To minimize amendments, revisions

to this subchapter involving changes in authorized contract clauses utilized in basic agreements will provide appropriate direction with respect to any required amendments of basic agreements and to the extent possible, amendments will be required only in matters resulting from changes in statutes, or executive orders. As a minimum, basic agreements will be reviewed annually on the anniversary of their effective date and revised at that time to conform with the current requirements of this subchapter. Amendments shall not have retroactive effect.

(3) *Discontinuance of basic agreement.* Basic agreements shall provide for discontinuance of their future application upon 30 days written notice by either party. Discontinuance of basic agreement will not affect any individual contract referencing the basic agreement (or the clauses appended thereto) entered into prior to the effective date of discontinuance.

(c) *Limitations.* (1) Basic agreements shall neither cite appropriations to be charged nor be used alone for the purpose of obligating funds.

(2) Basic agreements shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the contractor involved. Basic agreements shall not be used in any manner to restrict competition.

(3) Basic agreements shall be utilized only in connection with negotiated contracts.

§ 3.405-5 *Call contract.* [Reserved.]

§ 3.405-6 *Open end contract.* [Reserved.]

PART 4—COORDINATED PROCUREMENT

SUBPART B—POLICIES AND GENERAL PRINCIPLES

1. Section 4.201 has been revised so as to clarify the application of procurement assignments outside of the continental limits of the United States. Single department procurement assignments in such areas will be determined by the respective Unified Commanders, irrespective of which funds may be utilized. Section 4.201, as revised, reads as follows:

§ 4.201 *Application of procurement assignment.* Single procurement in the form of single department, joint agency, or plant cognizance procurement shall be effected whenever it will result in net advantages to the Department of Defense as a whole, except so far as it can be demonstrated that use of such a procurement method will adversely affect military operations. Single department procurement assignments outside the continental limits of the United States, regardless of funds utilized, will be determined by the respective Unified Commanders. Implementation of such assignments will be effected within the unified commands under the direction of the Unified Commander.

2. In § 4.202-1, paragraphs (g) and (h) have been deleted in their entirety. The revised section reads as follows:

§ 4.202-1 *Single department procurement.* The Procuring Department is generally responsible for the following, under single department procurement (for specific assignment of procurement responsibilities, see DOD publication "Procurement Assignments, List of Commodities"):

(a) Operational phases of procurement planning (phasing the submission of requirements, consolidating requirements, analyzing the market, and determining patterns for the phased placement of orders in such a manner as to assure meeting the needs of the Departments at the lowest possible price to the Government, and at the same time avoiding unnecessary peaks and valleys of production).

(b) Purchasing.

(c) Contract Administration, including arrangements for followup and expediting.

(d) Acquisition of licenses under patents or other proprietary rights covering the subject matter of the procurement and the settlement of patent infringement claims arising out of the procurement. Approval of the Department or Departments whose funds are to be charged for the acquisition of licenses or settlement of claims will be obtained.

(e) Arrangement for inspection.

(f) Arrangement for transportation.

PART 5—INTERDEPARTMENTAL PROCUREMENT

SUBPART A—PROCUREMENT UNDER FEDERAL SUPPLY SCHEDULE CONTRACTS

The list of Federal Supply Contracts which are mandatory upon the Department of Defense has been brought up to date. Notwithstanding the correction made in § 5.103-2 (a) under the item "Class 35, Periodicals and Law Books", the section on Periodicals will remain mandatory upon the Department of Defense until 30 June 1955. The revised list follows:

§ 5.103-2 *List of Federal Supply schedule contracts which are mandatory upon the Department of Defense*—(a) *Mandatory nationally.*

Class	Title of Schedule
7, 14	Gasoline and Lubricating Oil—Service Station Deliveries.
8	Tires and Tubes (Other Than Aircraft), Part II (Commercial tires and tubes only).
8, 45, 60	Brake Lining, Clutch Facings, Oil Filter Elements, and Tire Chains, Etc., Part IV. (Selected items only are mandatory upon DOD.)
17	Spark Plugs, Part II.
17	Electric Lamps, Part VI.
17	Household and Quarters Lamps, Part VII.
18	Purchase, Maintenance, Repair, and Rental of Micro-Photographic Equipment, and Supplies, Part IV.
26	Household and Quarters Furniture, Part I; and Part I, Supplement A.
26	Household and Quarters Furniture, Part II.
26	Household and Quarters Furniture, Part III.
26	Household and Quarters Furniture, Part IV.
26	Office Furniture, Wood and Steel, Including Steel Insulated Filing Cabinets, Part V.

Class	Title of Schedule
27	Floor Coverings, Part I.
28	Marginally Punched Continuous Forms.
35	Books, Part I, Sections A and B. (Section A only is mandatory upon DOD.)
35	Periodicals and Law Books, Part II. (Law Books Section only is mandatory upon DOD.)
53	Drafting-Room and Office Supplies, Part I.
53	Envelopes, Printed and Plain, Part V.
54, 104	Typewriters (Manual and Electric); Purchase, Exchange, Allowances, and Repair Parts; Maintenance and Reconditioning of Electric Typewriters, Part I.
54	Office Equipment, Part III, Sections A and B.
54	Offset Duplicating Blankets and Plates, Direct Image and Photographic (Metal and Paper Type), Part IV.
66	Vacuum Cleaners and Repair Parts, Accessories and Attachments, Part II.
83	Aircraft Tires (Casings and tubes).
103	Recording and Transcription Service, Part I.

(b) *Mandatory in Washington, D. C., and contiguous area.*

Class	Title of Schedule
16, 17	Dry Batteries.
18,	Photographic Paper and Film, and
51, 53	Other Sensitized Materials and Photographic Chemicals, Classes 18 and 51, Part II, and Class 53, Part III. (Class 51 and 53 items only are mandatory upon DOD.)
26	Executive Type Furniture, Class 26, Part VI. Also Class 25, Smoking Stands, Class 53, Desk Trays and Class 54, Baskets, Wastepaper.
27	Window Coverings, Part III.
42	Abrasives, Casters, Door Closers, Padlocks, Steel Strapping, etc.
51	Drugs, Medicinal, Laboratory, and Industrial Chemicals, Part I.
51	Gases, Industrial, Medicinal, and Refrigeration; Part III.
53	Rubber Stamps, Part IV.
56	Groceries and Other Provisions, Part II.
56	Ice, Part III.
57	Laboratories and Special Apparatus and Supplies, Section C.
58	Fire Extinguishers, Repair Parts, and Accessories.
67	Feed and Forage, Part I.
67	Seed, Part II.
70	Agricultural Materials (Fertilizers, peat, and soil conditioners).
103	Correct Time Service.
103	Regraining of Offset Duplicating Plates, Part III.
103	Wiping Cloth Service, Part IV.

PART 7—CONTRACT CLAUSES

SUBPART A—CLAUSES FOR FIXED-PRICE SUPPLY CONTRACTS

1. The references to §§ 3.402 and 3.404 have been deleted in § 7.102, and a new reference to § 3.403 substituted in lieu thereof, as follows:

§ 7.102 *Applicability.* As used throughout this subpart, the term "fixed-price supply contract" shall mean any contract (a) entered into either by formal advertising or by negotiation, other than (1) purchase orders for \$5,000

or less, (2) letter contracts, (3) preliminary notices of award, and (4) amendments or modifications to contracts or purchase orders; (b) at a fixed price (with or without provisions for price redetermination, escalation or other form of price revision as covered by § 3.403 of this subchapter; and (c) for supplies other than (1) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property, (2) experimental, developmental, or research work, or (3) facilities to be provided by the Government under a "Facilities Contract" as defined in Part 13 of this subchapter (but see §§ 7.104-15 and 7.104-16 with respect to purchase orders).

2. The contract clause relating to Bills of Materials has been revised and the paragraph in which it appears renumbered from § 7.105-7 to § 7.105-6. Revision of the clause is editorial in nature. However, the instructions now provide that the contractor shall not be required to obtain data for the Bill of Materials in greater detail from a subcontractor than he himself is required to furnish under the clause in the prime contract. It now reads as follows:

§ 7.105-6 *Bill of Materials.* A Bill of Materials consists of a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind. A Bill of Materials, with respect to all or part of the supplies to be furnished pursuant to a contract, shall be required only if the Contracting Officer, in accordance with the procedures of the Department concerned, shall determine that such bill is necessary to develop materials or components requirements for production and maintenance programs, for industrial mobilization purposes, or for other specified purposes. In such event, the contract shall specify, with respect to such bill, the following:

(a) The supplies or parts thereof to be covered by the Bill of Materials;

(b) The type of bill or bills (Detailed, Modified, Expanded Summary, or Abbreviated Summary) to be furnished, with applicable instructions;

(c) The compensation to be paid the contractor for furnishing such bill and any revisions thereto, or a statement that the price of the item to which the bill relates includes compensation for the furnishing of such bill;

(d) The number and kind of copies of such bill to be furnished; and,

(e) Delivery dates.

In such event, the contract shall also include the following clause:

BILL OF MATERIALS

(a) With respect to the supplies to be delivered pursuant to the contract, for which a Bill of Materials is required, the Contractor shall furnish a Bill of Materials in the required number of copies on Department of Defense Forms 346, and 347 if applicable, or authorized reproductions thereof, in accordance with the instructions specified in the Schedule.

(b) The Contractor shall furnish to the Government, at such intervals as designated in the Schedule, revised pages of the Bill of Materials incorporating the effect of any changes, pursuant to the clause hereof entitled "Changes," in the quantity of any material or part, or any other information contained in the Bill of Materials, or a statement that no revision is necessary. A final revision, or statement that no revision is necessary, shall be furnished upon completion of performance of the contract.

(c) The Bill of Materials and all revisions or statements subsequent thereto shall be subject to inspection and acceptance by the Government.

Where a Bill of Materials is procured by contract separate from the supplies to which such Bill of Materials relates, such contract shall include such of the terms mentioned above as may be appropriate and shall specify that the Bill of Materials shall be furnished on DD Forms 346, and 347 if applicable, or authorized reproductions thereof. The contractor shall not be required to obtain data for the Bill of Materials in greater detail from a subcontractor than he is to furnish under the terms of the above clause.

SUBPART B—CLAUSES FOR COST-REIMBURSEMENT TYPE SUPPLY CONTRACTS

The reference in § 7.202 to § 3.406 has been eliminated, as follows:

§ 7.202 *Applicability.* As used throughout this subpart, the term "cost-reimbursement type supply contract" shall mean any contract (other than a letter contract, letter of intent, preliminary notice of award, or amendment or modification to a contract) entered into on a cost or cost-plus-a-fixed-fee basis as covered in § 3.404 for supplies other than (a) the construction, alteration or repair of buildings, bridges, roads, or other kinds of real property, (b) experimental, developmental, or research work, or (c) facilities to be provided by the Government under a "facilities contract" as defined in Part 13 of this subchapter.

PART 8—TERMINATION OF CONTRACTS

SUBPART G—FORMS

The references in § 8.702 to §§ 3.405 and 3.406 have been deleted and a new reference to § 3.404 has been added in lieu thereof, as follows:

§ 8.702 *Termination clause for cost-type contracts.* The following standard clause shall be used in any cost-type contract, as defined in § 3.404, for supplies and experimental, developmental, or research work other than (a) construction, alterations, or repair of buildings, bridges, roads, or other kinds of real property, or (b) experimental, developmental, or research work with educational or nonprofit institutions, where no fee is contemplated.

(R. S. 161; 5 U. S. C. 22)

T. P. PIKE,
Assistant Secretary of Defense
(Supply and Logistics).

[F. R. Doc. 55-4299; Filed, May 26, 1955; 8:48 a. m.]

TITLE 14—CIVIL AVIATION
Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 144]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

PROCEDURE ALTERATIONS

The standard instrument approach procedure alterations appearing hereinafter are adopted to become effective when indicated in order to promote safety. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required.

Part 609 is amended as follows:

NOTE: Where the general classification (LFR, VAR, ADF, ILS, GCA, or VOR), location, and procedure number (if any) of any procedure in the amendments which follow, are identical with an existing procedure, that procedure is to be substituted for the existing one, as of the effective date given, to the extent that it differs from the existing procedure; where a procedure is canceled, the existing procedure is revoked; new procedures are to be placed in appropriate alphabetical sequence within the section amended.

1. The low frequency range procedures prescribed in § 609.6 are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet. MSL. Ceilings are in feet above airport elevation. If an LFR instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below.

City and State; airport name, elevation; facility; class and identification; procedure No.; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft.)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft.)	Course and distance, facility to airport	Ceiling and visibility minimums		If visual contact not established at authorized landing minimums after passing facility within distance specified, or if landing not accomplished	
							Condition	Type aircraft		
1 HONOLULU, HAWAII, Air- Hawaii, International Air- port, 10 SBRAZ-HNL Procedure No. 1, 0-8 Amendment No. 0-8 Effective: June 25, 1955 Supersedes amendment No. 0-7, dated November 1, 1953. Major changes. New format. Lower minima.	2 Barbers Point FM (final) ----	3 055-8	4 500	5 S side of SW course: 235° outbound, 055° inbound, 2,000' within 10 miles.	6 500	7 075-2.6	8 *T-dn C-dn S-dn 8 A-dn	9 9	10 10	11 11
								More than 2 engines	400-1 800-1½ 400-1 800-2	Within 2.6 miles, climb to 2,000' on S course (160°) and proceed to Southgate Inter-section. *All takeoffs to NW (32) will be restricted to 600-2, with left hand turn recommended. AIR CARRIER NOTE: Sliding scale not authorized. #Landings on runway 14 restricted to 600-2.

LFR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

City and State; airport name, elevation; facility; class and identification; procedure No.; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft.)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft.)	Course and distance, facility to airport	Ceiling and visibility minimums		If visual contact not established at authorized landing minimums after passing facility within distance specified, or if landing not accomplished
							Condition	Type aircraft	
1 TONOPAH, NEV. Municipal, 5,425'. SPRALZ-DIV TPFH. Procedure No. 1. Amendment No. 3. Effective: June 25, 1955. Supersedes Amendment No. 2, dated July 15, 1954. Major changes: New format; add required note for uncontrolled area.	2	3	4	5 W side of N course: 345° outbound. 185° inbound. 9,500' within 10 miles.	6 8,000	7 103—2.6	8 All aircraft 1,000-1 1,000-2 2,500-2 2,500-3 2,500-3	9 10 More than 75 m. p. h. or less	11 Within 2.6 miles, climb to 10,000' on S course within 2.5 miles of LFR. CAUTION: No control area. Pilots using this facility shall as soon as practicable, advise TPFH INSAC of position, altitude, ETA, and intentions and thereafter determine that adequate separation exists from other reported users of navigational facilities in the area. When other aircraft have previously contacted TPFH INSAC, hold between facility and a point 2 minutes out on final approach course at least 1,000' above procedure turn altitude and until advised that aircraft making approach has landed. Keep TPFH INSAC advised at all times of changes in altitude and position in order that other aircraft may also receive this information.

2. The very high frequency omnirange procedures prescribed in § 609.9 (a) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. If a VOR instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below.

City and State; airport name, elevation; facility; class and identification; procedure No.; effective date	Initial approach to facility from—	Course and distance	Minimum altitude (ft.)	Procedure turn (—) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude over facility on final approach course (ft.)	Course and distance, facility to airport	Ceiling and visibility minimums		If visual contact not established at authorized landing minimums after passing facility within distance specified, or if landing not accomplished
							Condition	Type aircraft	
1 HANKSVILLE, UTAH. CAA Site 54, 4,480'. BVOR-DPVJ HVE. Procedure No. 1. Amendment No. 1. Effective: June 23, 1955. Supersedes original dated Nov. 19, 1953. Major changes: New format.	2	3	4	5 S side of course: 090° outbound. 270° inbound. 7,500' within 10 miles.	6 5,700	7 270—0.2	8 All aircraft 600-2 1,200-2 1,200-2	9 10 More than 75 m. p. h. or less	11 Within 0 mile, climb to 11,000' on the 060° radial within 25 miles. Within 4.2 miles, climb to 9,000' on outbound track of 007° within 25 miles. Emergency procedure only, weather observation 0530-2030 only. No field attendant 2030-0530.
MILFORD, UTAH. CAA Site 41, 5,040'. VORW-MF. Procedure No. 1. Amendment No. 2. Effective: June 23, 1955. Supersedes Amendment No. 1, dated November 19, 1953. Major changes: New format.				5 W side of course: 180° outbound. 300° inbound. 8,000' within 15 miles. Beyond 15 miles not authorized.	6 6,000	7 345—4.2	8 All aircraft 300-1 1,000-2 1,000-2 1,000-2 S-d 1,000-1 S-n N.A. A-dn	9 10 More than 75 m. p. h. or less	11 Within 4.2 miles, climb to 9,000' on outbound track of 007° within 25 miles. Emergency procedure only, weather observation 0530-2030 only. No field attendant 2030-0530.

3. The instrument landing system procedures prescribed in § 609.11 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceiling and altitudes are in feet above airport elevation. If an ILS instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below:

City and State; airport name, elevation; facility; class and identification; procedure No.; effective date	Transition to ILS			Procedure turn (-) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude at glide slope interception (ft.)	Altitude of glide slope and distance to approach at—		Ceiling and visibility minimums		If visual contact not established upon descent to authorized landing minimums or if landing not accomplished		
	From—	To—	Course and distance			Min. altitudes (ft.)	Outer marker	Middle marker	Condition		Type aircraft	
1	2	3	4	5	6	7	8	9	10	11	12	13
HARRISBURG, PA. State, 247. ILS-HAR. Procedure No. 1. Amendment No. 1. Effective date: June 25, 1955. Supersedes Amendment Originally dated April 28, 1955. Major changes: Night straight-in landing minimums revised. Obstruction lighting incomplete.	Harrisburg LFR..... Harrisburg VOR..... New Kingstown FM..... Intersection Harrisburg VOR radial 173° and W course ILS.	LOM..... LOM..... LOM..... LOM.....	253-8 185-4.5 146-6.0 259-1.0	2,600 2,600 2,600 2,600	S side of W course: 293° outbound, 073° inbound, 2,600' within 10 miles.	Minimum altitude over LOM 2,600	No glide slope 8.2	2.0	2 engines or less T-d 500-1 T-n 500-2 S-S 600-1½ n 1,000-2 C-dn 1,000-2 A-dn 1,000-2 More than 2 engines T-d 500-1 T-n 500-2 S-S 600-1½ n 1,000-2 C-dn 1,000-2 A-dn 1,000-2	500-1 500-2 600-1½ 1,000-2 1,000-2 1,000-2	12	Climb to 2,500' on back course ILS within 15 miles. CAUTION: Circling minimums do not provide standard clearance over 1,195' ridge and tower 1.6 miles S of airport. AIR CARRIER NOTES: Landing on Runway 2 authorized only during daylight hours with ceiling 1,800' or better. Takeoff on Runway 20 not authorized. ADF approach not authorized. CAUTION: Nonstandard Instrument Landing System Approaches not authorized with any commissioned component inoperative.
NEW YORK, N. Y. La Guardia, 20'. ILS-LGA. LOM-LGA. Combination ILS-ADF. Procedure No. 1. Amendment No. 10. Effective date: June 25, 1955. Supersedes Amendment 9, dated June 15, 1954. Major changes: Procedure published under Part 603.	La Guardia LFR..... Glen Cove Intersection..... Ridgewood Intersection..... Flatbush MHW (final)..... Collis Neck VOR.....	LOM..... LOM..... LOM..... LOM..... Flatbush MHW. MHW.	223-9 251-17 162-17.2 043-7 032-23	2,600 2,500 2,500 1,500 1,500	S side SW course: 223° outbound, 043° inbound, 1,500' within 10 miles.	ILS 1,500 ADF 1,200 over LOM	1,310-4.5	285-0.8	2 engines or less T-dn 300-1 C-dn 500-1 *S-dn 4 ILS ADF 500-1 A-dn ILS ADF 800-2 More than 2 engines T-dn 200-½ C-dn 600-1½ *S-dn 4 ILS ADF 500-1 A-dn ILS ADF 800-2	300-1 600-1 400-½ 500-1 600-2 800-2 200-½ 600-1½ 400-½ 500-1 600-2 800-2		Within 4.5 miles after passing LOM, climb to 1,500' (or at a higher altitude when requested by ATC) on NE course LaGuardia ILS or LFR. LaGuardia LFR must be monitored during ADF approach. *500-1 required with any component of the ILS inoperative. The above procedure and airport minimums do not provide standard clearance over the following obstructions: 968' building 4 miles W of LOM, 298' tower 1.7 miles SW of airport, Empire State Building 3.8 miles W of LOM, 578' building 3 miles SW of LOM, 427' tank 2 miles N of airport.

ILS STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

City and State; airport name elevation; facility; class and identification; procedure No.; effective date	Transition to ILS			Procedure turn (-) side of final approach course; outbound and inbound; altitudes; limiting distances	Minimum altitude at glide slope interception (ft.)	Altitude of glide slope and distance to approach end of runway ft.—		Ceiling and visibility minimums		If visual contact not established upon descent to authorized landing minimums or if landing not accomplished		
	From—	To—	Course and distance			Min-imum altitudes (ft.)	Outer marker	Middle marker	Condition		Type aircraft	
1	2	3	4	5	6	7	8	9	10	11	12	
NEW YORK, N. Y. LaGuardia, 20', Using back course LaGuardia ILS and New Rochelle MHW RWC. Procedure No. 2. Combination ILS-ADF. Amendment No. 4. Effective date: June 25, 1955. Supersedes Amendment 3, dated June 15, 1954. Major changes: Proce- dure published under Part 609.	Port Chester Intersection... Ridgewood Intersection... LaGuardia LFR... Port Chester FM (final)... Glen Cove Intersection...	RWC MHW... RWC MHW... RWC MHW... RWC MHW... RWC MHW...	222-14 112-16.3 042-6 222-10 305-8	1,500 1,900 1,400 1,000 1,400	W side: NE course: 043° outbound, 233° inbound, 1,500' within 10 miles of New Rochelle MHW.	No glide slope or marker. Final approach altitudes and distances to Runway 22 RWC MHW 1,000' 8.9 miles LGA LFR 800' 3.2 miles.	8	9	10	More than 75 m. p. h. or less	12	
SAN ANTONIO, TEX. International, 80', ILS-LSAT, LOM-SA. Combination ILS and ADF. Procedure No. 1. Amendment 10. Effective: June 25, 1955. Supersedes amendment 6, dated August 30, 1954. Major changes: New format.	San Antonio VOR... San Antonio LFR... Kelly LFR... Wetmore Intersection... San Antonio LFR... Medina Intersection... Losoya Intersection...	OM... ILS SW course... LOM... OM... LOM... LOM... LOM...	185-12.0 174-4.0 039-8.0 211-9.0 194-8.0 103-21.0 345-18.0	2,200 2,200 2,200 2,200 2,200 2,700 2,200	W side SW course: 211° outbound, 031° inbound, 2,200' within 10 miles. Beyond 10 miles not authorized.	ILS 2,100 ADF over LOM 2,000	2,050-4.4	1,000-0.7	2 engines or less T-dn 300-1 C-dn 400-1 S-dn 3 ILS ADF More than 2 engines T-dn 300-1 C-dn 400-1 S-dn 3 ILS ADF All aircraft A-dn ILS 600-2 ADF 800-2	2 engines or less 300-1 500-1 200-1/2 400-1 400-1 200-1/2 200-1/2 200-1/2 400-1 600-2 800-2 400-1 500-1 600-2 800-2 300-1/2 600-1/2 400-1 500-1 600-2 800-2 200-1/2 400-1 400-1 200-1/2 200-1/2 500-1/2 200-1/2 400-1 600-2 800-2	Within 3.2 miles after passing LaGuardia LFR climb to 1,500' (or higher altitude when requested by ATIS) on SW course LaGuardia ILS or LFR. LaGuardia LFR must be monitored during ADF approach. The above procedure and airport minimums do not provide stopping and clearance for the following obstructions: 389' tower 0.7 miles SW of airport, 930' broadcast tower, 10 miles NW of runway station, 387' bridge towers, 2.2 miles NE of airport, 422' tank 2 miles N of airport.	Climb to 2,500' on NE course ILS or within 4.4 miles after passing LOM (ADF) climb to 2,500' on course of 031° or when directed by ATIS turn left, climb to 2,500' on N course LFR within 25 miles. NOTE: 400-1/2 required when glide slope not utilized.

ILS STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

City and State; airport name, elevation, facility, class and identification, procedure No., effective date	Transition to ILS			Procedure turn (-) side of final approach course (outbound and inbound); altitudes; limiting distances	Minimum altitude at glide slope intersection in inbound (ft.)	Altitude of glide slope and distance to approach end of runway at—		Ceiling and visibility minimums		If visual contact not established upon descent to authorized landing minimums or if landing not accomplished	
	F rom—	To—	Course and distance			Minimum altitude (ft.)	Outer marker	Middle marker	Condition		Type aircraft
1 SYRACUSE, N. Y. Hancock, 419'. ILS-SYE. L.O.M.-SY. Procedure No. 1. Amendment No. 10. Combination ILS-ADF. Effective date: June 25, 1955. Supersedes Amendment 9 dated April 21, 1955. Major changes: Glide slope and markers re located; runway extended.	2 Syracuse LFR..... Syracuse VOR..... Intersection E course Syracuse LFR and SW course Utica LFR. Intersection E course Syracuse LFR and bearing 335° to L.O.M. Intersection S course Syracuse LFR and bearing 045° to L.O.M.	3 L.O.M..... L.O.M..... E course ILS..... L.O.M..... L.O.M.....	4 069-14 123-11 310-13 335-3.5 045-22	5 1,000 1,900 #2,300 1,900 3,000	6 N side of E course: 068° outbound, 278° inbound, 1,600' within 10 miles	7 ILS 1,600 ADF 1,100 over LOM	8 1,600-4.7	9 610-0.7	10 2 engines or less *T-dn 300-1 C-dn #600-1 S-dn 28 ILS ADF #300-1 A-dn 800-2 More than 2 engines *T-dn 300-1 1/2 C-dn 700-1 1/2 S-dn 28 ILS ADF A-dn	11 More than 75 m.p.h. or less 11 12	13 Within 4.7 miles after passing L.O.M. (ADF), climb to 2,000' on W course ILS or course of 278° from L.O.M. within 25 miles. #Standard clearances not provided over 833' radio mast 1.3 miles SE of airport. *600-1 required for takeoff to SE. #After interception of localizer course inbound, descent on glide slope to cross the outer marker at 1,600' on final approach is authorized.

4. The ground controlled approach procedures prescribed in § 609.13 are amended to read in part:

GCA STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, and courses are magnetic. Distances are in statute miles unless otherwise indicated. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. If a GCA instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure authorized by the Administrator for Civil Aeronautics for such airport. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for a route operation in the particular area or as set forth below. Positive identification must be established with the ground controller. From initial contact with GCA to final authorized landing minimums, the instructions of the GCA controller are mandatory except when (A) visual references with ground is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach.

City and State; airport name, elevation; effective date	Radar terminal area; maneuvering altitudes by sectors and limiting distances	Ceiling and visibility minimums				
		Runway No.	Condition	Precision approach (PAR)	Surveillance approach (ASR)	
1 NEW YORK, N. Y. LaGuardia, 20'. Procedure No. 1. Amendment No. 5. Effective date: June 28, 1955. Supersedes Amendment No. 4, dated February 1, 1953. Major changes: Procedure published under Part 609.	2	3 4	4 T-dn 300-1 C-dn 500-1 *S-dn 400-3/4 A-dn 600-2 More than 2 engines T-dn 300-1 1/2 C-dn 600-1 1/2 *S-dn 400-3/4 A-dn 600-2	5 75 m. p. h. or less 5 6 7 8	6 More than 75 m. p. h. More than 75 m. p. h. 75 m. p. h. or less 75 m. p. h. or less 8	9 Except when the ground controller may direct otherwise prior to final approach, a missed approach procedure shall be executed as provided below when (a) minimums on final approach is not reached within 5 seconds; (b) directed by the controller; (c) visual reference is not established upon descent to this authorized landing minimums; or (d) landing is not accomplished. Climb to 1,500' (or higher altitude when requested by ATC) on NE course LaGuardia LFR. CAUTION: Circling minimums do not provide standard clearances over 422' tank 2 miles N of airport. *500-1 required with approach lights inoperative.

These procedures shall become effective on the dates indicated in Column 1 of the procedures.

(Sec. 205, 52 Stat. 934, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

[SEAL]

S. A. KEMP,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 55-4177; Filed, May 26, 1955; 8:45 a. m.]

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs,
Department of the InteriorSubchapter G—Enrollment and Reallotment of
IndiansPART 57—ENROLLMENT OF CONFEDERATED
TRIBES OF SILETZ INDIANS

- Sec.
57.1 Definitions.
57.2 Purpose.
57.3 Eligibility.
57.4 Proposed roll.
57.5 Appeals.
57.6 Final roll.
57.7 Special instructions.

AUTHORITY: §§ 57.1 to 57.7 issued under sec. 3, 68 Stat. 724.

§ 57.1 *Definitions.* As used in this part:

(a) "Secretary" means "Secretary of the Interior or his authorized representative".

(b) "Commissioner" means "Commissioner of Indian Affairs."

(c) "Director" means "Area Director, Portland Area Office."

(d) "Tribe" means "Confederated Tribes of Siletz Indians."

§ 57.2 *Purpose.* The regulations in this part are to govern the compilation of the membership roll of the Tribe pursuant to the act of August 13, 1954 (68 Stat. 724; 25 U. S. C. 691 et seq.).

§ 57.3 *Eligibility.* (a) There shall be eligible for enrollment in the Tribe any Indian, living on August 13, 1954:

(1) Whose name appears on the Tribe's per capita payment roll as of July 15, 1949; or

(2) Who is of one-eighth or more Indian blood and is a descendant of an

Indian whose name appears on the Tribe's per capita payment roll as of July 15, 1949; or

(3) Who has been allotted on the Siletz Indian Reservation; or

(4) Who is of one-eighth or more Indian blood and is a descendant of an Indian allotted on the Siletz Indian Reservation; or

(5) Who is of one-sixteenth or more Indian blood and was adopted into membership in the Tribe subsequent to July 15, 1949, and prior to August 14, 1954.

(b) Indians enrolled with any Indian tribe or band other than the Confederated Tribes of Siletz Indians shall not be eligible for enrollment under this section, except that the enrollment of an Indian on one of the payment rolls prepared pursuant to the act of August 30, 1954 (68 Stat. 979; 25 U. S. C. 771 et seq.), and 25 CFR 56 (20 F. R. 1552; March 15, 1955) shall not render such Indian ineligible for enrollment under this section.

§ 57.4 *Proposed roll.* The Secretary, after consultation with the Tribe, will prepare a proposed roll of members of the Tribe comprising the names of those Indians who are eligible for enrollment pursuant to § 57.3. Said names shall be listed on the roll in alphabetical order, and the roll shall set forth the following information with respect to each such name: Old and new roll numbers, sex, date of birth, marital status, degree of Indian blood, provision or provisions of § 57.3 (a) pursuant to which the Indian is enrolled, and, if enrollment is pursuant to § 57.3 (a) (2) or (4) the name of the descendant's enrolled or allotted ancestor. The Secretary will publish the proposed roll in the FEDERAL REGISTER.

§ 57.5 *Appeals.* Within 90 days from the date of publication of the proposed roll in the FEDERAL REGISTER, appeals may be filed in protest against the inclusion or omission of the name of any person on or from the proposed roll. Regulations governing the filing and disposing of such appeals are set forth in Part 55 of this subchapter (20 F. R. 336; January 14, 1955). The Secretary will designate a representative to file appeals in accordance with § 55.6 of this subchapter.

§ 57.6 *Final roll.* Upon the disposition of all appeals, the Secretary will prepare a final roll of the members of the Tribe, which shall comprise the names of the persons on the proposed roll published pursuant to § 57.4, with the exception of the names of such persons whom the Secretary has, on the basis of such appeals, stricken therefrom, and with the addition of the names of such persons whom the Secretary has, on the basis of such appeals, added thereto. The names on the final roll shall be listed in alphabetical order, and said roll shall also contain the information prescribed by § 57.4. The Secretary will publish the final roll in the FEDERAL REGISTER.

§ 57.7 *Special instructions.* To facilitate the work incident to the compilation of the above rolls the Commissioner may issue special instructions not inconsistent with this part.

DOUGLAS MCKAY,
Secretary of the Interior.

MAY 23, 1955.

[F. R. Doc. 55-4287; Filed, May 26, 1955; 8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Parts 1, 36]

CONTRACT COVERAGE OF EMPLOYEES OF
FOREIGN SUBSIDIARIES

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in sections 3121 (1) and 7805 of the Internal Revenue Code of 1954, as amended (68

Stat. 1094; 68A Stat. 917; 26 U. S. C. 3121 (1), 7805).

[SEAL]

O. GORDON DELK,
Acting Commissioner
of Internal Revenue.

The following regulations are hereby prescribed under section 176 and section 3121 (1) of the Internal Revenue Code of 1954, as added by Public Law 761, 83d Congress, approved September 1, 1954:

INCOME TAX REGULATIONS

§ 1.176 *Statutory provisions; payments with respect to employees of certain foreign corporations.*

Sec. 176. *Payments with respect to employees of certain foreign corporations.* In the case of a domestic corporation, there shall be allowed as a deduction amounts (to the extent not compensated for) paid or incurred pursuant to an agreement entered into under section 3121 (1) with respect to services performed by United States citizens employed by foreign subsidiary corporations. Any reimbursement of any amount previously allowed as a deduction under this section shall be included in gross income for the taxable year in which received.

(Sec. 176 as added by sec. 210, Social Security Amendments 1954)

PART 36—CONTRACT COVERAGE OF EMPLOYEES OF FOREIGN SUBSIDIARIES

Sec.	
36.3121 (1)-0	Introduction.
36.3121 (1) (1)	Statutory provisions; agreements entered into by domestic corporations with respect to foreign subsidiaries.
36.3121 (1) (1)-1	Agreements entered into by domestic corporations with respect to foreign subsidiaries.
36.3121 (1) (1)-2	Amendment of agreement.
36.3121 (1) (1)-3	Effect of agreement.
36.3121 (1) (2)	Statutory provisions; effective period of agreement.
36.3121 (1) (2)-1	Effective period of agreement.
36.3121 (1) (3)	Statutory provisions; termination of period by a domestic corporation.
36.3121 (1) (3)-1	Termination of agreement by domestic corporation or by reason of change in stock ownership.

Sec.	
36.3121 (1) (4)	Statutory provisions; termination of period by Secretary.
36.3121 (1) (4)-1	Termination of agreement by Commissioner.
36.3121 (1) (5)	Statutory provisions; no renewal of agreement.
36.3121 (1) (5)-1	Effect of termination.
36.3121 (1) (6)	Statutory provisions; deposits in trust fund.
36.3121 (1) (7)	Statutory provisions; overpayments and underpayments.
36.3121 (1) (7)-1	Overpayments and underpayments.
36.3121 (1) (8)	Statutory provisions; definition of foreign subsidiary.
36.3121 (1) (8)-1	Definition of foreign subsidiary.
36.3121 (1) (9)	Statutory provisions; domestic corporation as separate entity.
36.3121 (1) (9)-1	Domestic corporation as separate entity.
36.3121 (1) (10)	Statutory provisions; regulations.
36.3121 (1) (10)-1	Requirements in respect of liability under agreement.
36.3121 (1) (10)-2	Identification.
36.3121 (1) (10)-3	Returns.
36.3121 (1) (10)-4	Payment of amounts equivalent to tax.

§ 36.3121 (1)-0 *Introduction.* (a) The regulations in this part deal with the circumstances under which a domestic corporation may enter into an agreement with the district director for the purpose of extending the insurance system established by title II of the Social Security Act to certain services performed outside the United States by citizens of the United States as employees of a foreign subsidiary of the domestic corporation, and with the obligations of a domestic corporation which enters into such an agreement. The provisions of the Internal Revenue Code of 1954, as amended, to which the regulations in this part pertain are contained in section 3121 (1). The liabilities assumed under an agreement entered into pursuant to such section are based on the remuneration for services covered by the agreement. Such agreement may not be effective prior to January 1, 1955.

(b) Although the obligations incurred under an agreement entered into pursuant to section 3121 (1) of the Internal Revenue Code of 1954, as amended, must be distinguished from the obligations imposed on employers with respect to the taxes under the Federal Insurance Contributions Act, the two are similar in many respects. Accordingly, the regulations in this part are prescribed as a supplement to the regulation (26 CFR (1954), Part 31, Subpart B) relating to the employee tax and the employer tax imposed by the Federal Insurance Contributions Act. The terms used in the regulations in this part have the same meaning, unless otherwise provided, as when used in the regulations relating to the taxes imposed by such act.

(c) The regulations in this part constitute Part 36 of Title 26 of the Code of Federal Regulations. As used in the regulations in this part, the word "Code" means the Internal Revenue Code of 1954, as amended, and the term "Federal Insurance Contributions Act" means

chapter 21 of such Code. Each section of the regulations is preceded by the provision of the Code which it interprets. All references to sections of law are references to the Code unless otherwise indicated. The number of each section of the regulations begins with 36 followed by a decimal point (36.). Numbers which do not begin with 36 followed by a decimal point are numbers of sections of law unless otherwise indicated. In identifying sections of regulations, the symbol "\$" is used.

§ 36.3121 (1) (1) *Statutory provisions; agreements entered into by domestic corporations with respect to foreign subsidiaries.*

SEC. 3121. *Definitions.* * * *

(1) *Agreements entered into by domestic corporations with respect to foreign subsidiaries—*(1) *Agreement with respect to certain employees of foreign subsidiaries.* The Secretary or his delegate shall, at the request of any domestic corporation, enter into an agreement (in such form and manner as may be prescribed by the Secretary or his delegate) with any such corporation which desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any one or more of its foreign subsidiaries (as defined in paragraph (8)) by all employees who are citizens of the United States, except that the agreement shall not be applicable to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term "employment" or "wages", as defined in this section, had the service been performed in the United States. Such agreement may be amended at any time so as to be made applicable, in the same manner and under the same conditions, with respect to any other foreign subsidiary of such domestic corporation. Such agreement shall be applicable with respect to citizens of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign subsidiary specified in the agreement. Such agreement shall provide—

(A) That the domestic corporation shall pay to the Secretary or his delegate, at such time or times as the Secretary or his delegate may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment as defined in this section; and

(B) That the domestic corporation will comply with such regulations relating to payments and reports as the Secretary or his delegate may prescribe to carry out the purposes of this subsection.

(Sec. 3121 (1) (1) as added by sec. 209, Social Security Amendments 1954)

§ 36.3121 (1) (1)-1 *Agreements entered into by domestic corporations with respect to foreign subsidiaries—*(a) *In general.* (1) Any domestic corporation having one or more foreign subsidiaries may request the district director to enter into an agreement for the purpose of extending the Federal old-age and survivors insurance system established by title II of the Social Security Act to certain services performed outside the United States by all citizens of the United States who are employees of any

such foreign subsidiary. See § 36.3121 (1) (8)-1, relating to the definition of foreign subsidiary. Except as provided in § 36.3121 (1) (5)-1, relating to the effect of the termination of an agreement entered into pursuant to the provisions of section 3121 (1), the district director shall, at the request of a domestic corporation, enter into such an agreement on Form 2032 in any case where a Form 2032 is executed, and submitted to the district director, by the domestic corporation in the manner prescribed in this section. A domestic corporation may not have in effect at the same moment of time more than one agreement on Form 2032.

(2) An agreement authorized in section 3121 (1) (1) may not be made applicable to any services performed outside the United States which would not constitute employment, for purposes of the taxes imposed under the Federal Insurance Contributions Act, if the services were performed within the United States. Thus, such an agreement shall have no application with respect to any services performed outside the United States which, if performed within the United States, would be specifically excepted from employment under any of the numbered paragraphs of section 3121 (b), or which, although not so excepted, would be deemed not to be employment by application of section 3121 (c), relating to included and excluded services. Further, an agreement may not be made applicable with respect to any services performed outside the United States which constitute employment, as defined in section 3121 (b). Thus, an agreement may not be made applicable to services for any employer performed by any employee on or in connection with an American vessel or American aircraft when outside the United States, if (i) performed under a contract of service which is entered into within the United States or (ii) during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, because such services constitute employment as defined in section 3121 (b). An agreement may not be made applicable to remuneration which would not constitute wages, as defined in section 3121 (a), even if the services to which such remuneration is attributable had constituted employment.

(3) The terms "corporation", "domestic", and "foreign", as used in the regulations in this part, have the meaning assigned by paragraphs (3), (4), and (5), respectively, of section 7701 (a). Section 7701 (a) (3), (4), and (5) provides as follows:

SEC. 7701. *Definitions.* (a) When used in this title [Internal Revenue Code of 1954], where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(3) *Corporation.* The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) *Domestic.* The term "domestic" when applied to a corporation * * * means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) *Foreign.* The term "foreign" when applied to a corporation * * * means a corporation * * * which is not domestic.

(b) *Form and contents of agreement.* Form 2032 is the form prescribed for the agreement authorized in section 3121 (1) (1). The agreement shall include provisions substantially as follows:

(1) That the agreement shall apply to all services performed outside the United States by all citizens of the United States who are in the employ of the foreign subsidiary or subsidiaries to which the agreement is made applicable, but only to the extent that the remuneration paid each employee for such services would constitute wages if paid by one employer for services performed in the United States;

(2) That the agreement shall not apply to any services which constitute employment within the meaning of section 3121;

(3) That the agreement shall become effective on the first day of the calendar quarter in which the Form 2032 is signed by the district director or on the first day of the next succeeding calendar quarter, whichever is specified in the agreement;

(4) That the domestic corporation will pay, as required by the regulations in this part, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111, respectively, if the remuneration for the services covered by the agreement constituted wages;

(5) That the domestic corporation will pay, in accordance with written notification and demand therefor to the domestic corporation, amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable if the remuneration for services covered by the agreement constituted wages; and

(6) That the domestic corporation will comply with all provisions of the regulations in this part.

(c) *Execution and filing of Form 2032.* The request of any domestic corporation that the district director enter into an agreement with the corporation on Form 2032 shall be signified by the corporation by executing and filing Form 2032 in triplicate with the district director for the district in which is located the principal place of business in the United States of the domestic corporation. Such form shall be executed in accordance with the regulations in this part and the instructions relating to the form. Each copy of the form shall be signed and dated by the officer of the corporation authorized to enter into the agreement, shall show the title of such officer, and shall have the corporate seal affixed thereto. A certified copy of the minutes of the meeting of the board of directors of the domestic corporation, or other evidence, showing the authority of such officer so to act shall accompany the form. Form 2032 executed and filed as provided in this paragraph shall be signed and dated by the district director and, upon such signing, the Form 2032 so executed and filed will constitute the agreement authorized in section 3121 (1) (1). The district director will return

one copy of the agreement to the domestic corporation, will transmit one copy to the Department of Health, Education, and Welfare, and will retain one copy (together with all related papers).

§ 36.3121 (1) (1)-2 *Amendment of agreement.* (a) An agreement entered into by a domestic corporation as provided in § 36.3121 (1) (1)-1 may be amended so as to be made applicable, in the same manner and under the same conditions, with respect to any one or more of the foreign subsidiaries of the domestic corporation not previously named in the agreement. See paragraph (b) of § 36.3121 (1) (2)-1, relating to the effective period of an amendment of an agreement.

(b) Form 2032 Supplement is the form prescribed for use in amending an agreement entered into by a domestic corporation as provided in § 36.3121 (1) (1)-1.

(c) A domestic corporation shall signify its desire to amend an agreement entered into by the corporation as provided in § 36.3121 (1) (1)-1 by executing and filing Form 2032 Supplement in triplicate with the district director for the district in which is located the principal place of business in the United States of the domestic corporation.

(d) Form 2032 Supplement shall be executed and filed in the manner and in conformity with the requirements prescribed in paragraph (c) of § 36.3121 (1) (1)-1 in respect of an agreement on Form 2032. Form 2032 Supplement executed and filed as provided in this paragraph shall be signed and dated by the district director, and, upon such signing, the Form 2032 Supplement so executed and filed will constitute an amendment of the agreement entered into on Form 2032. The district director will return one copy of the amendment to the domestic corporation, will transmit one copy to the Department of Health, Education, and Welfare, and will retain one copy (together with all related papers).

§ 36.3121 (1) (1)-3 *Effect of agreement—(a) Liability for amounts equivalent to tax—(1) In general.* A domestic corporation which has entered into an agreement (as provided in § 36.3121 (1) (1)-1), or any amendment thereof (as provided in § 36.3121 (1) (1)-2), incurs liability under the agreement in respect of certain remuneration paid by each foreign subsidiary named in the agreement, or any amendment thereof. Liability is incurred in respect of the remuneration paid to all those employees of the foreign subsidiaries who are citizens of the United States and who perform services outside the United States (other than services which constitute employment) for the foreign subsidiaries. However, liability is incurred only with respect to that portion of such remuneration paid by the foreign subsidiary which is attributable to services performed during the period for which the agreement is in effect with respect to such subsidiary, and then only to the extent that the remuneration would constitute wages if the services to which the remuneration is attributable were performed in the United States. Liability

with respect to such remuneration is incurred in an amount equivalent to the sum of the employee and employer taxes which would be imposed by sections 3101 and 3111, respectively, if such remuneration constituted wages. If an individual performs services for more than one of the foreign subsidiaries named in an agreement, including any amendment thereof, such services are regarded as being performed in the employ of a single employer for purposes of determining the amount of the remuneration for such services which would constitute wages if the services were performed in the United States. See § 36.3121 (1) (9)-1, relating to the treatment of a domestic corporation as a separate entity in its capacity as a party to an agreement.

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

Example (1). P, a domestic corporation, has entered into an agreement as provided in § 36.3121 (1) (1)-1, effective with respect to services performed on and after January 1, 1955. Three foreign subsidiaries, S-1, S-2, and S-3 are named in the agreement. A, a citizen of the United States, is employed during 1955 by S-1, S-2, and S-3, for the performance outside the United States of services covered by the agreement. In 1955 A is paid remuneration of \$2,500 for such services by each of the foreign subsidiaries. The circumstances are such that the entire \$7,500 would constitute wages if the services had been performed in the United States. However, only \$4,200 of such remuneration would constitute wages if the services had been performed in the United States for a single employer, and it is with respect to this amount only that P incurs liability under its agreement.

Example (2). On August 1, 1955, P, the domestic corporation in the preceding example, amends its agreement to include therein its foreign subsidiary S-4. The amendment is in effect with respect to S-4 for the period beginning with October 1, 1955. B, a citizen of the United States, is employed by S-4 throughout 1955 for the performance of services outside the United States. B is paid remuneration of \$500 in each month of 1955 for these services. The circumstances are such that the first \$4,200 of such remuneration would constitute wages if the services had been performed in the United States, and, except for the \$4,200 limitation, the remainder of such remuneration would constitute wages if the services had been so performed. P incurs no liability with respect to remuneration paid B for services performed for S-4 prior to October 1, 1955. However, P incurs liability under its agreement with respect to the \$1,500 paid B in October, November, and December 1955, for services performed in these months. Since the remuneration paid to B for services performed during the first nine months of 1955 is not covered by the agreement, such remuneration is not taken into account in computing the \$4,200 limitation or the liability under the agreement.

Example (3). Assume the same facts as in example (2) except that B's services for S-4 during December 1955 are performed in connection with the production or harvesting of crude gum (oleoresin) and that such services if performed within the United States would be excepted from employment. See section 3121 (b) (1) (A). Accordingly, P incurs no liability under the agreement with respect to the \$500 paid in December 1955 for such services.

(3) *Determination of liability.* The amount of the liability referred to in

subparagraph (1) of this paragraph incurred by a domestic corporation for any period shall be determined in the same manner as liability for the employee tax and for the employer tax imposed by the Federal Insurance Contributions Act is determined, pursuant to regulations relating to the taxes under such act as in effect for the same period, with respect to wages paid by an employer to an employee.

(b) *Liability for amounts equivalent to interest or penalties.* A domestic corporation which has entered into an agreement as provided in § 36.3121 (1) (1)-1 also incurs liability under the agreement for amounts equivalent to the amount of interest, additions to the taxes, additional amounts, and penalties which would be applicable if the remuneration for services covered by the agreement constituted wages.

(c) *Deductions from employees' remuneration.* There is no obligation to deduct, or cause to be deducted, from the remuneration of any employee of a foreign subsidiary any part of the amount due from a domestic corporation under its agreement. Whether such deduction shall be made is a matter for settlement between the employee and the domestic corporation or such other person as may be concerned.

(d) *Cross reference.* For other obligations of a domestic corporation under an agreement, see § 36.3121 (1) (10)-1.

§ 36.3121 (1) (2) *Statutory provisions; effective period of agreement.*

Sec. 3121. *Definitions.* * * *

(1) *Agreements entered into by domestic corporations with respect to foreign subsidiaries.* * * *

(2) *Effective period of agreement.* An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement, but in no case prior to January 1, 1955; except that in case such agreement is amended to include the services performed for any other subsidiary and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other subsidiary only after the calendar quarter in which such amendment is executed.

(Sec. 3121 (1) (2) as added by sec. 209, Social Security Amendments 1954)

§ 36.3121 (1) (2)-1 *Effective period of agreement—(a) In general.* An agreement entered into as provided in § 36.3121 (1) (1)-1 shall be in effect for the period beginning with the first day of the calendar quarter in which the agreement is signed by the district director, or the first day of the calendar quarter following the calendar quarter in which the agreement is signed by the district director, whichever is specified in the agreement. In no case, however, shall the agreement be effective for any calendar quarter which begins prior to January 1, 1955.

(b) *Amendment of agreement.* If an amendment on Form 2032 Supplement filed by a domestic corporation to include in its agreement services per-

formed for a foreign subsidiary not previously named therein) is signed by the district director within the quarter for which the agreement is first effective or within the first calendar month following such quarter, the agreement shall be effective with respect to the subsidiary named in the amendment as of the date such agreement first became effective. However, if the amendment is signed by the district director after the last day of the fourth month for which the agreement is in effect, such agreement shall be in effect with respect to the subsidiary named in the amendment for the period beginning with the first day of the calendar quarter following the calendar quarter in which the amendment is signed by the district director.

§ 36.3121 (1) (3) *Statutory provisions; termination of period by a domestic corporation.*

Sec. 3121. *Definitions.* * * *

(1) *Agreements entered into by domestic corporations with respect to foreign subsidiaries.* * * *

(3) *Termination of period by a domestic corporation.* The period for which an agreement entered into pursuant to paragraph (1) of this subsection is effective may be terminated with respect to any one or more of its foreign subsidiaries by the domestic corporation, effective at the end of a calendar quarter, upon giving two years' advance notice in writing, but only if, at the time of the receipt of such notice, the agreement has been in effect for a period of not less than eight years. The notice of termination may be revoked by the domestic corporation by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner as may be prescribed by regulations. Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign corporation shall terminate at the end of any calendar quarter in which the foreign corporation, at any time in such quarter, ceases to be a foreign subsidiary as defined in paragraph (8).

(Sec. 3121 (1) (3) as added by sec. 209, Social Security Amendments 1954)

§ 36.3121 (1) (3)-1 *Termination of agreement by domestic corporation or by reason of change in stock ownership—*

(a) *Termination by domestic corporation.* (1) A domestic corporation which has entered into an agreement under section 3121 (1) (1) with respect to one or more of its foreign subsidiaries may terminate such agreement in part or in its entirety by giving (to the district director for the district in which is located the principal place of business in the United States of the domestic corporation) 2 years' advance notice in writing of its desire so to terminate the agreement at the end of a specified calendar quarter: *Provided,* That, at the time of the receipt of such notice by the district director, the agreement has been in effect with respect to the subsidiary or subsidiaries covered by the notice for at least 8 years. The notice of termination shall be signed and dated and shall show (i) the title of the officer authorized to sign the notice, (ii) the name, address, and identification number of the domestic corporation, (iii) the district

director with whom the agreement was entered into, (iv) the name and address of each foreign subsidiary with respect to which the agreement is to be terminated, (v) the date on which the agreement became effective with respect to each such foreign subsidiary, and (vi) the date on which the agreement is to be terminated with respect to each such foreign subsidiary. The notice shall be submitted in duplicate and shall be accompanied by a certified copy of the minutes of the meeting of the board of directors of the domestic corporation, or other evidence, showing authorization for the notice of termination. No particular form is prescribed for the notice of termination. The district director will transmit one copy of the notice of termination to the Department of Health, Education, and Welfare.

(2) A notice of termination given by a domestic corporation in respect of any one or more of its foreign subsidiaries may be revoked by the corporation with respect to any such subsidiary or subsidiaries by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of revocation. The notice of revocation shall be filed with the district director with whom the notice of termination was filed. Such notice of revocation shall be signed and dated and shall show (i) the title of the officer authorized to sign the notice of revocation, (ii) the name, address, and identification number of the domestic corporation, (iii) the name and address of each foreign subsidiary with respect to which the notice of termination is revoked, and (iv) the date of the notice of termination to be revoked. The notice shall be submitted in duplicate and shall be accompanied by a certified copy of the minutes of the meeting of the board of directors of the domestic corporation, or other evidence, showing authorization for the notice of revocation. No particular form is prescribed for the notice of revocation. The district director will transmit one copy of the notice of revocation to the Department of Health, Education, and Welfare.

(b) *Termination by reason of change in stock ownership.* (1) The period for which an agreement entered into by a domestic corporation as provided in § 36.3121 (1) (1)-1 is in effect with respect to a foreign corporation is automatically terminated at the end of the calendar quarter in which the foreign corporation ceases, at any time in such quarter, to be a foreign subsidiary of the domestic corporation. See § 36.3121 (1) (8)-1, relating to definition of foreign subsidiary.

(2) A domestic corporation which has entered into an agreement as provided in § 36.3121 (1) (1)-1 shall furnish to the district director for the district in which is located its principal place of business in the United States written notification in the event that a foreign corporation named in the agreement, including any amendment thereof, as a foreign subsidiary of the domestic corporation ceases to be its foreign subsidiary. The written notification shall be furnished in duplicate on or before the last day

of the first month following the close of the calendar quarter in which the foreign corporation ceases, at any time in such quarter, to be a foreign subsidiary of the domestic corporation. Such notification shall be signed and dated by the president or other principal officer of the domestic corporation. The written notification shall show (i) the title of the officer signing the notice, (ii) the name, address, and identification number of the domestic corporation, (iii) the district director with whom the agreement was entered into, (iv) the date on which the agreement was entered into, (v) the name and address of the foreign corporation with respect to which the notification is furnished, and (vi) the date on which the foreign corporation ceased to be a foreign subsidiary of the domestic corporation. No particular form is prescribed for the written notification. The district director will transmit one copy of the written notification to the Department of Health, Education, and Welfare.

§ 36.3121 (1) (4) Statutory provisions; termination of period by Secretary.

SEC. 3121. Definitions. * * *

(1) *Agreements entered into by domestic corporations with respect to foreign subsidiaries.* * * *

(4) *Termination of period by Secretary.* If the Secretary or his delegate finds that any domestic corporation which entered into an agreement pursuant to this subsection has failed to comply substantially with the terms of such agreement, the Secretary or his delegate shall give such domestic corporation not less than sixty days' advance notice in writing that the period covered by such agreement will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Secretary or his delegate by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the domestic corporation. No notice of termination or of revocation thereof shall be given under this paragraph to a domestic corporation without the prior concurrence of the Secretary of Health, Education, and Welfare.

(Sec. 3121 (1) (4) as added by sec. 209, Social Security Amendments 1954)

§ 36.3121 (1) (4)-1 Termination of agreement by Commissioner—(a) Notice of termination. The period for which an agreement entered into with a domestic corporation as provided in § 36.3121 (1) (1)-1 is in effect may be terminated by the Commissioner, with the prior concurrence of the Secretary of Health, Education, and Welfare, upon a finding by the Commissioner that the domestic corporation has failed to comply substantially with the terms of the agreement. The Commissioner shall give the corporation not less than 60 days' advance notice in writing that the period for which the agreement is in effect will terminate at the end of the calendar quarter specified in the notice of termination.

(b) *Revocation of notice of termination.* A notice of termination given to a domestic corporation by the Commissioner may be revoked by the Commissioner, with the prior concurrence of the Secretary of Health, Education, and Welfare, by giving written notice of revocation to the corporation prior to the

close of the calendar quarter specified in the notice of termination.

§ 36.3121 (1) (5) Statutory provisions; no renewal of agreement.

SEC. 3121. Definitions. * * *

(1) *Agreements entered into by domestic corporations with respect to foreign subsidiaries.* * * *

(5) *No renewal of agreement.* If any agreement entered into pursuant to paragraph (1) of this subsection is terminated in its entirety (A) by a notice of termination filed by the domestic corporation pursuant to paragraph (3), or (B) by a notice of termination given by the Secretary or his delegate pursuant to paragraph (4), the domestic corporation may not again enter into an agreement pursuant to paragraph (1). If any such agreement is terminated with respect to any foreign subsidiary, such agreement may not thereafter be amended so as again to make it applicable with respect to such subsidiary.

(Sec. 3121 (1) (5) as added by sec. 209, Social Security Amendments 1954)

§ 36.3121 (1) (5)-1 Effect of termination—(a) Termination of entire agreement. (1) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121 (1) (1)-1 is terminated by the domestic corporation, pursuant to paragraph (a) of § 36.3121 (1) (3)-1, with respect to all foreign subsidiaries named in the agreement, including any amendment thereof, an agreement may not again be entered into by the domestic corporation under the provisions of section 3121 (1) (1).

(2) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121 (1) (1)-1 is terminated by the Commissioner, pursuant to paragraph (a) of § 36.3121 (1) (4)-1, an agreement may not again be entered into by the domestic corporation under the provisions of section 3121 (1) (1).

(3) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121 (1) (1)-1 is terminated automatically by reason of a change in stock ownership (see paragraph (b) of § 36.3121 (1) (3)-1) with respect to all foreign corporations named in the agreement, including any amendment thereof, a new agreement may be entered into by the domestic corporation, as provided in § 36.3121 (1) (1)-1, with respect to any foreign corporation which is a foreign subsidiary of the domestic corporation.

(b) *Partial termination of agreement.* (1) If the effective period of an agreement entered into by a domestic corporation as provided in § 36.3121 (1) (1)-1 is terminated by the domestic corporation, pursuant to paragraph (a) of § 36.3121 (1) (3)-1, with respect to one or more foreign subsidiaries named in the agreement, including any amendment thereof, the period for which the agreement is in effect will continue with respect to any other foreign subsidiary or subsidiaries named in the agreement (or amendment). However, the agreement may not thereafter be amended to include any foreign subsidiary with respect to which the effective period of the agreement has been terminated.

(2) If the effective period of an agreement entered into by a domestic corpo-

ration as provided in § 36.3121 (1) (1)-1 is terminated automatically by reason of a change in stock ownership (see paragraph (b) of § 36.3121 (1) (3)-1) with respect to a foreign corporation which has ceased to be a foreign subsidiary of the domestic corporation, but the period for which the agreement is in effect continues with respect to one or more other foreign subsidiaries, the agreement may not thereafter be amended to include such foreign corporation even though the foreign corporation may again become a foreign subsidiary of the domestic corporation.

§ 36.3121 (1) (6) Statutory provisions; deposits in trust fund.

SEC. 3121. Definitions. * * *

(1) *Agreements entered into by domestic corporations with respect to foreign subsidiaries.* * * *

(6) *Deposits in trust fund.* For purposes of section 201 of the Social Security Act, relating to appropriations to the Federal Old-Age and Survivors Insurance Trust Fund, such remuneration—

(A) Paid for services covered by an agreement entered into pursuant to paragraph (1) as would be wages if the services constituted employment, and

(B) As is reported to the Secretary or his delegate pursuant to the provisions of such agreement or of the regulations issued under this subsection, shall be considered wages subject to the taxes imposed by this chapter [chapter 21, I. R. C. 1954].

(Sec. 3121 (1) (6) as added by sec. 209, Social Security Amendments 1954)

§ 36.3121 (1) (7) Statutory provisions; overpayments and underpayments.

SEC. 3121. Definitions. * * *

(1) *Agreements entered into by domestic corporations with respect to foreign subsidiaries.* * * *

(7) *Overpayments and underpayments.*

(A) If more or less than the correct amount due under an agreement entered into pursuant to this subsection is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be required by regulations prescribed by the Secretary or his delegate.

(B) If an overpayment cannot be adjusted under subparagraph (A), the amount thereof shall be paid by the Secretary or his delegate, through the Fiscal Service of the Treasury Department, but only if a claim for such overpayment is filed with the Secretary or his delegate within two years from the time such overpayment was made.

(Sec. 3121 (1) (7) as added by sec. 209, Social Security Amendments 1954)

§ 36.3121 (1) (7)-1 Overpayments and underpayments—(a) Adjustments—(1) In general. Errors in the payment of amounts for which liability equivalent to the employee and employer taxes with respect to any payment of remuneration is incurred by a domestic corporation pursuant to its agreement are adjustable by the domestic corporation in certain cases without interest. However, not all corrections made under this section constitute adjustments within the meaning of the regulations in this part. The various situations in which such corrections constitute adjustments are set

forth in subparagraphs (2) and (3) of this paragraph. All corrections in respect of underpayments and all adjustments or credits in respect of overpayments made under this section must be reported on a return filed by the domestic corporation under the regulations in this part and not on a return filed with respect to the employee and employer taxes imposed by sections 3101 and 3111, respectively. Every return on which such a correction (by adjustment, credit, or otherwise) is reported pursuant to this section must have securely attached as a part thereof a statement explaining the error in respect of which the correction is made, designating the calendar quarter in which the error was ascertained, and setting forth such other information as would be required if the correction were in respect of an overpayment or underpayment of taxes under the Federal Insurance Contributions Act. An error is ascertained when the domestic corporation has sufficient knowledge of the error to be able to correct it. An underpayment may not be corrected under this section after receipt from the district director of written notification of the amount due and demand for payment thereof, but the amount shall be paid in accordance with such notification.

(2) *Underpayments.* If a domestic corporation fails to report, on a return filed under the regulations in this part, all or any part of the amount for which liability equivalent to the employee and employer taxes is incurred under its agreement with respect to any payment of remuneration, the domestic corporation shall adjust the underpayment by reporting the additional amount due as an adjustment on a return or supplemental return filed on or before the last day on which the return for the return period in which the error is ascertained is required to be filed. The amount of each underpayment adjusted in accordance with this subparagraph shall be paid to the district director, without interest, at the time fixed for reporting the adjustment. If an adjustment is reported pursuant to this subparagraph but the amount thereof is not paid when due, interest thereafter accrues.

(3) *Overpayments.* If a domestic corporation pays more than the amount for which liability equivalent to the employee and employer taxes is incurred under its agreement with respect to any payment of remuneration, the domestic corporation may correct the error, subject to the requirements and under the conditions stated in this paragraph, by deducting the amount of the overpayment from the amount of liability reported on a return filed by the domestic corporation, except that—

(i) A correction may not be made in respect of any part of an overpayment which was collected from an individual by reason of the agreement unless the domestic corporation (a) has repaid the amount so collected to the individual, has secured the written receipt of the individual showing the date and amount of the repayment, and retains such receipt as a part of its records, or (b) has reimbursed the individual by reduc-

ing the amounts which otherwise should have been deducted from his remuneration by reason of the agreement; and

(ii) A correction may not be made in one calendar year in respect of any part of an overpayment which was collected from an individual in a prior calendar year unless the domestic corporation has secured the written statement of the individual showing that he has not claimed and will not claim refund or credit of the amount so collected, and retains such receipt as a part of its records. See § 31.6413 (c)-1 of this chapter, relating to claims for special credit or refund.

The correction constitutes an adjustment under this subparagraph only if it is reported on the return for the period in which the error is ascertained or on the return for the next following period, and then only if the correction is reported within the statutory period of limitation upon refund or credit of overpayments of amounts due under the agreement. See paragraph (b) (2) (iii) of this section relating to such statutory period. A claim for credit or refund may be filed in accordance with the provisions of paragraph (b) (2) of this section for any overpayment of an amount due under the agreement which is not adjusted under this subparagraph.

(b) *Errors not adjustable.*—(1) *Underpayments.* If a domestic corporation fails to report all or any part of the amount for which liability equivalent to the employee and employer taxes is incurred under its agreement with respect to any payment of remuneration, and such underpayment is not reported as an adjustment within the time prescribed by paragraph (a) (2) of this section, the amount of such underpayment shall be reported on the domestic corporation's next return, or shall be reported immediately on a supplemental return for the return period in which such payment of remuneration was made. The reporting of an underpayment under this subparagraph does not constitute an adjustment without interest.

(2) *Overpayments.* (i) If more than the correct amount due from a domestic corporation pursuant to its agreement (including the amount of any interest or addition) is paid to the district director and the amount of the overpayment is not adjusted under paragraph (a) (3) of this section, the domestic corporation may file a claim for refund or credit. Except as otherwise provided in this subparagraph, such claim shall be made in the same manner and subject to the same conditions as to allowance of the claim as would be the case if the claim were in respect of an overpayment of taxes under the Federal Insurance Contributions Act. Refund or credit of an amount erroneously paid by a domestic corporation under its agreement may be allowed only to the domestic corporation.

(ii) Any claim filed under this subparagraph shall be plainly marked "Claim under section 3121 (1)."

(iii) No refund or credit of an overpayment of the amount due from a domestic corporation under its agreement will be allowed after the expiration of 2 years after the date of payment to the

district director of such overpayment, except upon one or more of the grounds set forth in a claim filed prior to the expiration of such 2-year period.

(c) *Deductions from employees' remuneration.* If a domestic corporation deducts, or causes to be deducted, from the remuneration of an individual for services covered by the agreement amounts which are more or less than the employee tax which would be deductible therefrom if such remuneration constituted wages, any repayment to the individual (except to the extent otherwise provided in this section), or further collection from the individual, in respect of such deduction is a matter for settlement between the individual and the domestic corporation or such other person as may be concerned.

§ 36.3121 (1) (8) *Statutory provisions; definition of foreign subsidiary.*

SEC. 3121. *Definitions.* * * *

(1) *Agreements entered into by domestic corporations with respect to foreign subsidiaries.* * * *

(8) *Definition of foreign subsidiary.* For purposes of this subsection * * * a foreign subsidiary of a domestic corporation is—

(A) A foreign corporation more than 50 percent of the voting stock of which is owned by such domestic corporation; or

(B) A foreign corporation more than 50 percent of the voting stock of which is owned by the foreign corporation described in subparagraph (A).

(Sec. 3121 (1) (8) as added by sec. 209, Social Security Amendments 1954)

§ 36.3121 (1) (8)-1 *Definition of foreign subsidiary.* (a) A foreign corporation is a foreign subsidiary of a domestic corporation, within the meaning of the regulations in this part, if—

(1) More than 50 percent of the voting stock of the foreign corporation is owned by the domestic corporation; or

(2) More than 50 percent of the voting stock of the foreign corporation is owned by a second foreign corporation and more than 50 percent of the voting stock of the second foreign corporation is owned by the domestic corporation.

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

Example (1). P, a domestic corporation, owns 51 percent of the voting stock of S-1, a foreign corporation. S-1 owns 51 percent of the voting stock of S-2, a foreign corporation. S-2 owns 51 percent of the voting stock of S-3, a foreign corporation. S-1 and S-2 are foreign subsidiaries of P for purposes of the regulations in this part. Since neither P nor S-1 owns more than 50 percent of the voting stock of S-3, S-3 is not a foreign subsidiary of P within the meaning of these regulations.

Example (2). Assume the same facts as those stated in example (1) except that S-1 transfers to P one-half of its ownership of the voting stock of S-2. P owns no other voting stock of S-2. Accordingly, after the transfer, P and S-1 together own more than 50 percent of the voting stock of S-2, but neither P nor S-1 alone owns more than 50 percent of such stock. S-2 ceases to be a foreign subsidiary of P when such transfer is effected.

(c) The term "stock", as used in the regulations in this part, has the meaning assigned by paragraph (7) of section

7701 (a). Section 7701 (a) (7) provides as follows:

Sec. 7701. *Definitions.* (a) When used in this title [Internal Revenue Code of 1954], where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(7) *Stock.* The term "stock" includes shares in an association, joint-stock company, or insurance company.

(d) Ownership of the voting stock of a foreign corporation which is a foreign subsidiary of a domestic corporation may be transferred from the domestic corporation to another foreign subsidiary of the domestic corporation, from one foreign subsidiary of the domestic corporation to another, or from a foreign subsidiary of the domestic corporation to the domestic corporation itself without affecting the status of the foreign corporation as a foreign subsidiary of the domestic corporation, provided that more than 50 percent of the voting stock of such foreign corporation is at all times owned either (1) by the domestic corporation, or (2) by a foreign corporation more than 50 percent of the voting stock of which is owned by the domestic corporation.

§ 36.3121 (1) (9) *Statutory provisions; domestic corporation as separate entity.*

SEC. 3121. *Definitions.* * * *
(1) *Agreements entered into by domestic corporations with respect to foreign subsidiaries.* * * *

(9) *Domestic corporation as separate entity.* Each domestic corporation which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413 (c) (2) (C), relating to special refunds in the case of employees of certain foreign corporations, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

(Sec. 3121 (1) (9) as added by sec. 209, Social Security Amendments 1954)

§ 36.3121 (1) (9)-1 *Domestic corporation as separate entity.* A domestic corporation which enters into an agreement as provided in § 36.3121 (1) (1)-1 shall, for purposes of the regulations in this part and for purposes of section 6413 (c) (2) (C), relating to special credits or refunds, be considered an employer in its capacity as a party to such agreement separate and apart from its identity as an employer incurring liability for the employee tax and employer tax on the wages of its own employees. Thus, if a citizen of the United States performs services in employment for the domestic corporation and at any time within the same calendar year performs services covered by the agreement as an employee of one or more foreign subsidiaries named therein, the limitation on wages provided in section 3121 (a) (1) has application separately as to the wages for employment performed in the employ of the domestic corporation and as to the remuneration for services covered by the agreement performed in the employ of such foreign subsidiary or subsidiaries. All services covered by the agreement

whether performed in the employ of one or more than one such foreign subsidiary are regarded for purposes of the wage limitation as having been performed in the employ of the domestic corporation in its separate capacity as a party to the agreement. Similarly, any remuneration for such services which, if the services were performed in the United States, would be excluded from wages unless a certain amount of such remuneration is paid by a single employer within a specified period (for example, remuneration for agricultural labor) is regarded, for purposes of determining whether the domestic corporation incurs liability under its agreement with respect to such remuneration, as having been paid by the domestic corporation in its separate capacity as a party to the agreement. All remuneration received by an employee for services covered by the agreement is deemed, for purposes of the special credit or refund provisions contained in section 6413 (c), to have been received from the domestic corporation as an employer in its separate capacity as a party to the agreement.

§ 36.3121 (1) (10) *Statutory provisions; regulations.*

SEC. 3121. *Definitions.* * * *
(1) *Agreements entered into by domestic corporations with respect to foreign subsidiaries.* * * *

(10) *Regulations.* Regulations of the Secretary or his delegate to carry out the purposes of this subsection shall be designed to make the requirements imposed on domestic corporations with respect to services covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title [Internal Revenue Code of 1954] with respect to the taxes imposed by this chapter [chapter 21, I. R. C. 1954].

(Sec. 3121 (1) (10) as added by sec. 209, Social Security Amendments, 1954)

§ 36.3121 (1) (10)-1 *Requirements in respect of liability under agreement.* To the extent not inconsistent with, or otherwise provided in, the regulations in this part, the requirements and duties (relating to identification number, account numbers, wage information statements to employees, record keeping, etc.) imposed on an employer for any period with respect to the taxes imposed by the Federal Insurance Contributions Act are hereby made applicable to a domestic corporation with respect to its obligations and liabilities, for the same period, under an agreement entered into as provided in § 36.3121 (1) (1)-1.

§ 36.3121 (1) (10)-2 *Identification—*
(a) *Domestic corporation.* A domestic corporation which has secured, or is required to secure, an identification number as an employer having in its employ one or more individuals in employment for wages is not required to secure an identification number under the regulations in this part.

(b) *Employees.* Every employee performing services covered by an agreement shall have the same duties in respect of an account number as would be the case if the employee were performing services in employment for the domestic corporation.

§ 36.3121 (1) (10)-3 *Returns.* (a) The forms prescribed for use in making returns of the taxes imposed by the Federal Insurance Contributions Act (except any forms particularly prescribed for use by household employers or by employers filing returns in Puerto Rico or the Virgin Islands) shall be used by a domestic corporation in making returns of its liability under an agreement entered into as provided in § 36.3121 (1) (1)-1. Returns of such liability shall be made separate and apart from any returns required of the domestic corporation in respect of the taxes imposed by the Federal Insurance Contributions Act. The domestic corporation shall plainly mark "3121 (1) Agreement" at the top of each return, each detachable schedule thereof, and each paper or document constituting a part of the return, filed by the domestic corporation pursuant to the regulations in this part. Returns required under the regulations in this part shall be made by the domestic corporation as if all services covered by the agreement, whether performed in the employ of one or more than one foreign subsidiary, were performed in the employ of the domestic corporation as an employer in its separate capacity as a party to the agreement.

(b) Each return required under the regulations in this part must be filed on or before the last day of the month following the period for which the return is made.

§ 36.3121 (1) (10)-4 *Payment of amounts equivalent to tax.* A domestic corporation which has entered into an agreement as provided in § 36.3121 (1) (1)-1 is not required to make deposits with a Federal Reserve bank or authorized commercial bank of any amount for which liability is incurred under its agreement.

[F. R. Doc. 55-4296; Filed, May 26, 1955; 8:48 a. m.]

Office of the Secretary

[31 CFR Part 54]

GOLD REGULATIONS

RECORD RETENTION REQUIREMENT

Notice is hereby given that the Secretary of the Treasury proposes to amend the Gold Regulations as hereinafter set forth.

Interested persons may participate in the making of the proposed rules by submitting their views and data or arguments in writing to the Director of the Mint, Treasury Department, Washington 25, D. C., prior to June 27, 1955. All communications should be submitted in quadruplicate.

The amendment will provide that persons holding licenses or acquiring, holding, or disposing of gold, pursuant to the general authorizations in §§ 54.18 and 54.21 of the Gold Regulations, shall retain the records which they are required to keep for five years instead of three years as is presently the requirement. This amendment will conform the regulations to the act of September

14, 1954, which extended the general statute of limitations, which is applicable to offenses resulting from violations of the Gold Regulations, from three years to five years. The amendment is as follows:

The first sentence of § 54.26 (b) of the Gold Regulations as amended effective July 14, 1954, is amended to read as follows:

(b) Every person holding a license issued under § 54.25 (a), or acquiring, holding or disposing of gold pursuant to the authorizations in §§ 54.18 and 54.21, shall keep full and accurate records of all his operations and transactions with respect to gold, and such records shall be available for examination by a representative of the Treasury Department until the end of the fifth calendar year (or if such person's accounts are kept on a fiscal year basis, until the end of the fifth fiscal year) following such operations or transactions. * * *

Dated: May 23, 1955.

[SEAL] H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

[F. R. Doc. 55-4315; Filed, May 26, 1955;
8:51 a. m.]

DEPARTMENT OF AGRICULTURE Agricultural Marketing Service

[7 CFR Part 201]

RULES AND REGULATIONS OF THE SECRETARY OF AGRICULTURE UNDER THE FEDERAL SEED ACT

NOTICE OF PUBLIC HEARINGS ON PROPOSED AMENDMENTS

Pursuant to the provisions of section 402 of the Federal Seed Act approved August 9, 1939 (53 Stat. 1275), notice is hereby given of intention to promulgate amendments to the rules and regulations of the Secretary of Agriculture. There are under consideration amendments proposed by the United States Department of Agriculture and amendments proposed by the American Seed Trade Association. Public hearings with reference thereto will be held on June 20, 1955, in the conference room, fourth floor, Ross Building, 209 Southwest Fifth Avenue, Portland, Oregon; June 24, 1955, in room 200, Hotel Peabody, Memphis, Tennessee; and July 8, 1955, in the auditorium of the South Building, United States Department of Agriculture, Fourteenth and Independence Avenue SW., Washington, D. C., beginning at 9:30 in the morning of these days.

Interested persons are invited to attend these hearings and to offer comments or suggestions with reference to said proposals. Any comments or suggestions bearing on the proposals which cannot be made or presented in person at the hearings may be transmitted by mail, addressed to the Seed Branch, Grain Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D. C., and will be considered if received on or before the 15th day of July 1955.

Mr. W. A. Davidson, Seed Branch, Grain Division, Agricultural Marketing

Service, is hereby designated as the presiding officer who shall conduct the aforesaid hearings in the place and stead of the Secretary, with power to do all things necessary and appropriate to the proper conduct of such hearings, and Mr. Clyde Jackson, Grain Division, Agricultural Marketing Service, will serve as his alternate.

Amendments proposed by the United States Department of Agriculture:

1. Section 201.2 *Terms defined* is amended in the following respects:

a. Paragraph (h) is amended to read as follows:

(h) *Agricultural seeds*. The term "agricultural seeds" means the following kinds of grass, forage, and field crop seeds:

Alfalfa—*Medicago sativa* L.
Aflerla—*Erodium cicutarium* (L.) L'her.
Alyceclover—*Alyscarpus vaginalis* (L.) DC.
Bahlagrass—*Paspalum notatum* Fluegge.
Barley—*Hordeum vulgare* L.
Bean, adzuki—*Phaseolus angularis* Willd.
Bean, field—*Phaseolus vulgaris* L.
Bean, mung—*Phaseolus aureus* Roxb.
Bean—(see Velvetbean).
Beet, field excluding sugar beet—*Beta vulgaris* L.
Beggardweed—*desmodium tortuosum* (Sev.) DC.
Bentgrass or
Bentgrass, colonial—*Agrostis tenuis* Sibth.
Bentgrass, creeping—*Agrostis palustris* Huds.
Bentgrass, velvet—*Agrostis canina* L.
Bermuda-grass—*Cynodon dactylon* (L.) Pers.
Bluegrass, annual—*Poa annua* L.
Bluegrass, bulbous—*Poa bulbosa* L.
Bluegrass, Canada—*Poa compressa* L.
Bluegrass, Kentucky—*Poa pratensis* L.
Bluegrass, Nevada—*Poa nevadensis* Vasey.
Bluegrass, rough—*Poa trivialis* L.
Bluegrass, Texas—*Poa arachnifera* Torr.
Bluegrass, wood—*Poa nemoralis* L.
Bluestem, big—*Andropogon furcatus* Muhl.
Bluestem, little—*Andropogon scoparius* Michx.
Bluestem, sand—*Andropogon hallii* Hack.
Bluestem, yellow—*Andropogon ischaemum*.
Brome, mountain—*Bromus marginatus* Nees.
Brome, smooth—*Bromus inermis* Leys.
Broomcorn—*Sorghum vulgare* var. *technicum* (Koern.) Jav.
Buckwheat—*Fagopyrum esculentum* Moench (F. *culgare* Hill).
Buffalograss—*Buchloe dactyloides* (Nutt.) Engl.
Buffelgrass—*Pennisetum ciliare* (L.) Link.
Bur-clover, California—*Medicago hispida* Gaertn.
Bur-clover, spotted—*Medicago arabica* (L.) DC.
Burnet, little—*Sanguisorba minor* Scop.
Buttonclover—*Medicago orbicularis* (L.) All.
Canarygrass—*Phalaris canariensis* L.
Canarygrass, reed—*Phalaris arundinacea* L.
Carpetgrass—*Axonopus affinis* Chase.
Castorbean—*Ricinus communis* (L.)
Chickpea—*Cicer arietinum* L.
Clover, alsike—*Trifolium hybridum* L.
Clover, berseem—*Trifolium alexandrinum* L.
Clover, cluster—*Trifolium glomeratum* L.
Clover, crimson—*Trifolium incarnatum* L.
Clover, large hop—*Trifolium procumbens* L.
Clover, small hop (suckling)—*Trifolium dubium* Sibth.
Clover, ladino—*Trifolium repens* L.
Clover, lappa—*Trifolium lappaceum* L.
Clover, Persian—*Trifolium resupinatum* L.
Clover, red or
Red clover, mammoth—*Trifolium pratense* L.
Red clover, medium—*Trifolium pratense* L.
Clover, rose—*Trifolium hirtum* All.
Clover, strawberry—*Trifolium fragiferum* L.

Clover, sub (subterranean)—*Trifolium subterraneum* L.
Clover, white—*Trifolium repens* L. (also see Clover, ladino).
Clover, (also see Alyceclover, Bur-clover, Buttonclover, Sourclover, Sweetclover).
Corn, field—*Zea mays* L.
Corn, pop—*Zea mays* var. *evarta* (Sturt.) Bailey.
Cotton—*Gossypium* spp.
Cowpea—*Vigna sinensis* (Toner) Savi.
Crested dogtail—*Cynosurus cristatus* L.
Crotalaria, lance—*Crotalaria lanceolata* E. Mey.
Crotalaria, showy—*Crotalaria spectabilis* Roth.
Crotalaria, slenderleaf—*Crotalaria intermedia* Kotschy.
Crotalaria, striped—*Crotalaria striata* DC.
Crotalaria, sunn—*Crotalaria juncea* L.
Dallisgrass—*Paspalum dilatatum* Poir.
Dichondra repens Forst.
Dropseed, sand—*Sporobolus cryptandrus* (Torr.) A. Gray.
Emmer—*Triticum dicoccum* Schrank.
Fescue, Chewings—*Festuca rubra* var. *commutata* Gaud.
Fescue, hair—*Festuca capillata* Lam.
Fescue, meadow—*Festuca elatior* L.
Fescue, red—*Festuca rubra* L.
Fescue, sheep—*Festuca ovina* L.
Fescue, tall—*Festuca arundinacea* Schreb.
Flax—*Linum usitatissimum* L.
Gramma, blue—*Bouteloua gracilis* (H. B. K.) Lag.
Gramma, side-oats—*Bouteloua curtipendula* (Michx.) Torr.
Guineagrass—*Panicum maximum* Jacq.
Hardinggrass—*Phalaris tuberosa* var. *stenoptera* (Hack.) Hitchc.
Hemp—*Cannabis sativa* L.
Indiangrass, yellow—*Sorghastrum nutans* (L.) Nash.
Indigo, hairy—*Indigofera hirsuta* (L.)
Japanese lawgrass—*Zoysia japonica* Steud.
Johnsongrass—*Sorghum halepense* (L.) Pers.
Kudzu—*Pueraria thunbergiana* (Sieb. and Zucc.) Benth.
Lespedeza, Korean—*Lespedeza stipulacea* Maxim.
Lespedeza, sericea or Chinese—*Lespedeza cuneata* Dumont) D. Don. [L. *sericea* (Thunb.) Miq.]
Lespedeza, Siberian—*Lespedeza hedysaroides* (Pallas) Ricker.
Lespedeza, striate—*Lespedeza striata* (Thunb.) Hook. and Arn.
Lovegrass, sand—*Eragrostis trichodes* (Nutt.) Wood.
Lovegrass, weeping—*Eragrostis curvula* (Schrud.) Nees.
Lupine, blue—*Lupinus angustifolius* L.
Lupine, white—*Lupinus albus* L.
Lupine, yellow—*Lupinus luteus* L.
Manilagrass—*Zoysia matrella* (L.) Merr.
Meadow foxtail—*Alopecurus pratensis* L.
Medick, black—*Medicago lupulina* L.
Millet, browntop—*Panicum ramosum* L.
Millet, foxtail—*Setaria italica* (L.) Beauv.
Millet, Japanese—*Echinochloa crusgalli* var. *frumentacea* (Roxb.) Wight.
Millet, pearl—*Pennisetum glaucum* (L.) R. Br.
Millet, proso—*Panicum miliaceum* L.
Molassesgrass—*Melinis minutiflora* Beauv.
Mustard, black—*Brassica nigra* Koch.
Mustard, white—*Brassica hirta* Moench.
Napiergrass—*Pennisetum purpureum* Schumacher.
Oat—*Avena* spp.
Oatgrass, tall—*Arrhenatherum elatius* (L.) Mert. and Koch.
Orchardgrass—*Dactylis glomerata* L.
Panicgrass, blue—*Panicum antidotale* Retz.
Peanut—*Arachis hypogaea* L.
Pea, field—*Pisum sativum* var. *arvense* (L.) Poir.
Poa trivialis—(see Bluegrass, rough).
Rape, annual—*Brassica napus* var. *annua* Koch.
Rape, bird—*Brassica campestris* L.

Rape, turnip—*Brassica campestris* vars. L.
 Rape, winter—*Brassica napus* var. *biennis* (Schubl. and Mart.) Reichb.
 Redtop—*Agrostis alba* L.
 Rescuegrass—*Bromus catharticus* Vahl.
 Rhodesgrass—*Chloris gayana* Kunth.
 Rice—*Oryza sativa* L.
 Ricegrass, Indian—*Oryzopsis hymenoides* (Roem. and Schult.) Ricker.
 Roughpea—*Lathyrus hirsutus* L.
 Rye—*Secale cereale* L.
 Ryegrass or
 Ryegrass, Italian—*Lolium multiflorum* Lam.
 Ryegrass, perennial—*Lolium perenne* L.
 Safflower—*Carthamus tinctorius* L.
 Sainfoin—*Onobrychis viciifolia* Scop.
 Sesame—*Sesamum orientale* L.
 Sesbania—*Sesbania exaltata* (Raf.) Torr.
 Smilo—*Oryzopsis miliacea* (L.) Benth. and Hook.
 Sorghum—*Sorghum vulgare* Pers.
 Sourclover—*Mellilotus indica* (L.) All.
 Soybean—*Glycine max* (L.) Merrill [Soja max (L.) Piper].
 Spelt—*Triticum spelta* L.
 Sudangrass—*Sorghum vulgare* var. *sudanense* (Piper) Hitchc.
 Sunflower—*Helianthus annuus* L.
 Sweetclover or
 Sweetclover, white—*Mellilotus alba* Desr.
 Sweetclover, yellow—*Mellilotus officinalis* (L.) Lam.
 Sweet vernalgrass—*Anthoxanthum odoratum* L.
 Switchgrass—*Panicum virgatum* L.
 Timothy—*Phleum pratense* L.
 Trefoll, big—*Lotus uliginosus* Schkuhr.
 Trefoll, birdsfoot—*Lotus corniculatus* L.
 Vaseygrass—*Paspalum urvillei* Steud.
 Veldtgrass—*Ehrharta calycina* J. E. Smith.
 Velvetbean—*Stizolobium deeringianum* Bort.
 Velvetgrass—*Holcus lanatus* L.
 Vetch or
 Vetch, common—*Vicia sativa* L.
 Vetch, hairy—*Vicia villosa* Roth.
 Vetch, Hungarian—*Vicia pannonica* Grantz.
 Vetch, monantha—*Vicia articulata* Hornem. (V. monantha Desf.)
 Vetch, narrowleaf—*Vicia angustifolia* (L.) Reich.
 Vetch, purple—*Vicia athopurpurea* Desf.
 Vetch, woolypod—*Vicia dasycarpa* Ten.
 Wheat or
 Wheat, common—*Triticum aestivum* L. (T. vulgare Vill.)
 Wheat, club—*Triticum compactum* Host.
 Wheat, durum—*Triticum durum* Desf.
 Wheat, Polish—*Triticum polonicum* L.
 Wheat, poulard—*Triticum turgidum* L.
 Wheatgrass, crested or fairway crested—*Agropyron cristatum* (L.) Gaertn.
 Wheatgrass, crested or standard crested—*Agropyron desertorum* (Fisch.) Schult.
 Wheatgrass, intermediate—*Agropyron intermedium* (Host) Beauv.
 Wheatgrass, pubescent—*Agropyron trichophorum* (Link) Richt.
 Wheatgrass, slender—*Agropyron pauciflorum* (Schwein.) Hitchc. (A. *Trachycalum* Steud.)
 Wheatgrass, tall—*Agropyron elongatum* (Host) Beauv.
 Wheatgrass, western—*Agropyron smithii* Rydb.
 Wild-rye, Canada—*Elymus canadensis* L.
 Wild-rye, Russian—*Elymus junceus* Fisch.
 Zoysia japonica—(see Japanese lawngrass)
 Zoysia matrella—(see Manila grass)

b. Paragraph (i) is amended to read as follows:

(i) *Vegetable seeds.* The term "vegetable seeds" means the seeds of the following kinds that are or may be grown in gardens or on truck farms and are or may be generally known and sold under the name of vegetable seeds:

Artichoke—*Cynara scolymus* L.
 Asparagus—*Asparagus officinalis* L.
 Asparagusbean—*Vigna sesquipedalis* (L.) Fruwirth.
 Bean—*Phaseolus vulgaris* L.
 Bean, lima—*Phaseolus lunatus* var. *macrocarpus* Van Eseltine.
 Bean, runner—*Phaseolus coccineus* L.
 Beet—*Beta vulgaris* L.
 Broadbean—*Vicia faba* L.
 Broccoli—*Brassica oleracea* var. *botrytis* L.
 Brussels sprouts—*Brassica oleracea* var. *gemmifera* Zenker.
 Cabbage—*Brassica oleracea* var. *capitata* L.
 Cantaloupe—(see muskmelon)
 Cardoon—*Cynara cardunculus* L.
 Carrot—*Daucus carota* L.
 Cauliflower—*Brassica oleracea* var. *botrytis* L.
 Celeriac—*Apium graveolens* var. *rapaceum* DC.
 Celery—*Apium graveolens* var. *dulce* (Mill.) Pers.
 Chard, Swiss—*Beta vulgaris* var. *cicla* L.
 Chicory—*Cichorium intybus* L.
 Chinese cabbage—*Brassica pekinensis* (Lour.) Rupr.
 Citron—*Citrus vulgaris* Schrad.
 Collards—*Brassica oleracea* var. *acephala* DC.
 Corn, sweet—*Zea mays* L.
 Cornsalad—*Valerianella locusta* var. *olitoria* Pall.
 Cowpea—*Vigna sinensis* (Torner) Savi.
 Cress, garden—*Lepidium sativum* L.
 Cress, water—*Rorippa nasturtium-aquaticum* (L.) Britt. and Rendle.
 Cucumber—*Cucumis sativus* L.
 Dandelion—*Taraxacum officinale* Weber.
 Eggplant—*Solanum melongena* var. *esculentum* Nees.
 Endive—*Cichorium endivia* L.
 Kale—*Brassica oleracea* var. *acephala* DC.
 Kale, Chinese—*Brassica oleracea* var. *albo-glabra* (Bailey) Musil.
 Kohlrabi—*Brassica oleracea* var. *gongyloides* L.
 Leek—*Allium porrum* L.
 Lettuce—*Lactuca sativa* L.
 Muskmelon—*Cucumis melo* L.
 Mustard—*Brassica juncea* (L.) Coss.
 Mustard, spinach—*Brassica perviridis* Bailey.
 Okra—*Hibiscus esculentus* L.
 Onion—*Allium cepa* L.
 Onion, Welsh—*Allium fistulosum* L.
 Pak-choi—*Brassica chinensis* L.
 Parsley—*Petroselinum hortense* Hoffm.
 Parsnip—*Pastinaca sativa* L.
 Pea—*Pisum sativum* L.
 Pepper—*Capsicum* spp.
 Pumpkin—*Cucurbita pepo* L., *C. maschota* Duchesne and *C. maxima* Duchesne.
 Radish—*Raphanus sativus* L.
 Rhubarb—*Rheum rhaponticum* L.
 Rutabaga—*Brassica napus* var. *napobrassica* (L.) Reichb.
 Salsify—*Tragopogon porrifolius* L.
 Sorrel—*Rumex acetosa* L.
 Soybean—*Glycine max* (L.) Merrill [Soja max (L.) Piper].
 Spinach—*Spinacia oleracea* L.
 Spinach, New Zealand—*Tetragonia expansa* Thunb.
 Squash—*Cucurbita pepo* L., *C. moschata* Duchesne and *C. maxima* Duchesne.
 Tomato—*Lycopersicon esculentum* Mill.
 Tomato, husk—*Physalis pubescens* L.
 Turnip—*Brassica rapa* L.
 Watermelon—*Citrullus vulgaris* Schrad.

c. Paragraph (y) is amended to read as follows:

(y) *Hybrid.* The term "hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining (1) two, three, or four inbred lines; (2) one inbred or a single cross with an open-pollinated variety; or (3) two varieties or species, except open-pollinated varieties of corn (*Zea mays*).

The second generation and subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

2a. In § 201.5 (a) insert "orchardgrass," after "alfalfa," and insert "white clover," after "red clover,".

b. Delete paragraph (c) thereof.

3. In § 201.7 delete the phrase "received from the grower" from the first sentence and the phrase "and the sample" from the last sentence, and add the following additional sentence: "A copy of the grower's declaration and a sample of the seed shall be retained by the grower."

4. Amend § 201.12 to read as follows:

§ 201.12 *Name of kind and variety.* The representation of kind or kind and variety shall be confined to the name of the kind or kind and variety determined in accordance with § 201.34. The name shall not have affixed thereto words or terms that create a misleading impression as to the history or characteristics of the kind or variety.

5. In § 201.14 (a) insert "orchardgrass," after "alfalfa," and insert "white clover," after "red clover,".

6. Amend § 201.16 by adding at the end of the section the following sentence: "If in the course of such transportation, or thereafter, the seed is diverted to another State of destination, the person or persons responsible for such diversion shall cause the seed to be relabeled with respect to noxious-weed seed content, if necessary, to conform to the laws and regulations of the State to which the seed is diverted."

7. Amend § 201.20 by adding at the end of the section the following proviso: "Provided, That this shall not apply to the seed of Kentucky bluegrass during the months of August and September of the year in which the seed is produced."

8. Amend § 201.26 to read as follows:

§ 201.26 *Kind and variety.* The label shall bear the name of the kind and variety determined in accordance with § 201.34. The name shall not have affixed thereto words or terms that create a misleading impression as to the history or characteristics of the kind or variety.

9. In § 201.31 rearrange the names of kinds of vegetable seeds in the list in alphabetical order in accordance with § 201.2 (i) and insert in proper alphabetical order the following additional kinds and germination standards:

Kale, Chinese.....	75
Onion, Welsh.....	75

10. Amend § 201.34 to read as follows:

§ 201.34 *Kind and variety; designation as hybrid—(a) Indistinguishable seed.* Proper precautions to insure that the kind or variety or type of indistinguishable agricultural or vegetable seeds is properly stated shall include the maintaining of the records described in § 201.7. The examination of the seed and any pertinent facts may be taken into consideration in determining whether proper precautions have been taken to insure the kind, variety, or type to be that which is shown.

(b) *Name of kind.* The name of each kind of agricultural or vegetable seed is the name listed in § 201.2 (h) or (i), respectively.

(c) *Hybrid designation.* Seed shall not be designated in labeling as "hybrid" seed unless it comes within the definition of "hybrid" in § 201.2 (y).

(d) *Name of variety.* The name of each variety of agricultural or vegetable seed is the name determined in accordance with the following considerations:

(1) The variety name shall represent a subdivision of a kind, which is characterized by growth, plant, fruit, seed, or other characters by which it can be differentiated from other sorts of the same kind.

(2) Except as otherwise provided in this section, the name of a new variety shall be the name given by the originator or discoverer of the variety, except that in the event the originator or discoverer of a new unnamed variety, at the time seed of the variety is first introduced into channels of commerce of the United States for sale to the public, can not or chooses not to name the variety, the name of the variety shall be the first name under which the seed is introduced into such commerce. However if the variety name so provided is in a language not using the Roman alphabet, the variety shall be given a name, by the person authorized under this paragraph to name the variety, in a language using the Roman alphabet.

(3) The variety name shall not be misleading.

(4) The status under the Federal Seed Act of a variety name is not modified by the registration of such name as a trademark.

(5) Names of varieties which through broad general usage prior to the effective date of this section were recognized variety names, except for hybrid seed corn, shall be considered variety names without regard to the principles stated in paragraph (b) of this section.

(6) The variety name for any variety of hybrid seed corn first introduced into commercial channels in the United States for sale prior to October 20, 1951, shall be any name used for such variety in such channels prior to that date. The variety name for any variety of hybrid seed corn first introduced into commercial channels of the United States for sale on or after October 20, 1951, shall be the name assigned in accordance with this section.

(e) *List of variety names.* Variety names for the kinds listed include the following: (Names enclosed in parentheses are synonyms.)

(1) *Beans (vegetable snapbeans).*

Asgrow Black Valentine (Stringless Black Valentine; Black Valentine Stringless).
Bountiful (Improved Six Weeks).
Brittle Wax (Burpee's Brittle Wax; Round Pod Kidney Wax).
Cherokee (Black Valentine Wax; Cherokee Wax; Valentine Wax).
Commodore Improved (Improved Commodore).
Contender.
Davis Stringless Wax (Davis Stringless White Wax; Stringless Davis Wax).
Florida Belle.

Full Measure.
Giant Stringless Green Pod.
Idagreen.
Idaho Refugee.
Improved Kidney Wax (Improved Stringless Kidney Wax; Kidney Wax; Stringless Kidney Wax).
Keystonean.
Kinghorn Special.
Logan.
Longgreen.
Pencil Pod Black Wax.
Plentiful (Black Seeded Bountiful; Ferry's Plentiful).
Puregold Wax.
Ranger.
Rival.
Sensation Refugee—1066.
Sensation Refugee—1071.
Sensation Wax No. 1.
Slendergreen.
Streamliner (Granda; World's Fair).
Stringless Green Pod (Burpee's Stringless Green Pod; Landreth's Stringless Green Pod).
Stringless Red Valentine (Landreth's Extra Early Stringless Red Valentine; Red Valentine Stringless).
Supergreen.
Sure Crop (Bountiful Wax; Sure Crop Black Wax; Sure Crop Stringless Wax; Sure Crop Wax; Yellow Bountiful Wax).
Tendergreen (Asgrow Stringless Green Pod; New Stringless Green Pod).
Tenderlong 15.
Tender Pod.
Tennessee Green Pod (Brown Bunch; Field's First Early; Knife Blade; Mayo's Brown Bunch).
Topcrop.
Top Notch Golden Wax (Landreth's Top Notch Golden Wax).
Unrivalled Wax.
U. S. No. 5 Refugee.
Wade.

(2) *Cabbage.*

All Head Early (Burpee's All Head Early).
All Head Select (Wisconsin All Head).
American Drumhead Savoy (Improved American Savoy; Long Island Savoy; Perfection Drumhead Savoy; Perfection Late Savoy).
Badger Market.
Bonanza.
Bugner.
Charleston Wakefield (Charleston; Large Charleston Wakefield; Large Jersey; Large Wakefield).
Chieftain Savoy.
Copenhagen Market Early (Condon's Cannon Ball; Copenhagen Market; Extra Early Copenhagen Market; Viking Copenhagen).
Copenhagen Market Medium.
Danish Ballhead.
Danish Ballhead, Harris Special.
Donk's Danish Ballhead.
Early Jersey Wakefield (Extra Early Wakefield; Jersey Wakefield).
Ferry's Hollander.
Ferry's Round Dutch (Early Round Dutch).
Globe.
Glory of Enkhuizen (Enkhuizen Glory).
Golden Acre (Peerless Special; Premier).
Green Acre (Dark Green Copenhagen).
Improved Danish No. 22.
Improved Wisconsin All Seasons.
Improved Wisconsin Ballhead.
Jersey Queen.
Mammoth Rock Red (Mammoth Red Rock).
Marion Market.
Midseason Market.
Morse's Large Red.
Oakview Ballhead.
Penn State Ballhead.
Pennvalley.
Premium Late Flat Dutch (Large Late Flat Dutch; Late Flat Dutch).
Racine Market.
Red Acre.

Resistant Detroit (Detroit Resistant).
Red Danish.
Resistant Glory.
Resistant Golden Acre (Golden Acre Resistant).
Resistant Red Hollander.
Round Red Dutch.
Seneca Ballhead.
Stein's Flat Dutch (Early Flat Dutch; Stein's Early Flat Dutch).
Succession (All Season; Henderson's Succession).
Wisconsin Copenhagen.
Wisconsin Golden Acre.
Wisconsin Hollander (Wisconsin No. 8; Wisconsin Hollander No. 8).

(3) *Onions, hybrid.*

Abundance.
Aristocrat.
Asgrow B46.
Asgrow B47.
Asgrow B45.
Asgrow Y40.
Asgrow Y41.
Asgrow Y42.
Asgrow Y43.
Asgrow Y44.
Autumn Brown.
Autumn Chief.
Autumn Glory.
Autumn Spice.
Autumn Star.
Bonanza.
Brown Beauty.
Burpee Crystal Wax Hybrid.
Burpee Yellow Globe Hybrid.
California Hybrid Red No. 1.
Castilian.
Champion.
Contender.
Crystal Hybrid.
Early Harvest.
Elite.
Encore.
Epoch.
Fiesta.
Granex.
Magnifico.
Pioneer.
Surprise.
Vaughan's Hybrid Sweet Spanish No. 1.

(4) *Soybeans.*

Acadian.
Adams.
Agate.
Aoda.
Arisoy.
Arkan.
Arksoy (Early Wood's Yellow).
Arksoy 2913.
Amredo.
Avoyelles.
Bansel.
Barchet.
Bavender Special.
Biloxi (Brown Biloxi).
Blackhawk.
Boone.
Capital.
Cayuga.
Chame.
Charles.
Cherokee.
Chief.
Chusei.
Clemson.
C. N. S.
Creole.
Cypress No. 1.
Delsoy (Edsoy).
Delsta.
Dorman.
Dortchsoy No. 2.
Dortchsoy No. 31.
Dortchsoy No. 67.
Dunfield.
Earlyana.

Easycook.
Ebony.
Emperor.
Etum (Soy Good).
Flambeau.
Funk Delicious.
Gatan.
Georgian.
Giant Green.
Gibson.
Goldsoy.
Granger.
Habaro.
Haberlandt.
Hahto (Lima Soy).
Hakote.
Harman.
Harosoy.
Hawkeye.
Hayseed.
Herman.
Hidatsa.
Higan.
Hokkaido.
Hongkong.
Illini (Green Field).
Imperial.
Improved Pelican.
JEW 45.
Jogun.
Kabott.
Kanro.
Kanum.
Kingwa (Pekwa).
Korean (Early Korean).
Kura.
Laredo.
Lincoln.
L. Z.
Macoupin.
Magnolia.
Majos.
Mamloxi.
Mammoth Brown (Brown; Giant Brown; Large Brown; Tarheel Brown).
Mammoth Yellow (Large Yellow; Late; Late Yellow; Mammoth; Southern; Yellow).
Mamotan.
Mamredo.
Manchu.
Manchu No. 3.
Manchu No. 606.
Manchukota.
Mandarin (Early Mandarin).
Mandarin No. 507.
Mandarin (Ottawa).
Mandell.
Mendota.
Mingo.
Minsoy (Minnsويا).
Missoy.
Monetta.
Monroe.
Montreal Manchu.
Morse (Siegenthaler).
Mount Carmel.
Mukden.
Nanda.
Nanking.
Norsoy.
Ogden.
Ontario.
Otootan.
Pagoda.
Palmetto.
Patoka.
Peking (Black Champion; Black Sable; Essex; Extra Select Sable; Pedigreed Sable; Red Sable; Sable; Wings Royal).
Pelican.
Pennsoy.
Perry.
Pridesoy No. 57.
Ralsoy.
Richland.
Roanoke.
Rokusun.
Rose Non Pop.

S-100.
Sac.
Scioto.
Seminole.
Seneca.
Sioux.
Sousel (Super Quick).
Tanner (Brown Otootan; Red Otootan; Red Tanner).
Tastee.
Tennessee Non Pop.
Tokyo (Austrian Green; Ita Mame; Late Ita Mame; Mamotoc; Medium Ita Mame; Southern Medium Green).
Viking.
Virginia (Early Virginia Brown; Virginia Brown; Virginia Early Brown).
Volstate.
Wabash.
Willomi.
Wilson (Early Wilson; Early Wilson Black; Wilson Black; Wilson Early; Wilson Early Black).
Wisconsin Black (Early Black; Early Wisconsin Black; Extra Early Black; Wisconsin Early Black).
Wolverine.
Woods Yellow.
Yelando.
Yelredo.

(5) *Striate lespedeza*.

Common.
Kobe.
Tennessee 76.

11. Amend § 201.36b to read as follows:

§ 201.36b *Name of kind and variety; designation as hybrid.* (a) The representation of the name of a kind or kind and variety of seed in any advertisement subject to the act shall be confined to the name of the kind or kind and variety determined in accordance with § 201.34. The name shall not have associated therewith words or terms that create a misleading impression as to the history or characteristics of the kind or kind and variety. Descriptive terms and firm names may be used in kind or variety names provided the descriptive terms or firm names are a part of the name of the kind or variety of seed; for example, Stringless Green Pod, Detroit Dark Red, Black Seeded Simpson and Henderson Bush Lima. Seed shall not be designated as hybrid seed in any advertisement subject to the act unless it comes within the definition of "hybrid" in § 201.2 (y).

(b) Terms descriptive as to color, shape, size, habit of growth, disease-resistance, or other characteristics of the kind or variety may be associated with the name of the kind or variety provided it is done in a manner which clearly indicates the descriptive term is not a part of the name of the kind or variety; for example, Oshkosh pepper (yellow), Copenhagen Market (round head) cabbage, and Kentucky Wonder pole bean.

(c) Terms descriptive of quality or origin, terms descriptive of the basis for representations made, and terms taken from trade-marks may be associated with the name of the kind or variety of seed provided the terms are clearly identified as being other than part of the name of the kind or variety; for example, Fancy quality redtop, Idaho origin alfalfa, Growers' affidavit of

variety Atlas sorgo, and Ox brand Golden Cross corn.

(d) Terms descriptive of the manner or method of production or processing the seed (for example, certified, registered, delinted, scarified, treated, and hulled), may be associated with the name of the kind or variety of seed, provided such terms are not misleading.

12. Amend § 201.42 to read as follows:

§ 201.42 *Small containers.* In Sampling seed in small containers which it is not practical to sample as required in § 201.41, entire unopened containers may be taken in sufficient number to supply a minimum size sample as required in § 201.43. The sample may consist of the contents of one container, or two or more containers when combined.

13. Amend § 201.45 (b) to read as follows:

(b) The sample shall be repeatedly divided to the weight to be used for the working sample. Some form of efficient mechanical divider should be used. In case the proper mechanical divider cannot be used or is not available, the sample shall be thoroughly mixed and placed in a pile and the pile shall be repeatedly divided into halves until a sample of the desired weight remains.

14. Amend § 201.46 as follows:

a. Change the introductory paragraph to read:

For the detailed purity analysis and noxious-weed seed examination the working samples shall be at least the weights set forth in table 1. In mixtures the weight of the sample for purity analysis and the weight of the sample for noxious-weed seed examination shall be determined by the kind (or group of kinds of similar size) which comprises the major proportion of the sample.

b. In table 1 make the necessary changes and amendments in the names for the indicated kinds of seed so the names will be the same as those appearing in table 2, § 201.58. Also arrange the order of the kinds of seeds in table 1 to correspond with the order in which they are listed in table 2.

c. In table 1 change the existing information in the various columns for the indicated kinds to read as follows:

Bahia grass— <i>Paspalum notatum</i> :			
Var. Pensacola.....	5	50	366
All other varieties.....	10	50	178
Flax— <i>Linum usitatissimum</i>	15	100	330
Oatgrass, tall meadow— <i>Arrhenatherum elatius</i>	5	50	330
Corn salad (Fetters)— <i>Valerianella locusta</i> var. <i>olitoria</i> :			
Vars. Full Hearted and Dark Green.....	5	50	380
Fullhearted.....	5	50	380
All other varieties.....	10	50	380

d. In all instances where the figure in the column "Minimum weight for purity analysis" in table 1 is 2 grams, change the corresponding figure in the column "Minimum weight for noxious-weed seed examination" from 50 to 35.

e. Amend table 1 by inserting the following kinds and information in their appropriate alphabetical position:

Name of seed	Minimum weight for purity analysis	Minimum weight for noxious-weed seed examination	Approximate number of seeds per gram
Bluestem, yellow— <i>Andropogon ischaemum</i>	Gm 2	Gm 35	-----
Buffel grass— <i>Pennisetum ciliare</i>	10	50	-----
Burnet, little— <i>Sanguisorba minor</i>	25	150	108
Buttenclover— <i>Medicago orbicularis</i>	10	50	337
Castor bean— <i>Ricinus communis</i>	500	500	5
Dichondra— <i>Dichondra repens</i>	5	50	472
Indigo, hairy— <i>Indigofera hirsuta</i>	10	50	437
Lovegrass, sand— <i>Eragrostis trichodes</i>	1	25	3,550
Rose clover— <i>Trifolium hirtum</i>	5	50	358
Safflower— <i>Carthamus tinctorius</i>	100	500	29
Sesame— <i>Sesamum indicum</i>	10	50	360
Veldtgrass— <i>Ehrharta calycina</i>	2	35	655
Wheatgrass, pubescent— <i>Agropyron trichophorum</i>	10	50	180
Wheatgrass, intermediate— <i>Agropyron intermedium</i>	10	50	230
Wheatgrass, tall— <i>Agropyron elongatum</i>	10	50	140
Wild-rye, Russian— <i>Elymus junceus</i>	10	50	400
Chinese kale— <i>Brassica oleracea</i> var. <i>alboglabra</i>	10	50	-----
Onion, Welsh— <i>Allium fistulosum</i>	10	50	-----

f. In table 1, delete footnotes 1, 2, and 4, including the reference designations in the table, and renumber footnote No. 3 as No. 1.

15. Amend § 201.47 to read as follows:

§ 201.47 *Separation*. (a) The working sample shall be weighed in grams to four significant figures, and shall then be separated into four parts: (1) Kind or variety to be considered pure seed; (2) other crop seed; (3) weed seed; and (4) inert matter. Each of these four component parts shall be weighed in grams to four significant figures, and the percentage by weight of each part (based on the sum of the weights of the component parts and not on the original weight) shall be determined. The sum of the weights of the component parts shall be compared with the original weight of the working sample as a check against loss of material or other error.

(b) In the case of other crop seed and weed seed, the seeds of each species shall be separated when possible and the number or the weight of each kind determined. The separation of the seed of the kind or variety considered pure seed must be on such a basis that the separation can be made definitely by seed characteristics.

(c) When samples of seed contain two or more similar kinds of seeds the separation of which in the entire working sample would be very difficult, it is permissible to separate and weigh the similar seeds as a group. From the purity working sample at least 400 seeds are to be taken indiscriminately and the separation made on this portion. The proportion of each kind is then determined by weight or, if the seeds are of similar weight, the proportion may be determined by count, and from this the percentage in the entire sample is calculated.

(d) With reference to classification of pure seed, other crop seed, and inert matter, applicable methods of determination may include visual examination, use of reflected light or specific gravity. This has reference particularly to insect-damaged, broken or diseased seeds, or sterile grass florets.

16. Following § 201.47 insert two new undesignated sections to read as follows:

§ 201.— *Seed unit*. The seed unit is the structure usually regarded as a seed in agricultural practices and in commercial channels. The seed unit may consist of one or more of the following structures:

- (a) True seeds;
- (b) Caryopses and florets in the grass family. In this family the pure seed unit also includes the following structures for the indicated kinds:
 - (1) Spikelet or paired spikelets with at least one caryopsis in the bluestems (*Andropogon*) and yellow Indiangrass (*Sorghastrum nutans*).
 - (2) Spikelet with at least one caryopsis in the gramas (*Bouteloua*), or spike with at least one caryopsis in side-oats grama (*B. curtipendula*).
 - (3) Bur or fertile floret of buffalo grass (*Buchloe dactyloides*).
 - (4) Fascicle of buffel grass (*Pennisetum ciliare*).
 - (5) Bulblet of bulbous bluegrass (*Poa bulbosa*);
- (c) Dry indehiscent fruits in the following plant families: Buckwheat (*Polygonaceae*), sunflower (*Compositae*), geranium (*Geraniaceae*), goosefoot (*Chenopodiaceae*), and valerian (*Valerianaceae*);
- (d) One- and two-seeded pods of small-seeded legumes, burs of the bur clovers, and pods of peanuts. (This does not preclude the shelling of small-seeded legumes for purposes of identification);
- (e) Fruits or half fruits in the carrot family (*Umbelliferae*);
- (f) Nutlets in the following plant families: Borage (*Boraginaceae*), mint (*Labiatae*), vervain (*Verbenaceae*);
- (g) "Seed balls" or portions thereof in beets (*Beta*), and fruits with accessory structures such as occur in New Zealand spinach (*Tetragonia expansa*).

(b) Pieces of broken seeds that are larger than one-half the original size;

(c) Seeds that have started to germinate;

(d) Seeds of Cucurbitaceae and Solanaceae consisting principally of seedcoat (usually referred to as empty seed);

(e) Empty fruits (seed units) of species belonging to the following families: Sunflower (*Compositae*), buckwheat (*Polygonaceae*), carrot (*Umbelliferae*), valerian (*Valerianaceae*), mint (*Labiatae*), and other families in which the seed unit may be a dry, indehiscent, one-seeded fruit;

(f) All seed units of grasses in which a caryopsis can be detected either by light pressure or by reflected light;

(g) Multiple florets, or spikelets, of the following kinds of seeds when one or more of the florets contain a caryopsis: Bluegrass (*Poa*), tall meadow oatgrass (*Arrhenatherum elatius*), Rhodes grass (*Chloris gayana*), bluestems (*Andropogon*), gramas (*Bouteloua*), and oats (*Avena*), and spikes of side-oats grama (*Bouteloua curtipendula*) that contain one or more caryopses; in the case of orchard grass (*Dactylis glomerata*) all empty florets may be removed and classed as inert matter; or alternatively, all multiple florets may be weighed without detaching the empty florets in which case four-fifths ($\frac{4}{5}$) of the weight is added to the pure seed and one-fifth ($\frac{1}{5}$) to the inert matter;

(h) Diseased seeds, except ergots, smut balls, and other fungus bodies which are to be classed as inert matter. (See § 201.51);

(i) Insect-damaged seeds, except (1) broken pieces that are one-half or less than the original size and (2) chalcid-damaged seeds of alfalfa, red clover, and similar kinds of small-seeded legumes;

(j) Seed units of New Zealand spinach and beets regardless of whether they contain true seeds: *Provided*, That in the case of segmented beet balls, small fragments which obviously do not contain true seeds shall be classified as inert matter.

18. Amend § 201.49 to read as follows:

§ 201.49 *Other crop seed*. Seeds of plants grown as crops (other than the kind or variety included in the pure seed) shall be considered other crop seeds, unless recognized as weed seeds by applicable laws, or regulations, or by general usage. All interpretations and definitions for "pure seed" in § 201.48 shall also apply in determining whether seeds are other crop seed or inert matter.

19. Amend § 201.50 to read as follows:

§ 201.50 *Weed seed*. Seeds, bulblets, or tubers of plants recognized as weeds by applicable laws or regulations, or general usage shall be considered weed seeds. Badly injured weed seeds and empty, seedlike structures, including those of noxious-weed seeds, as described in § 201.51, shall be considered inert matter and not weed seeds. When seeds of *Juncus tenuis*, or other species of *Juncus* having seeds of a similar size, are present they may be included with the inert matter. However, clusters of *Juncus* seeds shall be included with the weed seeds.

17. Amend § 201.48 to read as follows:

§ 201.48 *Kind or variety considered pure seed*. The pure seed shall include all seeds of each kind or each kind and variety under consideration present in excess of 5 percent of the whole, and may include kinds and varieties present to an extent of 5 percent or less of the whole. The following shall be included with the pure seed:

- (a) Seeds that are immature, shriveled, cracked, insect-damaged or otherwise injured. (Seeds of legumes and crucifers with the seedcoat entirely removed shall be classified as inert matter. See § 201.51);

20. Amend § 201.51 to read as follows:

§ 201.51 *Inert matter.* Inert matter shall include seeds and seedlike structures from both crop and weed plants and other material not seeds as follows:

- (a) Crop plants—
 - (1) Broken seeds: Pieces of broken seeds one-half the original size or less;
 - (2) Seeds of legumes and crucifers with the seedcoats entirely removed;
 - (3) Glumes and empty florets except when considered pure seed or other crop seed under §§ 201.48 and 201.49;
- (b) Weed plants—
 - (1) Damaged seeds (other than caryopses of grasses) with over one-half of the embryo missing;
 - (2) Damaged caryopses of grasses, with over one-half of the root shoot axis missing (the scutellum excluded); and glumes and empty florets of grasses;
 - (3) Seeds of legumes and species of Brassica with the seedcoats entirely removed;
 - (4) Empty fruits (seeds) such as occur in the following plant families: Sedge (Cyperaceae), buckwheat (Polygonaceae), morning-glory (Convolvulaceae), and sunflower (Compositae). (This is to be determined by visual examination, which may include dissection or the use of reflected light);
 - (5) Bulblets of wild onion and wild garlic (*Allium*) which are devoid of the husk and pass through a 10 x 10 mesh screen (10 mesh per inch) made of 26 gage (0.020 inch diameter) stainless steel wire; bulblets which are devoid of the husks and are retained on 10 x 10 mesh screen, but which show injury to the basal end; bulblets which show evident damage to the basal end and have part of the husk removed;
 - (6) Immature florets of quackgrass (*Agropyron repens*) in which the caryopses are less than one-third the length of the palea;
 - (7) Dodder (*Cuscuta*): Seeds which are either (i) fragile, (ii) ashy gray to creamy white in color, or (iii) badly shriveled;
 - (8) Buckhorn (*Plantago lanceolata*): Black seeds, with no brown color evident, whether shriveled or plump; (The color of questionable seeds should be determined under a magnification of approximately 10 X with strong light);
 - (9) Ragweed (*Ambrosia*): Seed with both the involucre and pericarp absent;
- (c) Other matter—
 - (1) Nematode galls, including galls enveloped by the lemma and palea of grass florets;
 - (2) Fungus bodies, such as ergot and other sclerotia, and smut balls;
 - (3) All inert matter such as soil particles, sand, stones, chaff, stems, and leaves.

21. Amend § 201.52 to read as follows:

§ 201.52 *Noxious-weed seeds.* The determination of the number of seeds, bulblets, or tubers of individual noxious weeds present per unit weight should be made on at least the minimum quantities listed in table 1: *Provided*, That if the following indicated numbers of a single kind of seed, bulblet, or tuber are found in the pure-seed analysis (or noxious-weed seed examination of a like

amount) the occurrence of that species in the remainder of the bulk examined for noxious-weed seeds need not be noted: ½-gram purity working sample, 16 or more seeds; 1-gram purity working sample, 23 or more seeds; 2-gram purity working sample or larger, 30 or more seeds.

22. In § 201.53 change paragraph "(c)" to read as follows:

(c) When only a germination test is required and the pure seed is found to be less than 98 percent, the seed for the test shall be obtained by separating the sample into two components as follows: (1) Pure seed and (2) other crop seed, weed seed, and inert matter. In making this separation at least ¼ of the quantity required for a regular purity analysis shall be used. The whole sample must be well mixed and divided in such a manner as to get a completely representative subsample.

23. Amend § 201.55 to read as follows:

§ 201.55 *Retests.* (a) In considering whether a retest is required a difference of 10 percent between any two 100-seed replicates is permitted when the average is 80 percent or above, and a difference of 15 percent when the average is below 80 percent. When all 4 replicates are in agreement (i. e., do not exceed the 10 and 15 percent limits) the average shall be used and a retest is not required. If three replicates are in agreement the median of the four replicates shall be used and a retest is not required. (The median of four replicates is the average of the two middle values). When no

118.3 cc. (1 gill) sand
Its weight in grams $\times 20.2 - 8.0 =$ The number of cc. of water to add to each 100 grams
of air-dry sand.

(c) The amount of water provided by this formula is satisfactory for seeds the size of clovers and will have to be modified slightly, depending on the kind of seed being tested and the kind of sand used. For example, slightly more moisture should be added when the larger seeds are to be tested.

(d) In preparing soil tests water should be added to the soil until it can be formed into a ball when squeezed in the palm of the hand but will break freely when pressed between two fingers. After the soil has been moistened it should be rubbed through a sieve and put in the seed containers without packing.

(e) The addition of water subsequent to placing the seed in test will depend on the evaporation from the substrata in the germination chambers. Since the rate of evaporation will depend upon the relative humidity of the air, it is desirable to keep water in the germination chambers or to provide other means of supplying a relative humidity of approximately 95 percent. Germination tests should be observed at frequent intervals to insure an adequate moisture supply of the substrata at all times.

25. Amend § 201.56 to read as follows:

§ 201.56 *Interpretation.* (a) A seed shall be considered to have germinated when it has developed those essential structures which, for the kind of seed

more than two replicates are in agreement, a retest is necessary. If, at the time of the prescribed final count there are indications that a satisfactory germination has not been obtained, such as the presence of firm ungerminated seeds, a retest should be made.

(b) Samples showing injury as a result of chemical treatments shall be retested in soil. The result of the soil test will be regarded as authentic.

(c) When one or more retests, or concurrent tests, are made in the same laboratory in accordance with this part by either (1) the same method, or (2) alternate methods, the results of all tests within tolerance shall be averaged. When the results obtained by different methods are not within tolerance of each other, the higher result shall be used.

24. Following § 201.55, insert a new undesignated section to read as follows:

§ 201.— *Moisture and aeration of substratum.* (a) The substratum must be moist enough to supply the needed moisture to the seeds at all times. Excessive moisture which will restrict aeration of the seeds should be avoided. Except as provided for those kinds of seeds requiring high moisture levels of the germination media, the substrata should never be so wet that a film of water is formed around the seeds. For most kinds of seeds blotters or other paper substrata should not be so wet that by pressing, a film of water forms around the finger.

(b) The following formula may be used as a guide in the preparation of sand for germination tests:

under consideration, are indicative of its ability to produce a normal plant under favorable conditions. Seedlings possessing those essential structures are referred to as normal seedlings. Abnormal seedlings, consisting of those which are broken, devoid of roots, malformed, or weak, and other types not possessing essential structures, shall not be considered to have germinated.

(b) Sand and/or soil tests may be used as a guide in determining the classification of questionable seedlings and the evaluation of germination tests made on approved artificial media. This is intended to provide a method of checking the reliability of tests made on artificial substrata when there may be doubt as to the proper evaluation of such tests.

(c) Seedlings infected with fungi or bacteria should be regarded as normal if all essential structures are present. A seedling that has been seriously damaged by bacteria or fungi from any source other than the specific seed should be regarded as normal if it is determined that all essential structures were present before the injury or damage occurred. Germination counts should be made on samples where contamination and decay are present at approximately 2-day intervals between the usual first count and the final count. During the progress of the germination

test, seeds which are obviously dead and moldy and which may be a source of contamination of healthy seeds should be removed at each count and the number of such dead seeds should be recorded. When symptoms of certain diseases develop which can be readily recognized and identified, their presence should be noted.

(d) Seed units containing more than one seed or embryo, such as New Zealand spinach seed, Beta seed, and seed units of grasses consisting of multiple florets, shall be tested as a single seed and shall be regarded as having germinated if they produce one or more normal seedlings.

(e) Standard guides for seedling interpretation shall include the photographs of normal and abnormal seedlings¹ identified by photo numbers in table 2 in § 201.58 and the following descriptions for specific kinds and groups.

26. Following § 201.56, insert 11 new sections to read, respectively, as follows:

§ 201.56-1 *Goosefoot family (Chenopodiaceae) and Carpetweed family (Aizoaceae)*. (a) Kinds of seed: Beet, swiss chard, mangel, spinach, and New Zealand spinach.

(b) A completely normal seedling of the kinds specified in paragraph (a) of this section should have a long, slender root with root hairs, a long, well-developed hypocotyl, two attached leaflike cotyledons and an intact but small epicotyl. Normal seedlings shall include those that have: (1) A well-developed, long, slender root with root hairs; (2) a stubby primary root provided the secondary roots are strong and the hypocotyl is near normal length, as in spinach; (3) at least one attached cotyledon, provided the seedling is otherwise normal; (4) slight infection by fungi, provided none of the essential seedling structures have been damaged; (5) normal seedlings structures of Beta that have been discolored from toxic substances in the seed balls or other causes; or (6) at least one normal seedling from a seed ball, regardless of whether abnormal seedlings also emerge from the same fruit.

(c) Abnormal seedlings include those that have: (1) No root or a stubby primary root with poor secondary root development, usually associated with a shortened hypocotyl; (2) a malformed, shortened, twisted, watery, or stubby hypocotyl, usually associated with a stubby root but not necessarily so; (3) deep grainy lesions or cracks in the hypocotyl if they appear to interfere with the conducting tissues; (4) both cotyledons absent as in samples of "sheared" beets and occasional samples of spinach; (5) two large cotyledons, but a malformed, short hypocotyl, usually with a stubby root; (6) decayed cotyledons or hypocotyl, provided they are not the result of improper test conditions (if there is decay of beet seedlings in blotter tests the results from a properly conducted soil or sand test

should be accepted as correct); or (7) various combinations of the above-described abnormalities.

§ 201.56-2 *Sunflower family (Compositae)*. Kinds of seed: Artichoke, cardoon, chicory, dandelion, endive, lettuce, safflower, salsify, and sunflower.

By the end of the germination test, a perfectly normal seedling belonging to the sunflower family should have a well-developed root with root hairs, a long and well-developed hypocotyl, two leaflike cotyledons, and a small but visible epicotyl.

(a) Lettuce: The interpretations of lettuce seedlings are made only at the end of the test period.

(1) Normal seedlings include those that have: (i) A well-developed, long, slender root with root hairs; (ii) a well-developed long hypocotyl with no deep lesions which might interfere with the conducting tissues; (iii) two green cotyledons with some blackened or reddish brown areas, provided the hypocotyl and roots have developed normally or approximately so; or (iv) slight inflections by fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) No roots or very stubby or shortened roots, which are usually associated with a shortened hypocotyl; (ii) shortened hypocotyl which are usually associated with stubby roots; (iii) a malformed hypocotyl, severely twisted or having grainy areas or cracks extending into the conducting tissues; (iv) cotyledons with large areas of blackish or reddish brown tissue, usually appearing along the midrib, associated with a short hypocotyl and root (the seedcoats are often attached to the cotyledons, adhering to the darkened areas and can be easily removed if lightly sprinkled with water); (v) cotyledons with a gray cast over their entire area, usually darker at the midrib section (hypocotyl and roots invariably shortened and seedcoats usually attached to the cotyledons); (vi) swollen, blackened cotyledons with only vestiges of hypocotyl and root, the seedcoats usually remaining attached to the cotyledons; (vii) decayed cotyledons; or (viii) various combinations of the above-described abnormalities.

(b) Other kinds in the sunflower family: This group includes artichoke, cardoon, sunflower, safflower, salsify, dandelion, chicory, and endive.

(1) Normal seedlings include those that have: (i) A well-developed, long, slender primary root with root hairs; (ii) a stubby root if there are one or more strong secondary roots, provided the seedling is otherwise normal; (iii) a well-developed, long hypocotyl with no prominent breaks or deep lesions which might interfere with the conducting tissues; (iv) at least one uninjured cotyledon, provided the epicotyl is also present; or (v) slight infection of the roots or hypocotyl with fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) No root or a stubby root with weak secondary roots, usually asso-

ciated with a shortened hypocotyl; (ii) a malformed hypocotyl, which may be curled, shortened, or thickened, usually associated with a stubby root; (iii) deep, unhealed cracks or grainy areas on the hypocotyl, extending into the conducting tissues; (iv) both cotyledons entirely broken off; (v) one cotyledon broken off, provided the epicotyl is also absent; (vi) two normal cotyledons with a short malformed hypocotyl, usually with a stubby root; (vii) decayed cotyledons, provided the infection is not caused by improper test conditions; or (viii) various combinations of the above-described abnormalities.

§ 201.56-3 *Mustard family (Cruciferae)*. Kinds of seed: Broccoli, brussels sprouts, cabbage, Chinese cabbage, cauliflower, collards, garden cress, water cress, kale, Chinese kale, kohlrabi, mustard, pakchoi, radish, rape, rutabaga, and turnip.

By the end of the germination test, a perfectly normal cruciferous seedling should have a well-developed root, usually with root hairs, a long hypocotyl, two intact green leaflike cotyledons and a small but visible epicotyl or growing point.

(a) *Radish and brassica*. (1) Normal seedlings include those that have: (i) A well-developed, long, slender primary root with root hairs; (ii) a well-developed, long hypocotyl with no prominent breaks or deep lesions which might interfere with the conducting tissues; (iii) one or two cotyledons not decayed at the point of attachment to the hypocotyl, provided the epicotyl is also present; (iv) slight decay at the base of one cotyledon, provided the epicotyl is not infected; (v) less than 50 percent of the area of the cotyledons covered with spots or darkened areas; or (vi) slight infection of roots or hypocotyl with fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) No root or a stubby root, usually associated with a shortened hypocotyl; (ii) a malformed hypocotyl, which may be curled, shortened, or thickened and usually associated with a stubby root; (iii) deep, unhealed cracks or lesions (often grainy) on the hypocotyl, extending into the conducting tissues; (iv) decay at the point of attachment of both cotyledons to the hypocotyl which may or may not involve the terminal bud; (v) decay at the point of attachment of one cotyledon to the hypocotyl, provided the terminal bud is also decayed; (vi) 50 percent or more of the area of the cotyledons covered with spots or darkened areas; (vii) decayed roots or hypocotyl, provided the infection was not caused by improper test conditions; (viii) watery hypocotyl (usually associated with some other abnormality of the seedlings) provided this condition is not caused by excessive moisture of the substratum; or (ix) various combinations of the abnormalities described in this subparagraph.

(b) *Garden cress and water cress*. (1) Normal seedlings include those that have: (i) A well-developed, slender root with root hairs; (ii) a long, well-developed hypocotyl with no prominent breaks

¹These photographs may be purchased from the Office of Information, United States Department of Agriculture, Washington 25, D. C.

or deep lesions which might interfere with the conducting tissues; (iii) intact cotyledons; or (iv) slight infection with fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) No root, or a stubby root, usually associated with a shortened hypocotyl; (ii) a malformed hypocotyl, which may be curled, twisted, shortened, or thickened and frequently associated with a stubby root; (iii) deep, unhealed cracks or grainy lesions on the hypocotyl, extending into the conducting tissues; (iv) watery hypocotyls, usually associated with stubby roots or decayed cotyledons; (v) cotyledons entirely broken off; (vi) decayed cotyledons, provided the infection was not caused by improper test conditions; or (vii) various combinations of the above-described abnormalities.

§ 201.56-4 *Cucurbit family (Cucurbitaceae)*. (a) Kinds of seed: Citron, cucumber, muskmelon or cantaloup, pumpkin, squash, and watermelon.

(b) By the end of the germination test a perfectly normal seedling should have a well-developed primary root with several secondary roots, a long hypocotyl, two intact cotyledons, and an epicotyl or terminal growing bud.

(1) Normal seedlings include those that have: (i) A well-developed primary root with or without secondary roots; (ii) a stubby primary root with at least two strong and vigorous adventitious roots, provided the hypocotyl is not shortened very much; (iii) a long well-developed hypocotyl; (iv) two intact cotyledons; or (v) slight infection by fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) No primary root, a stubby primary root only, or a stubby primary root with weak secondary roots which are usually associated with a short hypocotyl; (ii) a malformed hypocotyl which may be shortened or thickened; (iii) a thickened and shortened hypocotyl and roots owing to injury from chemical treatment, provided the injury is still apparent in a soil or sand check test; (iv) decayed cotyledons or other essential seedling structures, provided the decay was not the result of improper test conditions; or (v) various combinations of the above-described abnormalities.

§ 201.56-5 *Grass family (Gramineae)*. Kinds of seed: Bentgrasses, bluegrasses, bluestems, bromes, cereals, fescues, millets, orchard grass, reedtop, ryegrass, sorghum, timothy, wheatgrass, and all other grasses listed in § 201.1 (h).

In the grass family a perfect seedling should have a well-developed primary root system, an intact cotyledon or scutellum, seed free from serious decay and long, well-developed green leaves within the coleoptile. One or more leaves may have broken through the coleoptile by the end of the test period.

(a) *Barley, oats, rye, and wheat*. (1) Normal seedlings include those that have: (i) At least one primary or seminal root, but preferably two or three seminal roots, provided the shoot is well-developed and the grain is not badly

decayed; (ii) well-developed leaves, green in color, and long enough to extend more than half way up into the sheath or coleoptile at the time the seedling is evaluated; (iii) spiral twisting or bending of the shoot, provided it is green in color, has normal length, and is not frost damaged; or (iv) slight infection by fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) No primary root, (ii) only one or two short or spindly seminal roots which are usually accompanied by weakened shoots and decayed grains; (iii) no green leaves, but only the white sheath or coleoptile formed, which may or may not be grainy, spirally twisted, split, or shortened; (iv) a shortened shoot, extending no more than one-half the way up through the coleoptile; (v) a thin, spindly, or watery shoot usually accompanied by weak root development and decayed grains; (vi) badly shattered or longitudinally split leaves, with or without splitting of the coleoptile; (vii) thickened and shortened shoot (leaves and coleoptile) often the result of overtreatment of seed with chemicals; (viii) decayed shoots (usually weak and show decay near the point of attachment to the grain which has often decayed) provided the decay is not the result of improper test conditions; (ix) bad frost-damage characterized by grainy coleoptiles and spirally twisted leaves and coleoptiles; (x) coleoptiles developed without the leaves (in soil tests, some of the longest of the spirally twisted seedlings will appear fairly strong but most of them break off just above the attachment of the plumule and coleoptile to the grain; the shortest of the seedlings do not emerge in soil tests); or (xi) various combinations of the abnormalities described in this subparagraph.

(b) *Rice*. (1) Normal seedlings include those that have: (i) One primary root, usually with numerous lateral roots (several permanent roots arising from the first node should be present if seedlings are not removed until the end of the test); (ii) well-developed green leaves which ordinarily should have broken through the coleoptile at the time the seedling is evaluated; or (iii) slight infection by fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) No roots; (ii) a spindly primary root with very little or no branching or secondary development; (iii) no green leaves, but only the white sheath or coleoptile; (iv) a spindly and sometimes watery shoot which is usually associated with decay of the rice grain; (v) a short leaf, extending no more than one-half the distance up through the coleoptile; (vi) shattered or longitudinally split plumules with or without splitting of the coleoptile; (vii) decayed plumules (usually appear weak and show decay near the point of attachment to the grain) provided the decay is not the result of improper test conditions; or (viii) various combinations of the above-described abnormalities.

(c) *Corn*. (1) Normal seedlings include those that have: (i) One primary

root, usually with secondary roots present; (ii) no primary root, but with at least two vigorous secondary roots, provided the grain is not badly decayed, and the shoot is well-developed; (iii) well-developed green leaves, usually broken through the coleoptile by the end of the test period; (iv) twisted and curled shoots bound by the tough seedcoat, provided the shoot is not decayed; or (v) slight infection by fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) No primary or secondary roots; (ii) no primary roots but small and weak secondary roots; (iii) no plumule, but only the white sheath or coleoptile; (iv) a shortened plumule, extending no more than one-half the way up through the coleoptile; (v) a thickened and shortened shoot, often the result of overtreatment of seed with chemicals; (vi) a spindly and pale shoot usually associated with moldy seeds; (vii) albino (entirely white) seedlings, which will not develop into plants because of lack of chlorophyll; (viii) shattered or longitudinally split leaves, with or without splitting of the coleoptile; (ix) decayed shoots of which the plumules usually appear weak and show decay near the point of attachment to the grain and the scutellum is usually rotten, provided the decay is not the result of improper test conditions; or (x) various combinations of the abnormalities described in this subparagraph.

(d) *Sorghum and Sudan grass*. (1) Normal seedlings include those that have: (i) One primary root, usually with well-developed secondary roots and root hairs if left for final counts in soil tests; (ii) well-developed, green leaves, usually broken through the coleoptile by the end of the test period; (iii) slight infection by fungi, provided none of the essential seedling structures have been damaged; or (iv) red coloration on the roots and on the coleoptile of the shoot, caused by natural pigments, provided the seedling is otherwise normal.

(2) Abnormal seedlings include those that have: (i) No roots; (ii) a weak, spindly, and usually shortened primary root, which is often associated with decay of the grain; (iii) no plumule, but only the white sheath or coleoptile; (iv) a shortened plumule, extending no more than one-half the way up through the coleoptile; (v) a spindly and pale plumule, usually associated with moldy seeds; (vi) shattered and longitudinally split plumules, with or without splitting of the coleoptile; (vii) decayed plumules, provided the decay is not the result of improper test conditions (the plumules usually appear weak and show decay near the point of attachment to the grain which is usually rotten); or (viii) various combinations of the abnormalities described in this subparagraph.

(e) *Grasses and millets*. (1) Normal seedlings include those that have: (i) A well-developed primary root, usually with root hairs; (ii) a well-developed green plumule which has usually broken through the coleoptile by the end of the test period; (iii) slight infection by fungi, provided none of the essential seedling structures have been damaged;

(iv) spirally coiled roots held within the tightly enveloping glumes as in certain samples of Bermuda grass; or (v) poor root development resulting from injury caused by use of a potassium nitrate solution (if many roots are so affected, a retest should be made on top of soil in closed Petri dishes).

(2) Abnormal seedlings include those that have: (i) No root; (ii) a weak, stubby, or spindly root, usually short and watery, associated with a decayed seed; (iii) no plumule, but only the white sheath or coleoptile which is often short and thick; (iv) a shortened plumule, extending only one-half the distance up through the coleoptile; (v) a spindly plumule, usually pale and watery; (vi) a shattered longitudinally split plumule with or without splitting of the coleoptile; (vii) decayed plumules, provided the decay is not the result of improper test conditions (the plumules usually appear weak and show decay near the point of attachment to the seed, which is usually rotten); or (viii) various combinations of the abnormalities described in this subparagraph.

§ 201.56-6 *Legume or pea family (Leguminosae)*. Kinds of seed: Alfalfa, alyceclover, asparagusbean, beans (*Phaseolus* spp.), beggarweed, black medic, broadbean, bur-clovers, button-clover, chickpea, clovers (*Trifolium* spp.), cowpea, crotalaris, hairy indigo, kudzu, lespedezas, lupines, peas, peanut, rough pea, sainfoin, sesbania, sourclover, soybean, sweetclover, trefoils, velvetbean, and vetches.

(a) *Beans; adzuki, field, garden, lima, mung, and asparagusbean*. Seedling interpretation for all these beans is similar as they all have the same type of development.

(1) Normal seedlings include those that have: (i) a terminal bud or epicotyl, and at least one primary leaf, even though one or both cotyledons may be present; (ii) a primary root or adventitious or secondary roots sufficient to anchor the seedling when grown in soil or sand, provided the hypocotyl is approximately of normal length; (iii) a fairly well-developed hypocotyl with no prominent breaks or deep lesions (Healed breaks, sometimes referred to as knees, are to be considered as normal, provided the seedling is not spindly); (iv) spirally twisted and curled roots and hypocotyl held within the tough seedcoat, causing delayed development, but are otherwise normal; (v) slight infection caused by fungi or bacteria, provided the essential structures have not been seriously damaged and appear to be able to carry on their normal functions at the time of evaluation. (If a few seedlings with total or partial decay of the plumule are found, they may be counted as normal, provided the hypocotyl and root are well-developed. The plumules on such seedlings usually do not decay when grown under greenhouse conditions where the cotyledons open up naturally and are exposed to a dry environment and sunlight. However, if there are many seedlings with decayed plumules in a test, a retest should be made and such seedlings evaluated cautiously).

(2) Abnormal seedlings include those that have: (i) No primary leaves or

terminal bud (baldheads); (ii) no primary leaves, but with a terminal bud (snakeheads or partial baldheads); (iii) no primary leaves, but terminal bud present and axillary buds in one or both of the cotyledons (partial baldheads); (iv) a malformed hypocotyl, which may be characterized by open splits, or one that appears curled, shortened, or thickened; (v) no primary root or well-developed set of adventitious or secondary roots; or various combinations of the abnormalities described in this subparagraph.

(b) *Broadbean, runner bean, velvetbean, chickpea, field pea, garden pea, roughpea, and vetches*. In this group a perfectly normal seedling should have a well-formed root, with or without secondary or adventitious development, a strong epicotyl with fairly long stem, a well-developed epicotyl with the leaves and terminal bud intact, and attached cotyledons.

(1) Normal seedlings include those that have: (i) A primary root or a set of secondary or adventitious roots sufficient to anchor the seedling when grown in soil or sand, provided the stem is not badly shortened; (ii) a fairly well-developed stem with no prominent breaks or deep lesions which might interfere with the conducting tissues; (iii) a terminal bud with at least one first leaf and an intact growing point; (iv) two shoots, provided the seedling appears vigorous and at least one of the shoots has a normal epicotyl and root; or (v) slight infection by fungi, provided the essential seedling parts have not been seriously damaged and appear to be able to carry on their normal functions at the time of evaluation.

(2) Abnormal seedlings include those that have: (i) No primary root or well-developed secondary or adventitious roots; (ii) a malformed stem, which may be characterized by severe open splits, and curled, shortened, or thickened development; (iii) no epicotyl, or an epicotyl without the terminal bud; (iv) shoots both of which appear weak and spindly, often partially broken away from the cotyledons; (v) decay caused by the spread of organisms from the cotyledons of the developing seedling; or (vi) various combinations of the abnormalities described in this subparagraph.

(c) *Cowpeas, lupines, peanuts, and soybeans*. A completely normal seedling of the above-mentioned kinds should have a well-formed root with or without secondary or adventitious roots, a strong and fairly long hypocotyl with two attached and open cotyledons, two well-developed primary leaves, and an intact terminal bud or epicotyl.

(1) Normal seedlings include those that have: (i) A primary root or a set of secondary or adventitious roots sufficient to anchor the seedling when grown in soil or sand, provided the hypocotyl is normal; (ii) a fairly well-developed hypocotyl with no prominent breaks or deep lesions which might interfere with the conducting tissues; (iii) a plumule with at least one leaf and an intact growing point; or (iv) slight infection by fungi, provided the essential seedling parts have not been seriously damaged

and appear to be able to carry on their normal functions at the time of evaluation.

(2) Abnormal seedlings include those that have: (i) No primary root or no well-developed secondary or adventitious roots; (ii) a malformed hypocotyl which may be curled, shortened, or thickened or have severe open splits; (iii) no epicotyl, or one without the growing point, with or without leaves; (iv) decayed epicotyl, provided the decay has spread from the rotted cotyledons of the developing seedling; or (vi) various combinations of the abnormalities described in this subparagraph.

(d) *Alfalfa, alyceclover, beggarweed, black medic, burclovers, buttonclover, clovers, crotalaris, hairy indigo, kudzu, lespedezas, sainfoin, sesbania, sourclover, sweetclovers, trefoils*. By the end of the germination test a perfectly normal seedling should have a long, slender root, usually with root hairs, a long hypocotyl, two attached cotyledons which have opened, and an intact epicotyl or growing point.

(1) Normal seedlings include those that have: (i) A long, slender root, usually with root hairs; (ii) slightly stubby roots on blotter tests of sweetclovers, provided the seedling is otherwise normal; (iii) roots slightly stubby from being held back by the attached seedcoat, provided the seedling is otherwise normal; (iv) short splits on the roots, provided the split does not extend into the central conducting tissues of the hypocotyl, and provided further that root hairs are present and the seedling is normal in other respects; (v) a long, well-developed hypocotyl which may have slight cracks or breaks, provided they do not extend into the conducting tissues; (vi) at least one cotyledon, provided the epicotyl is also present; or (vii) slight infection by fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) Stubby roots, usually associated with shortened hypocotyl; (ii) longitudinal, deep splits on the roots, extending into the conducting tissues of the hypocotyls; (iii) deep cracks or breaks in the hypocotyl which extend into the conducting tissues; (iv) both cotyledons broken off; (v) one cotyledon broken off if the epicotyl is also absent; (vi) rotted cotyledons, provided the decay did not spread to the seedling from an adjacent seed or was not the result of improper test conditions; (vii) A spindly, watery hypocotyl, provided it is not the result of excess moisture in the substrata (usually seedlings of this type have one or more abnormalities of the essential structures, such as broken cotyledons or deep splits in the hypocotyl); or (viii) various combinations of the abnormalities described in this subparagraph.

§ 201.56-7 *Lily family (Liliaceae)*. Kinds of seed: Asparagus, leek, onion, and Welsh onion.

(a) *Onion, Welsh onion, and leek*. By the end of the test period a perfectly normal onion or leek seedling should have a long, slender root with a thickened area where it is joined to the base of the hypocotyl, a fairly long hypocotyl,

and a long, green cotyledon with a definite loop or bend, often referred to as the "knee."

(1) Normal seedlings include those that have: (i) A well-developed, long, slender root, with or without root hairs; (ii) a fairly long hypocotyl; (iii) a long, green, leaflike cotyledon, with a well-developed bend or "knee" or (iv) slight infection by fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) A thickened area at the base of the hypocotyl with no root, or a stubby root; (ii) a very short hypocotyl, usually associated with a poorly developed root and cotyledon; (iii) a poorly developed leaflike cotyledon without a definite bend or "knee"; (iv) a spindly, watery hypocotyl, often associated with slowness in sprouting, and one or more other abnormalities; (v) a rotted cotyledon, provided the decay is not the result of improper test conditions; or (vi) various combinations of the abnormalities described in this subparagraph.

(b) *Asparagus*. By the end of the test period a normal asparagus seedling should have a long, slender root, a fairly long epicotyl, an intact terminal bud, and the seedling should not be broken away from the cotyledon.

(1) Normal seedlings include those that have: (i) A long, slender root; (ii) a long, well-developed epicotyl with terminal growing point; (iii) the cotyledon attached to the seedling; or (iv) slight infestation by fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) No root, or a very stubby root with weak secondary root development; (ii) a malformed epicotyl, which may be thickened, shortened, or twisted; (iii) no terminal growing point or bud; (iv) cotyledon broken away from the seedling; (v) decayed epicotyl, provided the decay is not the result of improper test conditions; or (vi) various combinations of the abnormalities described in this subparagraph.

§ 201.56-8 *Flax family (Linaceae)*.

(a) Kind of seed: Flax.

(b) By the end of the germination test a normal flax seedling should have a well-developed primary root, a long hypocotyl, two intact cotyledons, and a small epicotyl.

(1) Normal seedlings include those that have: (i) A long, slender root, usually with root hairs; (ii) a short or stubby primary root, provided secondary root development is strong and the hypocotyl is of normal length or approximately so; (iii) a long, well-developed hypocotyl with no breaks or lesions extending into the conducting tissues; (iv) at least one attached cotyledon, provided the epicotyl is not injured; (v) variously broken or cracked cotyledons, provided the other seedling parts appear normal; or (vi) slight infection by fungi, provided none of the essential seedling structures have been damaged.

(2) Abnormal seedlings include those that have: (i) A stubby or no primary root, provided the secondary root development is weak, a condition usually associated with a shortened hypocotyl; (ii)

a malformed hypocotyl, which may be twisted, thickened, or shortened; (iii) deep cracks or lesions on the hypocotyl, extending into the conducting tissues; (iv) both cotyledons broken off; (v) one cotyledon broken off if the epicotyl is also injured (vi) decayed cotyledons or other essential seedling structures, provided the decay is not the result of improper test conditions; or (vii) various combinations of the abnormalities described in this subparagraph.

§ 201.56-9 *Mallow family (Malvaceae)*. (a) Kinds of seed: Cotton and okra.

(b) By the end of the germination test a perfectly normal seedling should have a long, well-developed root with root hairs, a long hypocotyl, two attached green leaflike cotyledons, and a small epicotyl.

(1) Normal seedlings include those that have: (i) A well-developed, long, slender root, usually with root hairs; (ii) no primary root but strong secondary roots, provided the hypocotyl is of normal or approximately normal length; (iii) a long, well-developed hypocotyl with no breaks or deep grainy lesions which might interfere with the conducting tissues; (iv) at least one cotyledon and intact epicotyl; (v) slight infection by fungi, provided none of the essential seedling structures have been damaged; or (vi) a yellowish hypocotyl or roots of cotton which may appear diseased, provided the cotyledons are free of infection (the seedcoat must be peeled back on young seedlings to determine this condition of the cotyledons).

(2) Abnormal seedlings include those that have: (i) No root or very stubby roots, usually associated with a shortened hypocotyl; (ii) stubby roots and a thickened hypocotyl resulting from chemical treatment of seed, such as often occurs on delinted cottonseed; (iii) malformed hypocotyl, which may be curled, thickened, or shortened; (iv) deep cracks or grainy lesions on the hypocotyl which appear to interfere with the conducting tissues; (v) epicotyl absent, even though one or both cotyledons are attached; (vi) decayed cotyledons and hypocotyl, provided the decay did not spread from another seed or was not the result of improper test conditions; or (vii) various combinations of the abnormalities, described in this subparagraph.

§ 201.56-10 *Spurge family (Euphorbiaceae)*. Kind of seed: Caster bean.

(a) Normal seedlings include those that have: (1) A primary root or a set of secondary or adventitious roots sufficient to anchor the seedling when grown in soil or sand, provided the hypocotyl is not badly shortened; (2) a fairly well-developed hypocotyl with no prominent breaks or stem lesions which might interfere with the conducting tissues; (3) an epicotyl with terminal bud; or (4) slight infection by fungi or bacteria, provided the essential seedling parts have not been seriously damaged and appear to be able to carry on their normal functions at the time of evaluation.

(b) Abnormal seedlings include those that have: (1) No primary root or well-developed adventitious or secondary roots; (2) a malformed stem, which

may be characterized by severe open splits, and curled, shortened or thickened hypocotyl; (3) no epicotyl, or an epicotyl without the terminal bud; (4) decay caused by microorganisms carried by the individual seed or seedling being evaluated; or (5) various combinations of the abnormalities described in this subparagraph.

§ 201.56-11 *Miscellaneous plant families*. Kinds of seed by families:

Benne family (Pedaliaceae)—Sesame.
Carrot family (Umbelliferae)—carrot, celery, celeriac, parsley, parsnip.
Dichondra family (Dichondraceae)—Dichondra.
Knotweed family (Polygonaceae)—Buckwheat, sorrel, rhubarb.
Nightshade family (Solanaceae)—Eggplant, pepper, tomato, husk tomato.
Geranium family (Geraniaceae)—Alfalfa.
Hemp family (Cannabaceae)—Hemp.
Rose family (Rosaceae)—Little burnet.
Valerian family (Valerianaceae)—Corn salad.

(a) In this group of plant families, normal seedlings include those that have: (1) A well-developed primary root, usually with root hairs; (2) a stubby root or no primary root, provided the secondary root development is strong and the hypocotyl is near normal length as is frequently encountered in tomato seedlings; (3) a long, well-formed hypocotyl, with no prominent breaks or lesions, extending into the conducting tissues; (4) at least one attached cotyledon, provided the epicotyl is intact and the seedling is otherwise normal (a tiny epicotyl may be observed in seedlings left in test for final evaluation); or (5) slight infection by fungi, provided none of the essential seedling structures have been damaged (infection is likely to occur in rhubarb in which case retests may be advisable).

(b) Abnormal seedlings include those that have: (1) A stubby root or no primary root, provided there is weak secondary root development; (2) a malformed hypocotyl, which may be twisted, thickened, or shortened; (3) deep cracks or lesions on the hypocotyl extending into the conducting tissues; (4) both cotyledons, or one cotyledon and epicotyl, broken off; (5) two enlarged cotyledons, but hypocotyl short and usually malformed; (6) decayed cotyledons or hypocotyl, provided they are not the result of improper test conditions; or (7) various combinations of the abnormalities described in this subparagraph.

27. In the second sentence of § 201.57 delete the words "and asparagus" and insert the words "cotton and dichondra."

28. Following § 201.57, insert a new undesignated section to read as follows:

§ 201.— *Dormant seeds; firm ungerminated seeds*. Dormant seeds means seeds, other than hard seeds, which fail to germinate when provided the specific germination conditions for the kind of seed in question. Firm ungerminated seeds means seeds, other than hard seeds, which neither germinate nor decay during the prescribed test period and under the prescribed test conditions.

29. Amend § 201.58 to read as follows:

§ 201.58 *Substrata, temperature, duration of test, and certain other specific directions for testing for germination*

and hard seed. Specific germination requirements are set forth in table 2 to which the following paragraphs (a) and (b) are applicable:

(a) *Definitions and explanations applicable to table 2*—(1) *Duration of tests.* The following deviations are permitted from the specified duration of tests: Any test may be terminated prior to the number of days listed under "Final Count" if the germination of the sample has then been determined. The number of days stated for the first count is approximate and a deviation of 1 to 3 days is permitted. (Also, see subparagraph (5) of this paragraph and § 201.57.)

(2) *Light.* When light is required the intensity for nondormant seed may be as low as 25 foot-candles. In the case of dormant seed of grasses such as occur in *Agrostis tenuis*, *Poa compressa*, and *Lolium multiflorum* the light intensity should approximate 100 foot-candles.

(3) *Moisture-on-dry-side.* This term means that the moistened substratum should be pressed against a dry absorbent surface such as a dry paper towel or blotter to remove excess moisture. The moisture content thus obtained should be maintained throughout the germination test period.

(4) *Potassium nitrate (KNO₃).* These terms mean a two-tenths (0.2) percent solution of potassium nitrate (KNO₃) shall be used in moistening the substratum. Such solution is prepared by dissolving 2 grams of KNO₃ in 1,000 ml. of distilled water. The grade of the potassium nitrate shall meet A. C. S. specifications.

(5) *Prechill.* The term "prechill" means to place the seed on, or in, a moist substratum at a specified low temperature for a designated period of time. The prechilling period is not included in the duration of tests given in table 2, unless otherwise specified.

(6) *Predry.* The term "predry" means to place the seed in a shallow layer at a temperature of 35° to 40° C. for a period of 5 to 7 days, with provisions for circulation of the air.

(7) *Substrata (Kinds).* The symbols used for substrata are:

B= between blotters

TB= top of blotters

T= paper toweling, used either as folded towel tests or as roll towel tests in horizontal or vertical position

S= sand or soil

TS= top of sand or soil

P= covered Petri dishes: with two layers of blotters; with one layer of absorbent cotton; with five layers of paper toweling; with three thicknesses of filter paper; or with sand or soil

C= creped cellulose paper wadding (0.3-inch thick Kimpak or equivalent) covered with a single thickness of blotter through which holes are punched for the seed that are pressed for about one-half their thickness into the paper wadding

RB= blotters with raised covers, prepared by folding up the edges of the blotter to form a good support for the upper fold which serves as a cover, preventing the top from making direct contact with the seeds.

(8) *Temperature.* A single numeral indicates a constant temperature. Two numerals separated by a dash indicate an alternation of temperature, the test to be held at the first temperature for approximately 16 hours and at the second temperature for approximately 8 hours per day. If tests are not subjected to alternating temperatures over weekends and on holidays they are to be held at the lower temperature during this time. In cases where two temperatures are indicated (separated by a semicolon) the first temperature shall be regarded as the regular method and the second as an alternate method.

(9) *Toxicity of substrata.* If there is question as to whether a paper substratum is toxic to developing seedlings, check tests should be made on Whatman's No. 2 filter paper or its equivalent. Seeds of celery, celeriac, chicory, dandelion, endive, timothy, and Bermuda grass are particularly sensitive to toxic substrata. If root injury is evident on a substratum moistened with potassium nitrate, retests should be made on a substratum moistened with water or on soil.

(b) *Special procedures and alternate methods for germination referred to in table 2*—(1) *Alyce clover (Alysicarpus vaginalis); Swollen seeds.* At the conclusion of the 21-day test period carefully pierce the seedcoat with a sharp instrument and continue the test for 5 additional days.

Alternate method: The swollen seeds may be placed at 20° C. for 48 hours and then at 35° C. for 3 additional days.

(2) *Bahia grass (Paspalum notatum); removal of glumes*—(i) *Vars. Common and Argentine.* Remove the glumes with the aid of a sharp scalpel. If the seed is fresh or dormant scratch the surface of the caryopsis lightly and use potassium nitrate.

(ii) *Var. Pensacola.* The glumes shall not be removed for the germination test.

(3) *Beet, Swiss chard (Beta); preparation of seed for test.* Before placing the seeds on the germination substratum they shall be soaked in water for 2 hours, using at least 250 ml. of water per 100 seeds, then washed in running water and

the excess water should be blotted off. Samples producing darkened radicles should be retested in soil or by washing in running water for 3 hours and tested on "Kimpak," keeping the seed covered with slightly moist blotters.

(4) *Buffel grass (Pennisetum ciliare); alternate method for dormant seed.* The caryopses shall be removed from the fascicles and placed on blotters moistened with a 0.2 percent potassium nitrate solution, in Petri dishes. The seeds from a fascicle should be arranged so they will not be confused with seeds from other fascicles during the test. The seeds are then prechilled at 50° C. for 7 days and tested at 30° C. in light for 21 additional days. Firm ungerminated seeds remaining at the conclusion of the test should be scratched lightly and left in test for 7 additional days.

(5) *Cotton (Gossypium spp.); dormant samples.* Samples of cottonseed which do not respond to the usual method should be placed in a closed container with water and shaken until the lint is thoroughly wet. The excess moisture should then be blotted off.

(6) *Endive (Cichorium endivia); dormant samples.* Add about 1/8 inch of tap water at the beginning of the test and remove excess water after 24 hours.

(7) *Lettuce (Lactuca sativa); light exposure.* All samples should be given at least 1/2 hour of light after being placed on the moist substratum. Additional light during the test period is desirable for dormant samples and facilitates seedling interpretation for samples of low vigor.

(8) *Fescue grass (Bromus catharticus); dormant samples.* Wash for 48 hours in running water, or soak for 48 hours, changing the water and rinsing each morning and night.

(9) *Rice (Oryza sativa); flood test.* The seed is planted in moist sand. On the seventh day of the test add water to a depth of 1/4 inch above the sand level and leave for the remainder of the test. Only a final count is made.

(10) *Ryegrass (Lolium); fluorescence test.* The germination test for fluorescence of rye grass shall be conducted in light (not to exceed 100 foot-candles) with white filter paper as a substratum. The test shall be conducted in a manner that will prevent the contact of roots of different seedlings.

(11) *Trifolium, Medicago, Melilotus, and Vicia faba; temperature requirements.* The temperature for *Trifolium* spp., *Medicago* spp., *Melilotus* spp., and *Vicia faba* should never exceed 20° C. and a temperature of 17° to 18° is desirable.

(c) Table 2; germination requirements for indicated kinds.

TABLE 2—GERMINATION REQUIREMENTS FOR INDICATED KINDS

Name of seed	Substrata	Temperature	First count	Final count	Additional directions	
					Specific requirements and photo numbers	Fresh and dormant seed
<i>Agricultural seed</i>						
Alfalfa— <i>Medicago sativa</i>	B, S	20	4	17	Photos 2481, 2486; see par. (b) (11)...	
Alfalfa— <i>Erodium cicutarium</i>	B	20-30	3	14	Old seeds.....	
Alyceclover— <i>Alysicarpus vaginalis</i>	B	35	4	21	See par. (b) (1) for swollen seeds.....	
Bahiagrass— <i>Paspalum notatum</i> : Var. <i>Ponsacola</i>	P, S	30-35	7	28	Light; see par. (b) (2).....	
All other vars.....	P	30-35	3	21	Light; remove glumes; see par. (b) (2).	Scratch caryopses; KNO ₃ .
Barley— <i>Bordeum vulgare</i>	B, T, S	20; 15	4	7		Prechill 5 days at 5° or 10° C. or predry.
Bean:						
Adzuki— <i>Phaseolus angularis</i>	T, S	20-30	4	10		
Field— <i>Phaseolus vulgaris</i>	T, S	20-30; 25	5	18		
Mung— <i>Phaseolus aureus</i>	T, S	20-30	3	17		
Beet, field— <i>Beta vulgaris</i>	B, S	20-30	3	14	Photos 19557, 19558; see par. (b) (3).....	
Beggartweed, Florida— <i>Desmodium tortuosum</i>	B	30	5	28		
Bentgrass:						
Colonial (including Astoria and Highland)— <i>Agrostis tenuis</i>	P	15-30; 10-30	7	28	Light; KNO ₃	Prechill at 5° or 10° C. for 7 days; see par. (a) (2).
Creeping— <i>Agrostis palustris</i>	P	15-30; 10-30	7	28	Light; KNO ₃	Prechill at 5° or 10° C. for 7 days.
Velvet— <i>Agrostis canina</i>	P	20-30	7	21	Light; KNO ₃	
Bermuda grass— <i>Cynodon dactylon</i>	P	20-35	7	21	Light; KNO ₃ , photo 2518; see par. (a) (9).	
Bluegrass:						
Annual— <i>Poa annua</i>	P	20-30	7	21	Light.....	
Bulbous— <i>Poa bulbosa</i>	P, S	10	10	35	KNO ₃ or soil.....	Prechill all samples at 5° C. for 7 days.
Canada— <i>Poa compressa</i>	P	15-30; 10-30	10	28	Light; KNO ₃ , see par. (a) (2).	
Kentucky (including var. <i>Merion</i>)— <i>Poa pratensis</i>	P	15-30; 10-30	10	28	Light; KNO ₃	Prechill at 10° C. for 5 days.
Nevada— <i>Poa nevadensis</i>	P	20-30	7	21	Light; KNO ₃	
Rough— <i>Poa trivialis</i>	P	20-30	7	21	Light.....	
Texas— <i>Poa arachnifera</i>	P	20-30	7	28	Light; KNO ₃	Prechill at 5° C. for 2 weeks.
Wood— <i>Poa nemoralis</i>	P	20-30	7	28	Light.....	
Bluestem:						
Big— <i>Andropogon gerardii</i>	P, TS	20-30	7	28	Light; KNO ₃	Prechill at 5° C. for 2 weeks.
Little— <i>Andropogon scoparius</i>	P, TS	20-30	7	28	do.....	Do.
Sand— <i>Andropogon hallii</i>	P, TS	20-30	7	28	do.....	Do.
Yellow— <i>Andropogon ischaemum</i>	P, TS	20-30	5	21	do.....	Do.
Brome:						
Mountain— <i>Bromus marginatus</i>	P	20-30	6	14	Light.....	
Smooth— <i>Bromus inermis</i>	P, B, TB	20-30	6	14	Light optional.....	Prechill at 5° or 10° C. for 7 days.
Broomcorn— <i>Sorghum vulgare</i> var. <i>technicum</i>	B, S	20-30	3	10		
Buckwheat— <i>Fagopyrum esculentum</i>	B, T	20-30	3	6		
Buffalograss— <i>Buchloe dactyloides</i> : (Burs).....	P, TB, TS	20-35	7	28	Light; KNO ₃	Prechill at 5° C. for 6 weeks; test 14 additional days.
(Caryopses).....	P	20-35	5	14	Light; KNO ₃	
Buffalograss— <i>Pennisetum ciliare</i>	S	30	7	28	Light; press fascicles into well-packed soil and prechill at 5° C. for 7 days.	See par. (b) (4).
Bur-clover, California— <i>Medicago hispida</i>	B, T	20	4	14	Remove seeds from bur; see par. (b) (11).	
Bur-clover, spotted— <i>Medicago arabica</i>	B, T	20	4	14	do.....	
Burnet, little— <i>Sanguisorba minor</i>	B	15	5	14		
Butterclover— <i>Medicago orbicularis</i>	B	20	4	10	See par. (b) (11).....	15° C.
Canarygrass— <i>Phalaris canariensis</i>	B	20-30	3	7		
Canarygrass, reed— <i>Phalaris arundinacea</i>	P	20-30	5	21	Light.....	KNO ₃ .
Carpet grass— <i>Axonopus affinis</i>	P	20-35	10	21	Light.....	KN O ₂ .
Castor bean— <i>Ricinus communis</i>	T, S	20-30	7	14	Remove caruncle if mold interferes with test.	
Chickpea— <i>Cicer arietinum</i>	T, S	20-30	3	7		
Clover:						
Alsike— <i>Trifolium hybridum</i>	B, S	20	3	17	See par. (b) (11).....	15° C.
Bercoem— <i>Trifolium alexandrinum</i>	B, S	20	3	17	do.....	Do.
Cluster— <i>Trifolium glomeratum</i>	B	20	4	10	do.....	Do.
Crimson— <i>Trifolium incarnatum</i>	B, S	20	4	17	See par. (b) (11). Photos 2479, 2482.	Do.
Ladino— <i>Trifolium repens</i>	B, S	20	3	17	See par. (b) (11).....	Do.
Lappa— <i>Trifolium lappaceum</i>	B	20	3	17	do.....	Do.
Large hop— <i>Trifolium procumbens</i> (T. <i>compestre</i>).....	B	20	4	14	do.....	Do.
Persian— <i>Trifolium resupinatum</i>	B	20	3	17	do.....	Do.
Red— <i>Trifolium pratense</i>	B, S	20	4	17	See par. (b) (11). Photos 2483, 2484.	Do.
Rose— <i>Trifolium hirtum</i>	B	20	4	10	See par. (b) (11).....	Do.
Small hop (Suckling)— <i>Trifolium dubium</i>	B	20	4	14	do.....	Do.
Strawberry— <i>Trifolium fragiferum</i>	B	20	3	17	do.....	Do.
Sub— <i>Trifolium subterraneum</i>	B	20	4	14	do.....	Do.
White— <i>Trifolium repens</i>	B, S	20	3	17	do.....	Do.
Corn:						
Field— <i>Zea mays</i>	T, S	20-30; 25	4	7	Photos 2510, 2511, 2512, 2514.....	
Pop— <i>Zea mays</i> var. <i>evarta</i>	T, S	20-30; 25	4	7		
Cotton— <i>Gossypium</i> spp.....	T, S	20-30	4	12	Photos 19553, 19554.....	Test by alternate method; see par. (b) (5).
Cowpea— <i>Vigna sinensis</i>	T, S	20-30	5	18	Photos 1989, 1990, 2377.	
Crested dogtail— <i>Cynosurus cristatus</i>	P	20-30	10	21	Light.....	Prechill for 3 days at 5° or 10° C.
Crotalaria:						
Lance— <i>Crotalaria lanceolata</i>	B, S	20-30	4	10		
Showy— <i>Crotalaria spectabilis</i>	B, S	20-30	4	10	Photos 2496, 2497.....	
Slenderleaf— <i>Crotalaria intermedia</i>	B, S	20-30	4	10		
Striped— <i>Crotalaria mucronata</i>	B, S	20-30	4	10		
Sum— <i>Crotalaria juncea</i>	B, S	20-30	4	10		
Dallis grass— <i>Paspalum dilatatum</i>	P	20-35	7	21	Light; KNO ₃	
Dichondra— <i>Dichondra repens</i>	B	20-30	7	28		
Dropseed, and— <i>Sporobolus cryptandrus</i>	P	15-35	5	42	Light; ENO ₃	Prechill at 5° C. for 4 to 8 weeks and test for 28 days.
Emmer— <i>Triticum dicoccum</i>	B, T, S	20, 15	4	7		Prechill at 5° C. or 10° C. for 5 days or predry.

¹ Hard seeds often present. ² Firm ungerminated seeds frequently present.

TABLE 2—GERMINATION REQUIREMENTS FOR INDICATED KINDS—Continued

Name of seed	Substrata	Temperature	First count	Final count	Additional directions	
					Specific requirements and photo numbers	Fresh and dormant seed
<i>Agricultural seed—Continued</i>						
Fescue:						
Chewings— <i>Festuca rubra</i> var. <i>commuta</i>	P	°C. 15-25	Days 7	Days 21		
(Alternate method.....)	P	20-30	7	28	Light)	
Hair— <i>Festuca capillata</i>	P	10-25	10	28	KNO ₃	
Meadow— <i>Festuca elatior</i>	P	20-30	5	14	Light and KNO ₃ optional	
(Alternate method.....)	P	15-25	5	14)		
Red— <i>Festuca rubra</i>	P	15-25	7	21		
(Alternate method.....)	P	20-30	7	28	Light)	
Sheep— <i>Festuca ovina</i>	P	15-25	7	21		
(Alternate method.....)	P	20-30	7	28	Light)	
Tall— <i>Festuca arundinacea</i>	P	20-30	5	14	Light and KNO ₃ optional	
(Alternate method.....)	P	15-25	5	14)		
Flax— <i>Linum usitatissimum</i>	B, T, S	20-30	3	7	Photos 2003, 2008, 2485, 2487	
Grams:						
Blue— <i>Bouteloua gracilis</i>	P, TB	20-30	7	28	Light	KNO ₃
Side-oats— <i>Bouteloua curtipendula</i>	P	15-30	7	28	Light; KNO ₃	
Guineagrass— <i>Panicum maximum</i>	P	20-30	10	28	Light	
Hardinggrass— <i>Phalaris tuberosa</i> var. <i>stenoptera</i>	P	10-30	7	28	Light	KNO ₃
Hemp— <i>Cannabis sativa</i>	B, T	20-30	3	7		
Indiangrass, yellow— <i>Sorghastrum nutans</i>	P, TS	20-30	7	28	Light; KNO ₃	Prechill at 5° C. for 2 weeks.
Indigo, hairy— <i>Indigofera hirsuta</i>	B	20-30	5	14		
Japanese lawgrass— <i>Zoysia japonica</i>	P	35-20	10	28	Light; KNO ₃	
Johnsongrass— <i>Sorghum halepense</i>	P	20-35	7	35	Light	KNO ₃
Kudzu— <i>Pueraria thunbergiana</i>	T	20-30	5	14		
Lespedeza:						
Korean— <i>Lespedeza stipulacea</i>	B, S	20-35	5	14		
Sericea or Chinese— <i>Lespedeza cuneata</i> (<i>L. sericea</i>).....	B, S	20-35	7	28	Photo 2494	
Siberian— <i>Lespedeza hedyaroides</i>	B, S	20-35	7	21		
Striate (Common, Kobe, Tenn. 76)— <i>Lespedeza striata</i>	B, S	20-35	7	14		
Lovegrass, sand— <i>Eragrostis trichodes</i>	P	20-35	5	14	Light, KNO ₃	Prechill at 5° or 10° C. for 6 weeks.
Lovegrass, weeping— <i>Eragrostis curvula</i>	P	20-35	5	14	Light	KNO ₃
Lupine:						
Blue— <i>Lupinus angustifolius</i>	T, S	20	4	10	Photos 14535-14542	
White— <i>Lupinus albus</i>	T	20	3	10		
Yellow— <i>Lupinus luteus</i>	T	20	7	10		
Manilagrass— <i>Zoysia matrella</i>	P	35-20	10	28	Light; KNO ₃	
Meadow foxtail— <i>Alopecurus pratensis</i>	P	20-30	7	14	Light	
Medick, black— <i>Medicago lupulina</i>	B, S	20	4	17	See par. (b) (11).	
Millet:						
Browntop— <i>Panicum ramosum</i>	B	20-30	4	14	Light; KNO ₃	Prechill at 35° or 40° C. for 7 days; or test at 30° C.
Foxtail—Such as common, white wonder, German, Hungarian, Siberian, or Golden-Setaria italica.....	B	20-30	4	10		
Japanese— <i>Echinochloa crusgalli</i> var. <i>frumentacea</i>	B	20-30	4	10		
Pearl— <i>Pennisetum glaucum</i>	B	20-30	3	7		
Proso— <i>Panicum miliaceum</i>	B	20-30	3	7		
Molassesgrass— <i>Meibomia minutiflora</i>	P	20-30	7	21	Light	
Mustard:						
Black— <i>Brassica nigra</i>	P	20-30	3	7	Light	KNO ₃ and prechill at 10° C. for 3 days.
White— <i>Brassica hirta</i>	P	20-30	3	5	Light	
Napiergrass— <i>Pennisetum purpureum</i>	B	20-30	3	10		
Oat— <i>Avena</i> spp.....	B, T, S	20; 15	5	10	Photos 2407, 2408, 2524-2527, 19545, 19546.	Prechill at 5° or 10° C. for 5 days and conclude test on 7th day or predry.
Oatgrass, tall— <i>Arrhenatherum elatius</i>	P	20-30	6	14	Light	
Orchardgrass— <i>Dactylis glomerata</i>	P, TS	20-30	7	21	Light; germination more rapid on soil.	
Panicgrass, blue— <i>Panicum antidotale</i>	P, TS	20-30	7	28	Light	
Peanut— <i>Arachis hypogaea</i>	T, S	20-30	5	10	Remove shells; Photos 19541, 19542	Test at 30° C.
Pea, field— <i>Pisum sativum</i> var. <i>arvense</i>	T, S	20	3	18	Photos 2503, 2506, 14543-14547	
Rape:						
Annual— <i>Brassica napus</i> var. <i>annua</i>	B	20-30	3	7		
Bird— <i>Brassica campestris</i>	P	20-30	3	10	Light	KNO ₃
Turnip— <i>Brassica campestris</i> var.	B	20-30	3	7		
Winter— <i>Brassica napus</i> var. <i>biennis</i>	B	20-30	3	7		
Redtop— <i>Agrostis alba</i>	P, TB	20-30	5	10	Light	KNO ₃
Rescuegrass— <i>Bromus catharticus</i>	P, S	10-30	7	28	Light; see par. (b) (8) for alternate method.	In soil at 15° C.
Rhodesgrass— <i>Chloris gayana</i>	P	20-30	6	14	Light; KNO ₃	
Rice— <i>Oryza sativa</i>	T, S	20-30	5	14	Photos 19549, 19550; see par. (b) (9) for alternate method.	
Ricegrass, Indian— <i>Oryzopsis hymenoides</i>	P	15	7	42		Prechill at 5° C. for 4 weeks and test for 21 additional days.
Roughpea— <i>Lathyrus hirsutus</i>	T	20	7	14		
Rye— <i>Secale cereale</i>	B, T, S	20; 15	4	7	Photos 2403, 2408, 2528-2531	Prechill at 5° or 10° C. for 5 days, or predry.
Ryegrass:						
Italian— <i>Lolium multiflorum</i>	P, TB	20-30; 10-30	5	14	Light; KNO ₃ ; see par. (b) (10) for fluorescence test.	Prechill at 5° C. for 5 days; see par. (a) (2). Do.
Perennial— <i>Lolium perenne</i>	P, TB	20-30; 10-30	5	14	do	
Safflower— <i>Carthamus tinctorius</i>	T, S	20	4	8		
Sainfoin— <i>Onobrychis viciifolia</i>	B, T	20-30	4	14		
Sesame— <i>Sesamum orientale</i>	P	20-30	3	6		
Sesbania— <i>Sesbania exaltata</i>	T	20-30	5	17		
Smilo— <i>Oryzopsis miliacea</i>	P	20-30	7	42	Light	Prechill at 5° C. for 2 weeks.
Sorghum:						
Grain and Sweet— <i>Sorghum vulgare</i>	B, T, S	20-30	4	10	Photos 2413-2416	Prechill at 5° or 10° C. for 5 days.
Sourclover— <i>Melilotus indica</i>	B	20	3	14	See paragraph (b) (11)	
Soybean— <i>Glycine max</i>	T, S	20-30; 25	5	18	Photos 2371, 2372, 2375	
Spelt— <i>Triticum spelta</i>	B, T, S	20; 15	4	7		Prechill at 5° or 10° C. for 5 days, or predry.
Sudangrass— <i>Sorghum sudanense</i>	B, T, S	20-30	4	10	Photos 2449-2452	Prechill at 10° C. for 5 days.
Sunflower (Cult.)— <i>Helianthus annuus</i>	T, B	20-30	3	7		
Sweetclover:						
White— <i>Melilotus alba</i>	B, S	20	4	17	Photos 2374, 2375, 2376, 2381; see par. (b) (11).	
Yellow— <i>Melilotus officinalis</i>	B, S	20	4	17	do	
Sweet vernalgrass— <i>Anthoxanthum odoratum</i>	P	20-30	6	14	Light	
Witchgrass— <i>Panicum virgatum</i>	P, TS	15-30	7	28	Light; KNO ₃	Prechill at 5° C. for 2 weeks.

¹ Hard seeds often present.

TABLE 2—GERMINATION REQUIREMENTS FOR INDICATED KINDS—Continued

Name of seed	Substrata	Temperature	First count	Final count	Additional directions	
					Specific requirements and photo numbers	Fresh and dormant seed
<i>Agricultural seed—Continued</i>						
Timothy— <i>Phleum pratense</i>	P, TH	°C. 20-30	Days 5	Days 10	Light; photo 2399; see par. (a) (9)....	KNO ₃ .
Trefoil:						
Bij— <i>Lotus uliginosus</i> (L. major).....	B	20	5	10	.....	.....
Birdsfoot— <i>Lotus corniculatus</i>	B	20	5	10	Photos 19531, 19532.....	KNO ₃ .
Vazeygrass— <i>Paspalum urvillei</i>	P	20-35	7	21	Light.....	.....
Veldgrass— <i>Ehrharta calycina</i>	P	10-30	7	28	Light.....	.....
Velvetbean— <i>Stizelabium deeringianum</i>	T, S, C	20-30	3	14	Photos 19539, 19540.....	.....
Velvetgrass— <i>Holcus lanatus</i>	P	20-30	6	14	Light.....	.....
Vetch:						
Common— <i>Vicia sativa</i>	T	20	5	10	.....	.....
Hairy— <i>Vicia villosa</i>	T	20	5	14	.....	.....
Hungarian— <i>Vicia pannonica</i>	T	20	5	10	.....	.....
Monantha— <i>Vicia articulata</i> (V. menantha).....	T	20	5	10	.....	.....
Narrowleaf— <i>Vicia angustifolia</i>	T	20	5	14	.....	.....
Purple— <i>Vicia atropurpurea</i>	T	20	5	10	.....	.....
Woollypod— <i>Vicia dasycarpa</i>	T	20	5	14	.....	Prechill at 10° C. for 5 days and test at 15° C.
Wheat:						
Common— <i>Triticum aestivum</i>	B, T, S	20;15	4	7	Photos 2507, 2522.....	Prechill at 5° or 10° C. for 5 days, or predry.
Club— <i>Triticum compactum</i>	B, T, S	20;15	4	7	do.....	Do.
Durum— <i>Triticum durum</i>	B, T, S	20;15	4	10	do.....	Do.
Polish— <i>Triticum polanicum</i>	B, T, S	20;15	4	7	do.....	Do.
Poulard— <i>Triticum turgidum</i>	B, T, S	20;15	4	7	do.....	Do.
Wheatgrass:						
Fairway crested— <i>Agropyron cristatum</i>	P, TB	20-30	5	14	do.....	KNO ₃ and prechill at 5° or 10° C. for 7 days.
(Alternate method.....)	P, TB	15-25	5	14	do.....	.....
Standard crested— <i>Agropyron desertorum</i>	P, TB	20-30	5	14	do.....	KNO ₃ and prechill at 5° or 10° C. for 7 days.
(Alternate method.....)	P, TB	15-25	5	14	do.....	.....
Intermediate— <i>Agropyron intermedium</i>	P	20-30	5	28	Light.....	.....
Pubescent— <i>Agropyron trichophorum</i>	P	20-30	5	28	do.....	.....
Slender— <i>Agropyron trachycaulum</i>	P, TB	20-30	5	14	do.....	.....
Tall— <i>Agropyron elongatum</i>	P	20-30	5	21	do.....	.....
Western— <i>Agropyron smithii</i>	P, B	15-30	7	28	Light optional.....	KNO ₃ or soil.
Wild rye:						
Canada— <i>Elymus canadensis</i>	P	15-30	7	21	Light.....	Prechill at 5° C. for 2 weeks.
Russian— <i>Elymus junceus</i>	P	20-30	5	14	.....	.....
<i>Vegetable seed</i>						
Artichoke— <i>Cynara scolymus</i>	T	20-30	7	21	Photos 19533, 19534.....	.....
Asparagus— <i>Asparagus officinalis</i>	T, S	20-30	7	21	.....	.....
Asparagusbean— <i>Vigna sesquipedalis</i>	T, S	20-30	5	18	.....	.....
Beans:						
Garden— <i>Phaseolus vulgaris</i>	T, S	20-30;25	5	18	Photos 1834, 1835, 1846, 1854, 1855.....	.....
Lima— <i>Phaseolus lunatus</i> var. <i>macrocarpus</i>	T, C, S	20-30	5	19	Photos 2380, 2400, 2401.....	.....
Runner— <i>Phaseolus coccineus</i>	T, S	20-30	5	19	.....	.....
Beet— <i>Beta vulgaris</i>	B, S	20-30	3	14	See par. (b) (3); photos 19557, 19558.....	Prechill at 10° C. for 3 days.
Broadbean— <i>Vicia faba</i>	S, C	20	4	14	See para. (b) (1).....	Prechill at 5° or 10° C. for 3 days; KNO ₃ and light.
Broccoli— <i>Brassica oleracea</i> var. <i>botrytis</i>	B, P	20-30	3	10	.....	Do.
Brussels sprouts— <i>Brassica oleracea</i> var. <i>gemmifera</i>	B, P	20-30	3	10	.....	Do.
Cabbage— <i>Brassica oleracea</i> var. <i>capitata</i>	B, P	20-30	3	10	Photos 19551, 19552.....	.....
Cabbage, Chinese— <i>Brassica pekinensis</i>	B	20-30	3	7	.....	.....
Cardoon— <i>Cynara cardunculus</i>	T	20-30	7	21	Photos 19547, 19548.....	.....
Carrot— <i>Daucus carota</i>	B	20-30	6	21	Photo 19561.....	.....
Cauliflower— <i>Brassica oleracea</i> var. <i>botrytis</i>	B, P	20-30	3	10	.....	Prechill at 5° or 10° C. for 3 days; KNO ₃ and light.
Celeriac— <i>Apium graveolens</i> var. <i>rapacolum</i>	P, TB	10-20;20	10	21	Light at 20° C. constant; see par. (a) (9).....	.....
Celery— <i>Apium graveolens</i> var. <i>dulce</i>	P, TB	10-20;20	10	21	do.....	KNO ₃ and prechill at 19° C. for 3 days.
Chard, Swiss— <i>Beta vulgaris</i> var. <i>ciela</i>	B, S	20-30	3	14	See par. (b) (3).....	.....
Chicory— <i>Cichorium intybus</i>	P, TS	20-30	5	14	Light; KNO ₃ or soil; photo 2504; see par. (a) (9).....	Test at 30° C.
Citron— <i>Citrus vulgaris</i>	T	20-30	7	14	Soak seeds 6 hours.....	Prechill at 5° or 10° C. for 3 days; KNO ₃ and light.
Collards— <i>Brassica oleracea</i> var. <i>acephala</i>	B, P	20-30	3	10	.....	.....
Corn, sweet— <i>Zea mays</i>	T, S	20-30; 25	4	7	Photos 2510-2512, 2514.....	Test at 10° or 15° C.
Cornsalad (Fetticus)— <i>Valerianella locusta</i> var. <i>olitoria</i>	B	20	7	28	.....	.....
Cowpea— <i>Vigna sinensis</i>	T, S	20-30	5	18	Photos 1989, 1990, 2377.....	.....
Cress:						
Garden— <i>Lepidium sativum</i>	B, P	20	4	10	.....	Test at 15° C. and light.
Water— <i>Horippa nasturtium-aquaticum</i>	P	20-30	4	14	Light.....	.....
Cucumber— <i>Cucumis sativus</i>	B, T, S	20-30	3	7	Keep substratum on dry side; see par. (a) (3); photos 19535, 19536.....	.....
Dandelion— <i>Taraxacum officinale</i>	F, TB	20-30	7	21	Light; see par. (a) (9).....	.....
Eggplant— <i>Solanum melongena</i> var. <i>esulentum</i>	P, TB, HB	20-30	7	14	.....	Light; KNO ₃ . ¹
Endive— <i>Cichorium endivia</i>	P, TS	20-30	5	14	Light; KNO ₃ or soil.....	See pars. (a) (9) and (b) (6).
Kale— <i>Brassica oleracea</i> var. <i>acephala</i>	B, P	20-30	3	10	.....	Prechill at 5° or 10° C. for 3 days; KNO ₃ and light.
Kale, Chinese— <i>Brassica oleracea</i> var. <i>alboglabra</i>	P, B	20-30	3	10	.....	Light; KNO ₃ ; Prechill at 5° or 10° C. for 3 days.
Kohlrabi— <i>Brassica oleracea</i> var. <i>gongyloides</i>	B, P	20-30	3	10	.....	Prechill at 5° or 10° C. for 3 days; KNO ₃ and light.
Leek— <i>Allium porrum</i>	B	20	6	14	.....	.....
Lettuce— <i>Lactuca sativa</i>	P	20	none	7	Light for at least ½ hour [par. (b) (7)]; photos 2417, 2418, 19559, 19560.....	Prechill at 10° C. for 3 days or test at 15° C.
Muskmelon (cantaloup)— <i>Cucumis melo</i>	B, T, S	20-30	4	10	Keep substratum on dry side [par. (a) (3)].	.....
Mustard— <i>Brassica juncea</i>	P	20-30	3	7	Light.....	Prechill at 10° C. for 7 days and test for 5 additional days; KNO ₃ .
Mustard, spinach— <i>Brassica perviridis</i>	B	20-30	3	7	.....	.....
Okra— <i>Hibiscus esculentus</i>	T	20-30	4	14	Photos 19543, 19544.....	.....
Onion— <i>Allium cepa</i>	B	20	6	10	Photos 1962, 2253, 2254, 2328, 2330, 2340, 2341, 2469.....	.....
(Alternate method.....)	S	20	6	12	.....	.....
Onion, Welsh— <i>Allium fistulosum</i>	B	20	6	10	.....	.....
Pak-choi— <i>Brassica chinensis</i>	B	20-30	3	7	.....	.....
Parsley— <i>Petroselinum hortense</i> (P. crispum).....	B, TS	20-30	11	28	.....	.....

¹ Hard seeds often present.

TABLE 2—GERMINATION REQUIREMENTS FOR INDICATED KINDS—Continued

Name of seed	Substrata	Temperature	First count	Final count	Additional directions	
					Specific requirements and photo numbers	Fresh and dormant seed
Vegetable seed—Continued						
Parsnip— <i>Pastinaca sativa</i>	B, TS	20-30	6	28	Photos 2492, 2498-2500.....	Light and KNO ₃ .
Pea— <i>Pisum sativum</i>	T, S	20	5	18		
Pepper— <i>Capsicum</i> spp.....	P, TB, RB	20-30	6	14	Keep substratum on dry side [par. (a) (3)].	Prechill at 10° C. for 3 days. Test at 15° C.
Pumpkin— <i>Cucurbita pepo</i>	T, S	20-30	4	7		
Radish— <i>Raphanus sativus</i>	B	20	4	6	Photos 2554, 19555, 19556.....	Prechill at 10° C. for 3 days. Test at 15° C.
Rhubarb— <i>Rheum rhabonticum</i>	TB, TS	20-30	7	21	Light	
Rutabaga— <i>Brassica napus</i> var. <i>napobrassica</i>	B	20-30	3	14	Light.	Prechill at 10° C. for 3 days. Test at 15° C.
Calsify— <i>Tragopogon porrifolius</i>	T	20	5	10		
Sorrel— <i>Rumex acetosa</i>	P, TB, TS	20-30	3	14	Photos 2371, 2372, 2378.....	Prechill at 10° C. for 3 days. Test at 15° C.
Soybean— <i>Glycine max</i>	T, S	20-30; 25	5	18		
Spinach— <i>Spinacia oleracea</i>	TB	15; 10	7	21	Keep substratum on dry side [par. (a) (3)].	Prechill at 10° C. for 3 days. Test at 15° C.
Spinach, New Zealand— <i>Tetragonia expansa</i>	TS	10-30	5	28	Keep substratum on dry side [par. (a) (3)].	
(Alternate method)	B	15	5	21	Remove pulp from "seeds".	Light; KNO ₃ .
Squash— <i>Cucurbita moschata</i> and <i>C. maxima</i>	T, S	20-30	4	7	Keep substratum on dry side [par. (a) (3)]; photos 19537, 19538.	
Tomato— <i>Lycopersicon esculentum</i>	B, P, RB	20-30	5	14	Photo 2513.....	Light; KNO ₃ .
Tomato, husk— <i>Physalis pubescens</i>	P, TB	20-30	7	28	Light; KNO ₃	
Turnip— <i>Brassica rapa</i>	B	20-30	3	7	Keep substratum on dry side [par. (a) (3)].	Test at 30° C.
Watermelon— <i>Citrullus vulgaris</i>	T, S	20-30; 15	4	14		

¹ Hard seeds often present.

30. In § 201.59 delete the first two words in the first sentence and amend the second sentence to read: "Tolerances for purity percentages and germination percentages provided for in §§ 201.60 and 201.61 shall be determined from the mean of (a) the results being compared, or (b) the result found by test and the figures shown on a label, or (c) the result found by test and a standard. All other tolerances, including tolerances for pure-live seed, tolerances for pure seed based on 400- to 1000-seed tests, and tolerances for field and greenhouse tests for determination of kind, variety, or type shall be determined from the result or results found in the administration of the act."

31. Section 201.60 is amended as follows:

a. Change the first sentence in the second undesignated paragraph to read: "An additional tolerance shall be allowed for the following kinds of seeds (a) when any one kind constitutes the principal component of the sample, (b) in mixtures containing these kinds, singly or combined, in excess of 50 percent of the whole, and (c) in mixed and unmixed seeds wherein the chaffy seed plus the empty florets and/or spikelets exceed 50 percent of the sample."

b. Add to the list of subject kinds of seed the following: "Buffel grass, Hairy intermediate wheatgrass, Intermediate wheatgrass, Tall wheatgrass, and Veldtgrass."

32. In the list in § 201.61 delete the heading "Found by test" and insert therefor the following:

Mean (See § 201.59)

33. In § 201.64a change the section heading and the first sentence to read as follows:

§ 201.64a *Pure seed percentages based on 400- to 1000-seed tests.* Tolerances for pure seed percentages based on 400- to 1000-seed separations and fluorescence tests shall be: (a) Those set forth in the following table plus (b) one-half the regular pure seed tolerances deter-

mined in accordance with § 201.60. The sum of these two tolerances shall be applied to the result or results obtained in the administration of the act.

34. Following § 201.64a, insert a new undesignated section to read as follows:

§ 201.— *Field and greenhouse tests for determination of kind, variety, or type.* The following table of tolerances shall be used for field and greenhouse tests for determination of kind and variety:

Percentage purity found by test ¹	Number of plants—									
	50-74	75-99	100-149	150-199	200-249	250-299	300-349	350-399	400-799	800 or more
	Tolerance in percent									
95-100.....	10.0	9.5	8.5	8.0	7.5	7.0	6.5	6.0	5.5	5.0
90-94.....	10.5	10.0	9.0	8.5	8.0	7.5	7.0	6.5	6.0	5.5
85-89.....	11.0	10.5	9.5	9.0	8.5	8.0	7.5	7.0	6.5	6.0
80-84.....	11.5	11.0	10.0	9.5	9.0	8.5	8.0	7.5	7.0	6.5
75-79.....	12.0	11.5	10.5	10.0	9.5	9.0	8.5	8.0	7.5	7.0
70-74.....	12.5	12.0	11.0	10.5	10.0	9.5	9.0	8.5	8.0	7.5
65-69.....	13.0	12.5	11.5	11.0	10.5	10.0	9.5	9.0	8.5	8.0
60-64.....	13.5	13.0	12.0	11.5	11.0	10.5	10.0	9.5	9.0	8.5
55-59.....	14.0	13.5	12.5	12.0	11.5	11.0	10.5	10.0	9.5	9.0
50-54.....	14.5	14.0	13.0	12.5	12.0	11.5	11.0	10.5	10.0	9.5

¹ The tolerance for any value below 50 percent is the tolerance on the difference between 100 percent and the figure for which the tolerance is being determined. Thus, the tolerance on 45 percent for 400 plants would be: 100-45=55; tolerance equals 9.5 percent.

35. Amend § 201.65 as follows:

a. In the formula for "percent perennial ryegrass," under paragraph (a), delete "percent fluorescence + percent nonfluorescence" and substitute therefor the words "percent germination."

b. Amend paragraph (b) *Sweetclover* to read as follows:

(b) *Sweetclover.* In determining the percentage of yellow blossom biennial sweetclover in a mixture of yellow and white blossom biennial sweetclover, at least 400 seeds shall be examined to determine the percentage of mottled seed. The percentage of mottled seed shall be multiplied by four and this product multiplied by the percentage of sweetclover in the sample. The product shall be construed as representing the percentage of yellow blossom sweetclover.

36. Renumber the sections of the regulations to the extent necessary to permit the insertion of new sections following §§ 201.47, 201.55, 201.57 and 201.65,

as proposed above; the assignment to present section 201.64a of a full section number immediately after present § 201.60; and the insertion of present §§ 201.65 and 201.66 immediately before present § 201.59.

37. In the list in § 201.101 insert in the proper alphabetical order the following:

- Castorbean.
- Lettuce.
- Rape, winter.
- Safflower.
- Sesame.

38. Amend § 201.102 by adding to the tabulation in proper alphabetical order the following names and percentages:

Bluestem, yellow.....	25
Buffelgrass.....	50
Lovegrass, sand.....	50
Veldtgrass.....	35
Wild-rye, Russian.....	60

39. Amend § 201.107 as follows:

a. In paragraph (a) add to the list of plant families in proper alphabetical order, the following:

Piperaceae—Pepper.

b. In paragraph (b) add to the list of incidental weed seeds in proper alphabetical order, the following:

Afileria—*Erodium cicutarium* (L.) L'Her.
Beggartweed—*Desmodium tortuosum* (Sev.) DC.
Bluegrass, annual—*Poa, annua* L.
Burnet, little—*Sanguisorba minor* Scop.
Dichondra—*Dichondra repens* Forst.
Sesbania—*Sesbania exaltata* (Raf.) Torr.

Amendments proposed by the American Seed Trade Association:

40. In § 201.22 delete the numeral "5" and insert in lieu thereof the numeral "8."

41. In § 201.31 delete the words "Beans, garden (varieties other than Rival, Topcrop, and Logan)—75" which appear as the 4th item in the list of germination standards, and delete from the 5th item the words "(varieties Rival, Topcrop, and Logan)."

Done at Washington, D. C., this 20th day of May 1955.

[SEAL]

EARL L. BUTZ,
Assistant Secretary.

[F. R. Doc. 55-4233; Filed, May 26, 1955;
8:45 a. m.]

[7 CFR Part 945]

[AO-265]

TOMATOES GROWN IN FLORIDA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED MARKETING AGREEMENT NO. 125 AND ORDER NO. 45

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900; 19 F. R. 57), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed Marketing Agreement No. 125 and Order No. 45, regulating the handling of tomatoes grown in the State of Florida, to be effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), hereinafter called the "act." Interested parties may file exceptions to this recommended decision with the Hearing Clerk, Room 112 Administration Building, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the twentieth day after publication of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The public hearing on the record of which the proposed marketing agreement and marketing order were formulated was held at West Palm Beach, Florida, on March 7-10, 1955, pursuant to notice thereof which was published February 10, 1955, in the FEDERAL REGISTER (20 F. R. 862). Such notice set forth the proposed marketing agreement and order which

were sponsored by producers and handlers of tomatoes in the State of Florida, as represented by officials of the Florida Fruit and Vegetable Association.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise federal jurisdiction;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the act;

(3) The definition of the commodity and determination of the production area to be affected by the marketing agreement and order;

(4) The identity of the persons and transactions to be regulated; and

(5) The specific terms and provisions of the proposed marketing agreement and order including:

(a) Definitions of terms used therein which are necessary and incidental to attain the declared objectives of the act, and including all those set forth in the notice of hearing, among which are those applicable to the following additional terms and provisions;

(b) The establishment, maintenance, composition, powers, duties, and operation of a committee, which shall be the administrative agency for assisting the Secretary in administration of the program;

(c) The authority for the committee to incur expenses and to levy assessments on shipments;

(d) The need for establishment of tomato marketing research and development projects;

(e) The method for limiting the handling of tomatoes grown in the production area;

(f) The methods for establishing minimum standards of quality and maturity;

(g) The methods for authorizing special regulations applicable to the handling of tomatoes for specified purposes or to specified outlets which may be handled under special regulations that are modifications or amendments to grade, size, and quality regulations;

(h) The necessity for inspection and certification of shipments;

(i) The relaxation of regulation in hardship cases and the methods and procedures applicable thereto;

(j) The procedure for establishing reporting requirements upon handlers;

(k) The requirements of compliance with all provisions of the marketing agreement and order and with regulations issued pursuant thereto; and

(l) Additional terms and conditions as set forth in §§ 945.82 through 945.95 and published in the FEDERAL REGISTER (20 F. R. 862) on February 10, 1955, which are common to marketing agreements and orders.

Findings and conclusions. The findings and conclusions on the aforementioned material issues, all of which are based on the evidence introduced at the hearing and the record thereof, are as follows:

(1) The major portion of the tomatoes grown in the Florida production area enter commercial market channels with the great bulk of such movement

going to destinations outside Florida. 1954-55 Florida tomato production is estimated at 4,965,000 bushels for the late fall and winter crops. Estimates of early spring production were not available at the time of the hearing. The 1953-54 Florida crop of tomatoes was estimated at 8,718,000 bushels out of which 19,068 carlot equivalents (including trucks), or approximately 7,627,200 bushels, were shipped in interstate or foreign commerce. The distribution of Florida tomatoes for the 1952 and 1953 calendar years was also widespread. Shipments were made in 1952 and 1953 to 34 States, the District of Columbia, the Provinces of Quebec, Ontario, Manitoba, and British Columbia, as well as to points within Florida. The major portion of the market for tomatoes in fresh form lies outside the production area.

Any handling of tomatoes grown in the State of Florida exerts a direct influence upon all other handling of tomatoes. It is a primary objective of tomato handlers, as it is also of all handlers of other commodities, to seek the highest return they can get for the tomatoes or other commodities they have to sell. In assessing the market outlook and in making sales, sellers survey all accessible markets with a view to accepting the most advantageous opportunities and offers to market their tomatoes. Successful handlers are forced by competition to maintain and keep abreast of all possible market information, particularly the level and trend of prices in specific markets both within the State of production and beyond the State border. Markets within the production area provide opportunities for handlers to effect sales the same as markets outside the State. The opportunity for advantageous sales are eagerly sought by handlers and such opportunities are accepted regardless of whether the tomatoes are sold at the shipping point, or at destination, or in consuming markets within the State of Florida, or in Boston, New York, Chicago, Atlanta, or any other market beyond the production area. Both buyers and sellers use the latest and most modern forms of communication not only to keep up with their competitors, but also to maintain the closest possible association with market conditions at every point where there may be a potential sale. Both shipping point handlers and receiving market handlers through close attention and modern communications quote, offer, bargain, buy, and sell tomatoes and thereby create an institution commonly referred to in the trade as "the tomato market." The tomato market is a combination of all the phenomena that relate to the supply of and demand for tomatoes in the producing area, the supply that is available for immediate marketing, the supply for marketing later, the quality of such supply, the supply of tomatoes in competing areas with various ramifications of quality and availability, prices quoted by sellers at shipping point and in receiving markets as well as at sundry points between, and a great variety of additional factors that influence both buyers and sellers in helping them to arrive at a

meeting of minds, a closing of contracts of sale, and a final consummation of contract through exchange of tomatoes and consideration.

These factors are interdependent as between shipping point and receiving markets. A factor or factors which influence the market at shipping point soon are reflected in prices in terminal markets, subject to the effect of location factors, and, in turn, factors influencing prices in receiving markets are soon reflected in the market at shipping point. For example, bad weather at shipping point may slow down the rate of grading and loading to such an extent that buyers will experience difficulty in filling orders and they will bid higher than otherwise for remaining supplies. In turn, the increase in price of tomatoes at shipping point will soon be reflected in the market at receiving points outside the production area. An alternative to the above example may involve a similar set of circumstances at shipping point, with bad weather holding up grading and loading, but if competing supplies in terminal markets take advantage of such situation by increasing the amount available the price of tomatoes in the terminal markets may not increase appreciably, if at all, and in turn prices at shipping point may also fail to rise. It is a well established fact, and well recognized in the tomato market, that a sale of a particular quantity of tomatoes in a market within that portion of the State of Florida comprising the production area exerts a direct influence upon all other sales of such tomatoes, as also does a sale of tomatoes in a market within any other State. The movement and sale of tomatoes grown in Florida, whether to a market within or outside the production area, affects the price structure for all tomatoes grown in Florida.

Changes in the supply of tomatoes being marketed at any particular time and changes in estimates of tomato supplies available for market affect the price of tomatoes. Changes in the supply of tomatoes grown in the Florida production area, or any part thereof, have a direct effect on both terminal market and shipping point prices for all tomatoes. Tomatoes grown in any portion of the production area and marketed at any given season complete with other tomatoes marketed during such season whether such other tomatoes are grown in other portions of or outside of such production area.

Public agencies supply daily information relative to terminal tomato markets such as Boston, New York, Chicago, Atlanta, etc. and, during the active shipping season the same agencies supply similar information relevant to market information at shipping points in Florida, as well as shipping point prices for tomatoes grown in other producing areas. This published market information, and information which handlers receive through private communication, are closely followed by all handlers in an effort to keep up with competition and to maintain particular advantage to themselves so that they may continue to operate successfully.

Few, if any tomatoes grown within the production area, are produced specifically for any outlet other than the fresh market. However, a substantial tonnage of Florida tomatoes is moved to canning plants within the production area. During the 1953-54 season, for example, more than one million bushels or 11.5 percent of total Florida tomato production went for canning. Such tomatoes are those that remain in the fields after the salable fresh market crop has been picked and repicked and consist mostly of fruit considered too ripe for handling in fresh market channels. Sale of tomatoes to canners is a salvage operation by the industry. Such salvage operation is performed by picking crews hired by other than the producers. After the producer has picked all acceptable fresh market fruit, he usually sells the remaining fruit, on the vines, to a cannery or to a huckster on a per acre or other similar bulk basis. Although prices paid by canners are relatively low, such prices have a direct effect on the total returns to tomato producers. When prices of tomatoes moving into fresh market channels reach a point that picking for fresh market is no longer profitable, the returns to growers for canning tomatoes are extremely small.

It is a common practice for handlers to load tomatoes at shipping points within the State and to ship such tomatoes to markets within the State, particularly Jacksonville or Tampa, and before or upon arrival at such markets to divert the shipments to markets outside the State. Conversely, shipments originally directed to markets outside the State may be diverted to markets within the State for final disposition. This diversion from intended destination outside the State to markets within the State is a common practice, especially among truckers who are able to divert quickly in response to attractions from local prices. It is impossible in many cases at the time tomatoes are sold to a trucker to determine finally whether such tomatoes will be marketed by the trucker within the production area or at a point, or even several points outside the production area. The sale and movement of tomatoes grown within the production area are directly related whether such sale or such movement is within the production area or outside thereof.

The phenomena of sale and movement constitute the market for tomatoes and the interdependence of the markets both within and outside the State directly burdens, obstructs and affects interstate commerce. Phenomena making up the market for tomatoes constitute commerce which is so inextricably intermingled that all sale and movement of such tomatoes are either in the current of interstate or foreign commerce or directly burden, obstruct, or affect such commerce and therefore all such movement and sale of tomatoes grown in the production area should be subject to the authority of the act and of the marketing agreement and order which may be issued pursuant thereto.

(2) Prices for tomatoes grown in Florida have fluctuated rather widely during the past several years, reflecting disorderly marketing conditions that have adversely affected growers' returns. Production and price statistics for Florida tomatoes are reported by the Agricultural Marketing Service, United States Department of Agriculture, on the basis of three seasons within each crop year; namely, late fall, winter, and early spring. During the past 6 crop years, 1948-49 to 1953-54, the average farm price paid for Florida tomatoes has exceeded the Florida parity equivalent price in only one season. The farm price for the 1954-55 late fall season for Florida tomatoes averaged \$4.85 per bushel reflecting 95 percent of parity. During the 1953-54 early spring season, the average price paid was \$4.40 per bushel or 90 percent of parity. The comparable price reported for the 1953-54 winter crop was \$4.55 or 84 percent of parity. Late fall average farm prices for Florida tomatoes have varied from \$4.20 to \$6.60 per bushel for the past ten seasons, 1945-54. Prices during this 10-season span have reflected returns to farmers ranging from 77 percent to 117 percent of parity. Even greater fluctuation is reported in the season average farm prices paid for Florida winter-season tomatoes. For the last nine seasons, the per bushel price has varied from \$3.75 to \$7.20 or from 63 to 126 percent of parity. Similar price data for the past nine early spring seasons show average prices ranging from a low of \$4.15 per bushel up to \$6.00; this reflects parity levels of 77 to 122 percent.

Volume shipments of Florida tomatoes usually begin in November and continue into June of each crop year. During this marketing period, there is a rather wide range in prices with sharp, short time fluctuations in such prices within seasons, from season to season, and among different grades and sizes of tomatoes. 1953-54 season f. o. b. shipping point data in the Fort Pierce section bear out the above. Tomatoes of 70-85 percent or more U. S. No. 1 quality in 60-pound crates, 6 x 6's or larger, brought \$14.00-16.00 for the week ending November 27, 1953. During the same week 6 x 7's realized \$13.00-15.00; 7 x 7's, \$11.00-12.00; and 7 x 8's \$8.00-9.00. Comparable prices for the Fort Pierce early spring crop were considerably lower. In May 1954, 6 x 6's were \$7.00-8.50; 6 x 7's \$5.00-7.50; 7 x 7's, \$3.00-5.00; 7 x 8's \$2.00-3.50. During the height of the Dade County shipping season (mid-March 1954) the price paid for 6 x 6's of the above mentioned quality was \$7.50-8.50; 6 x 7's brought \$5.00-6.00; 7 x 7's, \$3.00-4.00; and 7 x 8's \$1.50-2.25 per 60 pound-crate. For the 1953-54 winter "deal" in the Fort Myers-Immokalee section, 6 x 6's and larger were \$7.00-8.00 with 6 x 7's a dollar less. During April 1954 tomatoes from the same section were \$8.00-9.00 for 6 x 6's; 6 x 7's were \$7.00 to 8.00. During May 1954 in the Manatee-Ruskin Section, 6 x 6's closed out at \$8.50 to 9.00 with 6 x 7's a dollar cheaper.

Examination of the records of a growers' cooperative which were submitted at the hearing clearly indicates the advantage accruing to the grower who sells

high quality produce and shows the penalty suffered when such produce is of less acceptable grade and sizes. For example, the records disclosed that, during May 1952, No. 1 6 x 6's in 60-pound wire bound crates netted the grower \$4.16, No. 2 6 x 6's realized \$2.54, and No. 2 7 x 7's returned only 20 cents. Similar data for the April 30-May 3, 1953, period show a greater spread in such prices with No. 1 6 x 6's bringing \$4.56, No. 2 6 x 6's realized only \$1.65 while the grower suffered a net loss of 10 cents per package on the No. 2 7 x 7's. Again, during the following season (May 1954), there was a wide price spread ranging from \$6.42 for No. 1 6 x 6's to \$0.90 for No. 2 7 x 7's. All of these prices reflect net returns paid to growers by the cooperative during a short period in each of the last three seasons.

The quantity of tomatoes available on the market at any given time, either daily or seasonally, has a direct effect upon the price which producers receive for their tomato crops. Florida producers grow a major portion of the domestically grown tomatoes during the late fall, winter, and early spring seasons covering the period November through May. The quantity of tomatoes put on the market by Florida producers or handlers also has a direct effect upon the price of all tomatoes, particularly the price which Florida growers receive for their crop. The price of tomatoes in the market is a direct function not only of the total quantity of tomatoes being marketed, but also of the quality of tomatoes as reflected by the different prices paid by grades and sizes for such tomatoes. Certain grades and sizes of tomatoes return higher prices to producers than other grades and sizes. For example, U. S. No. 1 quality tomatoes normally return a higher price than U. S. No. 2 grade tomatoes, and a considerably higher price than tomatoes which are of lower quality than U. S. No. 2. Such low quality tomatoes are commonly referred to in trade circles as "No. 3's" and sometimes as "culls." Small sized tomatoes, such as 8 x 8's and 7 x 8's, also return less to the grower than the usual preferred sizes; 6 x 7's, 6 x 6's, and larger.

Shipments of immature and over-ripe tomatoes have the same detrimental effect on returns to growers as do poor quality or undesirable sizes of tomatoes.

It is a common and usual practice among the great majority of handlers to eliminate the small size tomatoes, culls, and over-ripe stock, and in many cases the "No. 3's" also, when they are grading tomatoes for market. Such poor quality tomatoes and discounted sizes and undesirable maturity are removed. These handlers have found from experience it pays them to do so because the adulteration of the better packs, which constitute the bulk of their crop, with the poorer grades, maturity, and sizes forces the price down on all of their sales. However, some handlers continue to sell culls and off-sizes because they frequently are able to buy them at exceptionally low prices from the grower and to sell them at a small discount from average prices, thereby giving the handler as much or even a greater margin than they could expect from handling

usual good quality and the more desirable sizes of tomatoes. The withholding of poor grades and undesirable maturities and sizes of tomatoes from markets in effect reduces the available market supply of such tomatoes. By reducing the quantity being marketed as well as eliminating discounts from average price, growers' prices for tomatoes are thereby improved.

The sale of cull tomatoes tends, not only to return discounted prices to growers, but also give only limited satisfaction to consumers and such sale operates against repeat sales. It is not in the public interest to sell cull tomatoes under normal conditions because the evidence shows that consumers fail to obtain proper value for their expenditures as compared with purchases of good quality tomatoes, and the returns to growers are adversely affected thereby tending to destroy the value of agricultural assets which support the national credit structure, and these conditions, in turn affect transactions in agricultural commodities with a national public interest.

Prices to Florida tomato producers and total returns of such producers could be augmented by handling only the more preferred grades, sizes, and maturities of such tomatoes. Voluntary efforts have been made and practiced by individual producers and handlers in Florida to eliminate some of the "culls" or "No. 3's", especially when the average price level to Florida tomato producers was low, but such voluntary efforts have not raised producers' prices and returns appreciably when other handlers continue to ship culls and small sizes to the detriment of all other tomato producers and handlers and contrary to the public interest of the Florida tomato industry.

The orderly marketing of tomatoes grown in Florida has been disrupted and the purchasing power of the producers thereof has been impaired by reason of the handling of certain grades, sizes, qualities, and maturities of such tomatoes which have adversely affected prices returned to tomato producers.

A marketing agreement and order is necessary to authorize regulation of the sale and transportation of tomatoes grown in Florida so that more orderly marketing conditions for such tomatoes may be established. The establishment of more orderly marketing conditions as brought about by marketing agreement and order regulations will tend to establish parity prices for tomatoes grown in Florida. A marketing agreement and order authorizing regulation of the handling of tomatoes will assist the Florida industry in establishing and maintaining such minimum standards of quality and maturity and such grading and inspection requirements for tomatoes grown in the production area which will effectuate such orderly marketing of such tomatoes as will be in the public interest. The adoption of a marketing agreement and order program by handlers of Florida tomatoes and the approval of such an order by Florida tomato producers will tend to promote more orderly marketing of such tomatoes and it will be in the public interest. It is hereby found that

the marketing agreement and order as hereinafter set forth will promote more orderly marketing of Florida tomatoes and the operation of such a program will tend to establish and maintain such orderly marketing conditions for Florida tomatoes as will establish, as the price to farmers, parity prices for such tomatoes.

(3) The term "tomatoes", as used in the marketing agreement and order, identifies the agricultural commodity referred to therein and distinguishes it from other agricultural commodities. The term "tomatoes" should be defined to mean all varieties of the edible fruit (*lycopersicon esculentum*) which are commonly referred to as tomatoes in the production area as well as throughout the United States. Tomatoes are one of the principal vegetable crops grown by producers in the production area. Reference to "tomatoes" has a common and specific meaning to all growers and handlers in the production area as well as in other parts of the country. The definition of tomatoes, as set forth in the marketing agreement and order, establishes the identity of the agricultural commodity for which regulation is authorized. This definition establishes the commodity to which the handling activities related thereto are subject to the authority of the marketing agreement and order. The act authorizes marketing agreements and orders applicable to tomatoes, or to any regional or market classification thereof. Tomatoes of all varieties which are grown in the production area constitute a regional classification of tomatoes and regulation of the handling of such tomatoes as authorized by the marketing agreement and order will tend to effectuate the declared policy of the act. Tomatoes therefore should be defined in the marketing agreement and order to mean all varieties of tomatoes grown in the production area.

The term "production area" should be incorporated in the marketing agreement and order as a means of specifying the area within which tomatoes must be produced before the handling thereof is subject to regulation thereunder. Production area is defined to include all territory within the State of Florida south or east of the Suwanee River. The production area thus defined contains all of the tomato producing counties of commercial importance within Florida. No tomato acreage is reported for the 1953-54 crop year in any of the Florida counties outside of the production area. Although tomatoes are not now grown commercially in some of the counties within the production area, especially among some of the northern counties, such counties contain land areas capable of supporting commercial production of tomatoes and, as such, are potential growing areas.

There may be minor variations in practices and methods of production, harvesting, and marketing of tomatoes from growing section to growing section within the production area; perhaps one variety of tomatoes may be preferred for growing in the Fort Pierce section, another in the Immokalee area. Nevertheless, grading and quality standards

for commercial sales are the same throughout the production area. No producing section has a marketing season which is entirely separate and apart from the other sections' marketing seasons as shown by the tabulation of monthly rail and truck shipments for the various Florida tomato producing areas. Each section within the production area has to share and compete in common markets at the same time as one or more other sections. Undesirable grades, sizes, qualities, and maturities of tomatoes have the same effect in a market on the prices paid for Florida tomatoes irrespective of the producing section or sections. To divide the production area as defined would tend to defeat the purpose of a marketing agreement and order in that poor quality tomatoes from a section outside the area would depress the price of the tomatoes regulated and would have a similar effect on price as an illegal shipment from the regulated area.

Natural geographic and political boundaries favor the establishment of the production area as defined. The production area consists largely of the peninsula portion of the State of Florida bounded on the east, south, and west by the Atlantic Ocean and the Gulf of Mexico, on the northwest by the Suwannee River, and on the north by the State of Georgia. The Suwannee River and the State boundary do not bisect a tomato producing area. In addition, enforcement of regulations is favored by the fact that road guard stations, operated by the Citrus and Vegetable Division, Florida State Department of Agriculture, are strategically located at a number of highway outlets leading out of the production area. Also the number of rail outlets from such area is limited. There is no reasonable method or basis of dividing the production area into two or more areas for purposes of separate marketing agreements and orders. All territory included within the boundaries of the production area constitutes the smallest regional production area that is practicable, consistent with carrying out the declared policy of the act, and the production area, therefore, should be defined as hereinafter set forth.

(4) The term "handler" and "shipper" are synonymous and they should be defined to identify those persons who handle tomatoes in the manner described and set forth in the definition of "handle" because such persons are subject to the regulations authorized by the marketing agreement and order. Any person who is engaged in the act or acts of handling or shipping tomatoes, or who causes tomatoes to be handled or shipped, is a handler. Such persons are responsible for the grade, size, quality, and maturity of tomatoes delivered to transportation agencies, or which are transported or sold in the current of interstate or foreign commerce, or so as directly to burden, obstruct, or affect such commerce, and such persons are handlers.

Common or contract carriers transporting tomatoes which are owned by another person are performing a han-

dling function but such handling should not be regulated under the marketing agreement and order because such carriers are not responsible for the grade, size, quality, and maturity of the tomatoes being transported. Neither are they responsible for the introduction of such tomatoes into the stream of interstate commerce. Also the sole interest of common or contract carriers in such tomatoes is to transport them for a service charge to destinations selected by others. The responsibility for the grade, size, quality, and maturity of such tomatoes delivered to a common or contract carrier should be borne solely by the person or persons responsible for delivering such tomatoes to the carriers.

Therefore, the term handler or shipper should be defined to mean any person (except a common or contract carrier of tomatoes owned by another person) who handles tomatoes or causes tomatoes to be handled.

The term "handle" is defined in the marketing agreement and order to determine those transactions by handlers which fall within the authority for regulation under this program. Handle or ship are synonymous. Handle should include the act of shipping and the activities by handlers which are included within these terms. The handling of tomatoes under the marketing agreement and order begins with the movement of such tomatoes from the field where grown and continues to follow such tomatoes until they reach the local retailer or leave the production area. Handle also means the sale of tomatoes grown in the production area at any point between the time that they begin to move from the field until they reach the local retailer or leave the production area.

The growing and harvesting of tomatoes in the production area are producer functions and should be construed as operations of the producer in his capacity as a producer. The picking is a harvesting activity normally performed as a grower function, even though it is an essential preliminary to the marketing of tomatoes.

It is common practice during the harvest season for some tomatoes grown in the production area to move directly from the field to market. However, the great bulk of tomatoes picked are eventually subjected to grading and packing operations prior to movement to market.

The initial handling activities which start with the packing and loading of tomatoes at the time they begin to move from the field should apply to all tomatoes moving into market for fresh consumption except tomatoes being transported, sold, or delivered (i) to registered packing houses within the production area or (ii) to auction markets designated by the committee. In the case of the two exceptions the tomatoes are not being transported to market for immediate consumption and such tomatoes upon sale at auction or upon delivery to packing houses are then subjected to preparation for market, i. e., washing, grading and packing. The auction buyer and the packing house operator are handlers because each is re-

sponsible for preparation for market; each determines the grade, size, quality, and maturity of tomatoes entering market channels. No useful purpose would be served by attempting to include within the definition of handle the activities leading up to and including sale of tomatoes at auction markets or to delivery of tomatoes to registered packing houses within the production area because such tomatoes are not in the usual form in which the bulk of the crop is marketed; they have not yet been graded or prepared for market; most sellers and buyers do not consider them as usual or appropriate products for commercial transactions, and as such they have not yet entered the stream of commerce. In order to maintain control of such handling it is necessary that grading be performed within the production area.

Some growers who sell tomatoes from the field at the "end of the row" are handlers and, as such, should be held responsible for compliance with any rules and regulations issued pursuant to the marketing agreement and order. If, however, such grower should make a sale of tomatoes at the end of the row to a handler registered with the committee such registered handler should be the first handler of tomatoes and the grower would have no obligations under the marketing agreement and order. Such registered handler should assume any regulatory burdens with respect to such items as payment of assessments, inspection and certification, and compliance with grade and size regulations. This registration of handlers may be desirable, because some tomatoes are prepared for market at or near the fields where grown in locations which would impose a problem of enforcement and in the collection of assessments. The committee should have authority to register each handler-applicant who, according to committee determination, is responsible and who will conduct his packing and handling operations in accordance with program requirements. Persons making sales from the field to handlers not registered with the committee have not transferred any regulatory responsibilities but are still liable as handlers for program compliance. Each subsequent handler of such tomatoes should be held responsible for seeing to it that such tomatoes are properly inspected and certified and that they meet the applicable grade and size regulations. It has been common practice to ship tomatoes as they are picked from the field to repacking plants within Florida or occasionally to repacking plants outside the production area. This practice constitutes handling. The picking, packing, loading, hauling, or any other handling or movement of such tomatoes from the spot where grown places them in commerce by virtue of such movement and, in addition, such activities, with the exception of the activities heretofore indicated, cause the tomatoes to become a part of the visible supply of tomatoes which are available for market, and which directly burdens, obstructs, or affects interstate commerce. The sale of such tomatoes at any time during these initial marketing activities continues

such tomatoes in commerce because such sale constructively moves the tomatoes in the stream of commerce from the seller to the buyer or consignee and actual movement of such tomatoes in the stream of commerce pursuant to the instructions to the buyer or consignee constitutes sale or transportation, or both.

All tomatoes grown in the production area, which are produced for fresh market, are graded or prepared for market and such processing activities are handler functions in the marketing of such tomatoes which are included in the definition of handle.

The running of such tomatoes over a mechanical grader, or the preparation of such tomatoes for market by any other means, comes within the definition of handle because such activities determine the various outlets to which tomatoes can go and they have a direct effect upon the price which tomato growers shall receive for their crop. The matter of compliance with regulations which are authorized by the marketing agreement and order can be determined by the handler who is grading or preparing such tomatoes for market. The primary responsibility for the grade, size, and quality of tomatoes in any given unit, or in any given lot rests with the person or persons responsible for the grading operation and for the kind of tomatoes which are put in the crate or the shipping unit.

The act of selling such tomatoes makes the person who effects such sale a handler because such sale directly affects the market for tomatoes. The transportation of tomatoes also has a direct bearing on the market and the movement and sale of tomatoes, regardless of whether such sale or movement is within or outside the production area, is so inextricably intermingled that such activities cause such tomatoes to become a part of the stream of interstate commerce.

With the exception of the processes or activities specifically excluded from the definition of the term handle, all such activities, from the time tomatoes grown in the production area are picked until they are offered for retail sale within the production area by a person in his capacity as a retailer, or they move outside of the production area, are included in the process of handling. The definition of handle in the marketing agreement and order does not include the sale at retail of tomatoes by a person in his capacity as a retailer. The activities of the producer, including the growing and the harvesting of tomatoes, are not included in the definition of handle because such activities are construed as falling within the capacity of a producer as such.

(5) (a) Certain terms applying to specific individuals, agencies, legislation, concepts, or things are used throughout the recommended marketing agreement and order. Those terms should be defined for the purpose of designating specifically their applicability, and establishing approximate limitations of their respective meanings wherever they are used.

The definition of "Secretary" should include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for programs of this nature, but also, in order to recognize the fact that it is physically impossible for him to perform personally all functions and duties imposed upon him by law, any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

The definition of "act" provides the correct legal citation for the statute pursuant to which the proposed regulatory program is to be operative, and makes it unnecessary to refer to such citations thereafter.

The definition of "person" follows the definition of that term as set forth in the act, and will ensure that it will have the same meaning as used in the act.

"Producer" should be defined to mean any person who is engaged in a proprietary capacity in the production of tomatoes within the production area and who is producing such tomatoes for market. A definition of the term producer is necessary for appropriate determinations as to eligibility to vote for, and to serve as a member or alternate member of the committee, and for other reasons. The term should be limited to those who have an ownership interest in tomatoes produced in the production area. It should not include laborers or others who perform work for a fee or for hire in producing tomatoes.

Considerable controversy developed during the hearing with respect to the interpretation of the definition of producer. Numerous credit and financial arrangements are currently existent among persons connected with the growing and marketing of tomatoes in the production area which complicates the problem of determining who is a producer and who is not a producer for the purposes of the marketing agreement and order. A producer is any "person" who produces in a proprietary capacity tomatoes for market. "Person" is defined as an individual, partnership, corporation, association, or any other business unit—each of which should be considered a legal entity. Each legal entity, whether an individual, a partnership or "joint venture", or a corporation, so engaged in the production of tomatoes for market should have, for example, one voice in selecting committee members and alternates in one district.

The appropriate test for determining whether or not a person is entitled to be called a producer is whether he has the title to the particular tomatoes. A person who owns and farms land resulting in his ownership of the tomatoes produced on such land should clearly be considered as the producer of such tomatoes. The same is true with respect to a person who rents and farms land resulting in his ownership of all or a portion of the tomatoes produced thereon. Likewise, a person who owns land which he does not farm but, as rental for such land, obtains the ownership of a portion of the tomatoes produced thereon should be regarded as the producer of that portion, and the tenant on such land should

be regarded as the producer of the remaining portion produced on such land. In each of the above situations, where the person acquires ownership of all of the particular tomatoes, such person, regardless of whether an individual, partnership, association, corporation, or other business unit, should be considered as one producer and entitled to one vote. However, in cases where the ownership is divided, i. e., where one person obtains ownership of only a portion of the particular production and another person obtains ownership of the other portion of such production, each such person should be considered as a producer and entitled to one vote.

There is considerable variation in the types of partnerships, including the so-called "joint ventures". The most common type appears to be the arrangement whereby one person puts up all or a part of the capital and another contributes machinery and/or skill. Another arrangement provides that one person is responsible for selling the crop, another with growing and harvesting the tomatoes. Capital, machinery, and labor may be contributed in varying degrees by each of the partners. Nevertheless, the partnership is an entity, the producer, and thus should have only one vote, the same as an individual or corporation. Any action with respect to such an organization regarding voting matters depends, therefore, on the partnership agreement and action by the partners pursuant thereto, irrespective of whether the partnership is composed of individuals, corporations, or combinations thereof.

Numerous persons are engaged in tomato growing operations who are paid for their services on a wage or per unit of production basis. As heretofore indicated, if such persons do not have title to any of the tomatoes, they are merely laborers working for a stated fee and as such should not have a producer status under the marketing agreement and order.

"Grading" and "preparation for market" are synonymous and mean the sorting of tomatoes by hand or mechanical means, or both, so that such tomatoes are separated into grade, size, maturity, and pack. Such classifications are determined by the handler who directs, in person or through his agent, how and in what number of classes the particular lot of tomatoes shall be separated. Grading may vary from an operation performed entirely by hand in which certain tomatoes are picked out when they are being loaded at the field to a production line operation whereby tomatoes are carried by mechanical conveyor for washing and waxing thence to a series of moving belts and tables, where sizes are determined and good quality, as represented by grades, sizes, and maturities, or any combination thereof, is separated from bad so that the tomatoes which are to go to preferred price outlets are separated from those going to discounted price outlets. The grading or preparation for market is an operation which applies to all tomatoes grown in the production area, even though the extent to which tomatoes are separated into market classes may vary consider-

ably among the types of ultimate outlets. For example, sales of tomatoes in some fresh market outlets usually result in a lot of tomatoes being carefully graded so that only the preferred qualities and sizes are shipped to such outlets while the off grades and off sizes may go to less discriminating markets or canning plants which do not require such careful separation into market classifications.

Definitions of "grade" and "size" are incorporated in the marketing agreement and order to enable persons affected thereby to determine the basis for application of grade and size limitations to the product they handle. Grade and size, the essential terms in which regulations are issued, should be defined as comprehending the equivalents of the meanings assigned to these terms in (i) the official U. S. Standards for Fresh Tomatoes issued by the United States Department of Agriculture, (ii) the U. S. Consumer Standards for Fresh Tomatoes issued by the United States Department of Agriculture, and (iii) to modifications or amendments of such standards, and to variations of such standards by regulations under the marketing agreement and order. Regulations under the order can then use such terms (grade, size, and maturity) with the constant meaning assigned thereto in such standards, or in such modified or amended standards, or such regulation can vary such terms by prescribing, for example a percentage of grade, as may be required at the time of issuing such regulation. Official inspectors are qualified to certify to the grade, size, and maturity of tomatoes grown in the proposed production area, in terms of any one of the aforesaid standards, or modification, amendment, or variation thereof.

The U. S. Standards for Fresh Tomatoes are generally used for shipments of tomatoes from producing areas. However, it was testified that, in some instances, Florida tomatoes are graded in terms of the consumer standards and latitude for the application of the latter standards should be afforded.

"Pack" should be defined as the basis for distinguishing among the various units in which tomatoes are prepared for market and shipped. The term pack is commonly used throughout the tomato trade and refers to a combination of factors relating to grade, size, and maturity of the tomatoes and to the type of container. For example, 85 percent U. S. No. 1 grade tomatoes, 6 x 6's, when put in 60 pound wirebound crates may be referred to as a specific pack. U. S. No. 2, 6 x 7's, also may be termed a specific pack and with additional differentiation when packed in various types of containers. "Pack" should mean any pack of tomatoes as set forth in the U. S. Standards for Fresh Tomatoes and, in addition, should include any other packs recommended by the committee and approved by the Secretary. Since the trend in merchandising Florida tomatoes is toward the "jumble pack" as opposed to the place-pack, the committee should be permitted, under its rules and regulations, to define and establish such packs in addition to the U. S. Standard Packs as set forth in the official standards.

"Maturity" should be defined as included in the marketing agreement and order. Although the bulk of Florida tomatoes are marketed as "mature green", the so-called "pink deal" and vine ripened tomatoes are assuming a more important place in the market for Florida tomatoes. The application of different maturity stages to any regulations recommended by the committee would permit different regulations for the mature green tomatoes without inequitable regulation of the handling of either. Mature green tomatoes are firmer and less susceptible to bruising, growth cracks, and other injury or defects than are tomatoes shipped as "pinks" or vine ripened. Also local Florida markets, such as Tampa or Miami, prefer, and are better able to handle, more mature tomatoes than are such markets as New York and Boston because such tomatoes moving long distances are subjected to additional handling, which is more liable to cause damage in the case of more mature fruit. The sale of tomatoes with certain stages of maturity, such as the immature or overripe fruit, have price depressing effects on good quality tomatoes the same as do undesirable grades and sizes of tomatoes. Inspectors are qualified to inspect and certify as to maturity levels which may be recommended for handling and shipment by the committee on the same basis as they can for grade and size.

"Container" is defined in the marketing agreement and order as a basis for differentiating among the numerous shipping units in which tomatoes move to market and for the permissive application of different regulation to such different shipping units. Authority for regulation by type of container was enacted by the 83rd Congress as an amendment to the Agricultural Marketing Agreement Act of 1937, as amended. The Florida tomato industry, as represented by growers and shippers at the hearing, indicated that certain undesirable practices in the marketing of tomatoes relating to net weights and to numerous container types and sizes tend toward market disturbances. Use of the authority enacted in the recent container amendment to the act will provide a basis for alleviation of the problems associated with containers.

It is common practice in the production area for tomatoes to be moved from fields where grown to markets, packing houses, auctions, or other outlets in loose form within a truck body, herein termed bulkload. In many instances, such movement would be free of regulation in that the transportation thereof would be to registered handlers or to auction markets designated by the committee. However, in order that the term "bulk load" may be included within the definition of container and to preclude the handling thereof contrary to the purpose of the marketing agreement and order, the committee should have the authority to treat bulkloads as being subject to regulation under the container provisions. It was testified at the hearing that such a way of transportation often caused special damage to the tomatoes, much of which did not become apparent

until after they had reached market, and that there should be authority to prohibit the use of such a method. Any such regulation, however, may be effected by confining permissible containers for use in handling to other specified containers of specified sizes and dimensions.

The term "varieties" is included in the marketing agreement and order so that the committee may recognize the real differences in the characteristics of different varieties and the differences in types of regulations which might be considered and recommended therefor. The great bulk of tomatoes now being produced in Florida fall within the general varietal grouping known as the Globe-type. Among the more common names associated with this type are the Jefferson, Homestead, Manalucie, Rutgers, Grothen's Globe and Manasota. Certain of these varieties are preferred and may be more adaptable within particular sections of the production area. In another case, a particular variety may be more satisfactory than others when grown especially for the "pink" deal. Although the inspection service does not now ordinarily certify as to a particular variety but only as to general type, such would be possible should the committee establish a descriptive varietal basis for use by inspectors. The marketing agreement and order should authorize different regulations so that special treatment may be given to particular varieties or no regulation need be issued in the case of newly developed or other specified varieties because of the different marketing characteristics of particular varieties which committee members and others can recognize and distinguish. The means set forth in the definition of varieties is appropriate for determining different varieties of tomatoes grown in the production area.

The definition of "committee" is incorporated in the marketing agreement and order to identify the administrative agency which is responsible for assisting the Secretary in the administration of the program. Such committee is authorized by the act and the definition thereof minimizes the use of words in the marketing agreement and order.

A definition of "fiscal period" is incorporated in the marketing agreement and order to establish the beginning and end for an operating period. The establishment of such period which should comprise a full twelve months, is necessary for business-like administration of the marketing agreement and order and is desirable as a basis for establishing the term of office of committee members and alternates. The date marking the end of one fiscal period and the beginning of the new should fall at a time of little or no activity in the marketing of the tomato crop and should allow sufficient time for the committee to organize and be prepared to function prior to the start of the new marketing season. July 31 is after the end of the spring tomato deals in Florida and August 1 is the beginning of the fall planting season. There are no reported commercial shipments of tomatoes being made from Florida during this between-season time

of year. It is, therefore, appropriate that fiscal period should be defined as set forth in the marketing agreement and order.

"District" should be defined in the marketing agreement and order as referring to each of the geographical sections or divisions of the production area, either as initially established or as later reestablished, in order to provide a basis for the nomination and selection of committee members and for regulatory purposes. The proposed division into districts is adequate and equitable and it provides a practical basis for the purposes for which intended.

"Export" should be defined in the marketing agreement and order to include all shipments of tomatoes beyond the boundaries of the continental United States. Separate treatment for export shipments may be desirable and necessary because the nature of the demand for tomatoes in export markets may differ from the requirements in the domestic markets and, therefore, different or special regulations, or even no regulations, might be justified with respect to such shipments.

Canada is the most important export market for Florida tomatoes. Cuba also provides a market for a relatively minor quantity of tomatoes grown in the production area. Customarily Canadian consumers have preferred smaller sizes of tomatoes than are sold in many domestic markets. Also, in order that handlers of Florida tomatoes may be able to meet competition in export markets, and especially in Canada, sufficient flexibility should be allowed the committee in the regulation of such exports, or to provide that relaxation of or no regulations be applicable to shipments destined to export outlets.

It was testified that territories and possessions of the United States should be included under the term "export" because of the insignificant quantity shipped thereto and the fact that the situation in that connection is analogous to shipments to foreign countries.

(b) The marketing agreement and order should provide for the selection by the Secretary of an administrative committee, called the Florida Tomato Committee composed of 15 producer members. Establishment of this committee is desirable and necessary to aid the Secretary in carrying out the declared policy of the act and such committee is authorized by the act. Inasmuch as most producers within the production area also perform handler functions and are familiar with marketing conditions for tomatoes, no useful purpose would be served by providing for handler representation, as distinct from producer representation, on the committee.

The committee membership of 15 producers would be equitable and practicable. Evidence supports the finding that this plan of representation has received intensive study by the industry and that, after thorough consideration, such division of responsibility among 15 producers is appropriate.

Each producer member of the committee should be a producer, or an officer or employee of a corporate producer, of tomatoes in the district for which se-

lected and each such person should be a resident of the production area. A person with such qualifications should be intimately acquainted with the problems of producing or marketing tomatoes grown in such district and each may be expected to present accurately the problems incident to production or marketing of tomatoes grown in that district. The qualifications for each alternate should be the same as for the respective member for whom he may act. Such qualifications should help to assure that the interests of the group from which each is selected will be adequately represented in committee deliberations.

Each committee member and his respective alternate should serve a one year term of office ending July 31, and for any additional period needed for the selection and qualification of his successor. Such term of office is reasonable and will allow the tomato industry to express its approval or disapproval of the committee's membership at the end of any season and prior to the opening of a new season. Committee members and alternates should be selected for the fiscal period during which they are to serve and until their successors are selected and have qualified.

Districts are established to provide a basis for selection of committee members. The districts as initially established were worked out by a committee of industry spokesmen and they represent the best basis which could be devised at this time for providing a fair, adequate, and equitable representation on the committee.

The districts as set forth in the marketing agreement and order constitute what are generally known and recognized by the tomato trade as separate and distinct production sections. For example, District No. 1 is generally known as The Dade County section; District No. 2 includes the Fort Pierce "deal"; District No. 3 contains the Immokalee-Fort Myers area; District No. 4 is commonly referred to as the Manatee-Ruskin area, and includes also the Plant City-Wauchula section, and District No. 5 is known as North Central Florida, including the Marion and Sumter County "deals".

The provision for redistricting is desirable because it allows the committee to consider from time to time whether the basis for representation could be improved and how such improvements should be made. The guides as set forth in the marketing agreement and order which the committee should keep in mind in considering redistricting are appropriate and desirable points of reference that relate directly to the welfare of tomato producers and handlers.

It is practical and equitable that selection of committee members and alternates should be on the basis of districts as provided for in the marketing agreement and order. This would provide a geographical basis for selection of such members. Such geographical basis should be, and for purpose of initial membership has been, related to the number of producers and the production of tomatoes within the production area so that a practical basis for establishing equity has been reached. Although the

preponderance of tomato acreage or production may exist in 2 or 3 districts, other districts may contain a numerical superiority of producers. The evidence at the hearing indicates that, in view of the above, a balanced administrative committee would be selected should each district be initially provided with the same number of committee members. In this manner both small and large producers would receive equitable treatment. The provision that three producers should be initially selected as committee members and three producers should be initially selected as committee alternates from each district is equitable and it meets with the wishes of the industry as shown by the evidence. The provision that there should be three producers selected as alternate committee members provides a practical working basis for having full representation when any member from a district is absent.

A procedure for the election by producers of nominees for membership on the committee should be prescribed in the marketing agreement and order. Such provision is intended to provide for assistance by the tomato industry to the Secretary in his selection of members and alternates on the committee. It is customary in the Florida tomato industry for producers to conduct meetings to establish their preference for positions of trust and responsibility in the tomato industry. The nomination of prospective members and alternates at meetings of producers in the respective districts is a customary and practical method of providing the Secretary with the names of the persons which the industry desires to serve on the committee. In order to obtain an indication of the industry's preference for membership on the initial committee, meetings of producers may be sponsored by the United States Department of Agriculture, or by any agency or group requested to do so by the Department. This provides a practical and an expedient means of initiating movement whereby the industry may express its wishes and preferences with respect to committee membership.

Nomination meetings for the purpose of electing nominees for members or alternates on the committee after the initial committee should be held prior to June 15 of each year. Such meetings, should be held by the committee or by persons or groups requested by such committee to hold such meetings.

At least two nominees should be designated for each position as member and each position as alternate so that the Secretary will have a choice in making his selection. In addition, if a selectee declines to serve, the Secretary would also have the name of another prospective member or alternate from which to make a selection. It is the desire of the industry, and it is appropriate that producers voting at such industry meetings may ballot for nominees to indicate the ranking of their choice for each position to be filled. Nominees lists should be supplied to the Secretary in the form and manner prescribed by him so as to establish administrative uniformity in the handling of such matters. Such

nominations for committee members and alternates should be supplied to the Secretary not later than July 15 of each year.

Only producers should participate in nominating members and alternates on the committee because the committee will be composed entirely of producer members.

If a person produces tomatoes in more than one district, such person should select the district in which he wishes to cast his vote for nominees on the committee. Any other procedure would tend to give such person a greater voice than other producers in the nomination of committee members.

Each producer participating in the industry meetings for election of nominees to the committee should be limited to one vote on behalf of himself, his agents, subsidiaries, affiliates, or representatives in designating nominees. Voting on any other basis would not provide for equitable representation because it would give the producers with interest in more than one district a greater voice in election of nominees than producers operating in only one district. The plan of one vote for each producer should be so construed that the person eligible to vote in a nomination meeting shall be allowed to cast one vote for each position which is to be filled in the district with which he affiliates. For example, at meetings for election of nominees to the initial committee each person voting as a producer in a given district would be allowed to cast one vote each for each of the three member nominees and one vote for each of the three alternate member nominees.

In order that there will be an administrative agency in existence at all times to administer the marketing agreement and order, the Secretary should be authorized to select committee members and alternates without regard to nomination if, for any reason, nominations are not submitted to him in conformance with the procedure prescribed therein. Such selection should, of course, be on the basis of the representation provided in the marketing agreement and order so that the composition of the committee will at all times continue as prescribed therein.

Each person selected by the Secretary as a committee member or alternate should qualify by filing with the Secretary a written acceptance of his willingness and intention to serve in such capacity. This requirement is necessary so that the Secretary will know whether or not the position has been filled. Such acceptance should be filed within 10 days after the notification of appointment so that the composition of the committee will not be delayed unduly.

It is also desirable and necessary that the Secretary should be authorized to fill committee vacancies without regard to nominations if the names of nominees to fill any such vacancy are not made available to the Secretary within thirty days after such vacancy occurs. The Secretary should have recourse to such means of filling vacancies in order to maintain continuity of administrative agency operation and to insure that all portions of the production area are ade-

quately represented in the conduct of committee business.

Each alternate should be authorized to act in the place and stead of a member for whom he is an alternate during such member's temporary absence. Continuity of operation of the marketing agreement and order is best assured by such authorization. An alternate should be authorized to act in a member's absence when such absence is due to death, removal, resignation, or disqualification of the member. Alternates acting in the place and stead of members may continue to act in such capacity until a successor for the member has been selected and has qualified.

A quorum of the committee should consist of at least ten members. This would not only insure that two more than a majority of the members must be in attendance at committee meetings but also would require that representation be present from at least four of five districts. Committee decisions should, therefore, reflect an accurate and representative cross section of industry thought and attitudes.

Not less than ten members of the committee should be required to concur in any committee action in order for it to pass. Such a voting requirement, constituting a minimum of two-thirds of the membership, is deemed reasonable and adequate.

The committee should be authorized to vote by telephone, telegraph, or other means of communication when a matter to be considered is so routine that it would be unreasonable to call an assembled meeting or when rapid action is necessary because of an emergency. Any votes cast at other than an assembled meeting should be confirmed promptly in writing to provide a written record of the votes so cast. In case of an assembled meeting, however, all votes should be cast in person.

Committee members and alternates should be reimbursed for necessary expenses incurred in the performance of service to the committee. Expenses for services by committee members should be allowed only for those specifically requested or directed by the committee. Such expenses might include travel, hotel accommodations, and meals. Reimbursement for reasonably necessary expenses is required to offset actual out-of-pocket expense incurred in performing duties in connection with the marketing agreement and order.

The committee should be given those specific powers which are set forth in section 8c (7) (C) of the act, because such powers are authorized to be granted by the enabling statutory authority and they are necessary so that an agency of the character set forth in the marketing agreement and order can function.

The committee's duties, as set forth in the marketing agreement and order, are necessary for the discharge of its responsibilities.

The duties established for the committee are generally similar to those specified for administrative agencies under other programs of this character. It is intended that any activities undertaken by members or alternates of the committee will be necessary for the com-

mittee to carry out its responsibilities as prescribed in the marketing agreement and order. It should be recognized that these specified duties are not necessarily all inclusive in that it may develop that there are other duties which are incidental to, and not inconsistent with, the terms and conditions of the marketing and order which the committee may need to perform.

(c) The committee should be authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee during each fiscal period for the maintenance and functioning of such committee and for such other purposes as the Secretary may, pursuant to the provisions of the marketing agreement and order, determine to be appropriate. The expenses so incurred should be shared by handlers on the basis of the ratio of each handler's total shipments to the total shipments by all handlers during specified fiscal periods. The basis for determination of the ratio of shipments by individual handlers should be based upon the total shipments by first handlers thereof.

The committee should be required to prepare a budget at the beginning of each fiscal period, and as often as may be necessary thereafter, showing estimates of income and expenditures necessary for the administration of the marketing agreement and order for such period. Each such budget should be presented to the Secretary with an analysis of its components and explanation thereof in the form of a report on such budget. It is desirable that the committee should recommend a rate of assessment to the Secretary which should be designed to bring in during each fiscal period sufficient income to cover expenses incurred by the committee.

The funds to cover the expenses of the committee should be obtained through the levying of assessments on handlers. The act specifically authorizes the Secretary to approve the incurring of such expenses by administrative agencies, such as the Florida Tomato Committee, and the statute also requires that each marketing agreement and order issued pursuant to the act should contain provisions requiring handlers to pay their pro rata shares of the necessary expenses. Moreover, in order to assure continuance of the committee, the payment of assessments by handlers should be permitted to be required irrespective of whether particular provisions of the marketing agreement and order are suspended or become inoperative.

Each handler should pay the committee upon demand his pro rata share of such reasonable expenses which the Secretary finds will be incurred necessarily by the committee during each fiscal period. Such pro rata share of expenses should be equal to the ratio between the total quantity of tomatoes handled by him as the first handler thereof during a specified fiscal period and the total quantity of tomatoes so handled by all handlers during the same fiscal period. It is necessary that responsibility for the payment of the assessment on each lot of tomatoes be fixed and it is logical to

impose such liability on the first handler of such tomatoes. In most instances the first handler and the applicant for inspection are the same person. However, in the event the first handler fails to apply for and obtain inspection, this does not in any way cancel his obligation with respect to the payment of assessments. Except in the case of movements to registered handlers and to designated auction markets, first handling should apply to tomatoes when they have been subjected to grading or preparation for market. Assessment rates should be recommended by the committee and applied by the Secretary to a specific unit of shipment. For example, assessment rates may apply to carlot shipments, or they may be applied on a crate basis, or by any other unit of shipment commonly used in marketing tomatoes grown in the production area. However, such assessments for a fiscal period should be applied on a uniform rate basis.

At any time during or subsequent to a given fiscal period the committee should be authorized to recommend the approval of an amended budget and the fixing of an increased rate of assessment to balance necessary committee expenses and revenues. Upon the basis of such recommendations, or other available information the Secretary should be authorized to approve amended budgets and, if he finds that the then current rate of assessment is insufficient to cover committee administration of the marketing agreement and order he should be authorized to increase the rate of assessment. The marketing agreement and order should authorize the application of such increased rate of assessment to all tomatoes previously handled by first handlers during the specified fiscal period so as to avoid inequities among handlers.

Funds received by the committee pursuant to the levying of assessments should be used solely for the purpose of administration of the marketing agreement and order, including appropriate research and development projects. The committee should be required to maintain books and records clearly reflecting the true up-to-date operations of its affairs so that its administration may be subject to inspection at any time by appropriate parties. Each member and each alternate, as well as employees, agents, or other persons working for or on behalf of the committee should be required to account for all receipts and disbursements, funds, property, or records for which they are responsible and the Secretary should have the authority, at any time, to ask for such accounting. Whenever any person ceases to be a member or alternate of the committee, he should be required to account for all receipts, disbursements, funds, property, books, records, and other committee assets for which he is responsible. Such persons should also be required to execute assignments or such other instruments which may be appropriate to vest in their successor or agency or person designated by the Secretary, the right to all such property and all claims vested in such person.

If the committee should recommend that the operations of the marketing

agreement and order should be suspended, or if no regulation should be in effect for a part or all of a marketing season, the committee should be authorized to recommend as a practical measure that one or more of its members, or any other person, should be designated by the Secretary to act as a trustee or trustees during such period. This would provide a practical method whereby the committee's business affairs could be taken care of during periods of relative inactivity with a minimum of difficulty and expense to the industry and to the Secretary. This does not mean, however, that such a procedure would have to be followed in such a situation. If the circumstances would seem to call for such way of handling, the committee and its personnel would continue to operate, possibly in a curtailed fashion, as usual.

The committee should provide periodic reports on its fiscal operations. It is expected that audit reports shall be requested by the Secretary at appropriate times, such as the end of each marketing season, or at such other times as might be necessary to maintain appropriate supervision and control of the committee's affairs. Handlers should be entitled to a proportionate refund of the excess assessments which remain at the end of a fiscal period, or at the end of such other period as may be deemed appropriate by reason of suspension or termination. Such refund should be credited to each such handler against the operations of the following fiscal period, unless he should demand payment thereof, in which event such proportionate refund shall be paid to him.

If and when the committee is required to wind up its affairs upon termination of a marketing agreement and order authorizing such agency, considerable expense is involved in the liquidation process. The affairs of the committee which are to be liquidated usually result from a number of years' operations. It is appropriate, therefore, for the maintenance and functioning of the committee that some of the funds remaining at the end of a fiscal period, which are in excess of those necessary for payment of expenditures during such period, should be carried over into subsequent fiscal periods as a reserve for possible liquidation. Such reserve should be maintained for the purpose of helping to cover the expenses of final liquidation in the event that the marketing agreement and order are terminated. It is not anticipated that any such reserve will be accumulated in an amount in excess of what might be the reasonable costs of such a liquidation action.

Any funds remaining after liquidation has been effected should be refunded to handlers on a pro rata basis. In some cases, however, individual handler's accounts will be of such small amounts as to make impracticable the return thereof. Funds of such insignificant nature should be permitted for use by the committee for purposes of liquidation.

(d) The establishment or provision for the establishment of marketing research and development projects designed to assist, improve, or promote the

marketing, distribution, and consumption of tomatoes was authorized by amendments to the act in Public Law 690, known as the Agricultural Act of 1954, enacted by the 83d Congress. Such authorization should be included in the marketing agreement and order.

Through the medium of research investigation, the committee may be able to evaluate in detail grade and size composition of the tomato crop in each of the various producing sections. More complete data in this regard would enable the committee and the Secretary to determine with a greater degree of accuracy the effect of specific regulations on the market.

Projects designed to evaluate preferences among markets and localities in terms of grade, size, quality, maturity, pack, containers, and other factors would be of considerable value in determining what regulations in those regards should be established for such markets and localities. The aid of marketing research and development projects may assist in a determination as to the effect and value of private and industry promotion of Florida tomatoes.

Research into market development, transportation, handling methods, and containers, and studies on the relative merits of different stages of maturity at which tomatoes are marketed are examples of aspects which the committee may at some time consider worthy of investigation.

As the tomato industry and the committee become more aware of the value of and need for marketing research and development, other projects will undoubtedly be initiated, the need for which will not have been foreseen early in committee operations. Therefore, the committee should have the authority to recommend the establishment of such projects which are in the best interest of tomato marketing and which will assist, improve, and promote the marketing, distribution, and consumption of Florida tomatoes. The committee should be empowered to engage in or contract for such projects, to spend funds for such purpose, and to consult and cooperate with other agencies with regard to their establishment. All such projects should receive the prior approval of the Secretary.

(e) The declared policy of the act is to establish and maintain such orderly conditions for tomatoes among other commodities, as will tend to establish parity prices for such tomatoes. The regulation of the handling of tomatoes by grade, size, quality, or maturity as authorized in the marketing agreement and order provides a means of carrying out such policy and is one of the ways authorized by the act (in section 8c (6)) for achieving that objective.

The procedures and methods which are outlined in the marketing agreement and order for the development and institution of marketing policies relating to grade, size, quality, or maturity regulation provides a practical basis for the committee to obtain appropriate and adequate information relating to tomato marketing problems. Also members of the industry, including both growers and handlers, should be provided with the

information regarding the policies and regulations recommended by the committee. The factors set forth in the marketing agreement and order which the committee should take into consideration in developing its marketing policies are the ones commonly and usually taken into account by growers and handlers in their day to day evaluation of the market outlook with respect to tomatoes.

In order that the Secretary may effectively carry out his responsibilities in connection with the marketing agreement and order, the committee should prepare and submit to the Secretary a report on its proposed marketing policy, or amendments thereto, relating to the marketing of tomatoes during each season. The initial marketing policy offered each season by the committee should be prepared and submitted to the Secretary prior to or simultaneous with its initial recommendations for regulations. This will give all interested parties the maximum notice of probable regulations. Reports on marketing policy and regulations recommended should be submitted to the Secretary and presented to the industry by the committee.

The committee, which has responsibility for recommending grade, size, and quality regulations, as well as modifications, suspensions, amendments thereto, or terminations thereof, should be authorized to consider and recommend any or all methods of regulations which are authorized by the marketing agreement and order for the Secretary to issue thereunder. Evidence shows that authority should be established in the marketing agreement and order to issue regulations with respect to grade, size, quality, or packs in any or all portions of the production area during any period.

The limitation of the handling of poorer grades, off qualities, and less desirable sizes and maturities of tomatoes grown in the production area will tend to increase prices of more desirable grades, qualities, sizes, and maturities and to promote more orderly marketing and increase the returns to producers of such tomatoes. The two standards for fresh tomatoes issued by the U. S. Department of Agriculture would provide a common and acceptable means of determining grade, size, quality and maturity of tomatoes grown in the production area. Such standards are widely used throughout the production area, and both producers and shipping point handlers, as well as buyers, are generally acquainted with such standards and commonly use them in their market transactions. Authority should be provided for limiting the grade and size of tomatoes which may be placed in any given pack or container. The poorer grades and off qualities include not only the unclassified tomatoes as set forth in the Federal standards for tomatoes, which are commonly referred to as culls, but also other tomatoes which show defects as set forth and described in such standards and in any modifications or amendments thereto which may be considered desirable to the Secretary. The limitation of the handling by prohibiting movement of poorer grades, off

qualities, and less desirable sizes of tomatoes will help to improve orderly marketing conditions for such tomatoes by enhancing the long run demand for and competitive position of tomatoes grown in the production area.

The orderly marketing of tomatoes grown in the production area, with the objective of increasing returns to producers of such tomatoes, will be promoted by authorizing the regulation of handling of particular grades, sizes, qualities, or packs of tomatoes, differently for different varieties, differently for different stages of maturity, differently for different portions of the production area, differently for different containers, differently for different markets, differently for different purposes to which modification or suspension of regulation may be applied, or differently for any combination of these groups, during any period. Demand for different varieties of tomatoes establishes price preferences for different grades or sizes, or both, of such varieties. For example, evidence establishes a basis for varietal preference at the market place. A lot of Grothen's Globe tomatoes packed in 40-pound containers realized the same or better returns as tomatoes of any other variety packed in 60-pound crates, according to the record, and the Grothen's Globes were of generally poorer quality than most of the other varieties, often failing to make grade only because of shape. Another variety was pointed out as preferred for production in connection with the vine-ripened or pink "deal." Certain varieties are preferable, or perhaps more adaptable, for growing in certain producing sections.

Different regulations in terms of different stages of maturity may provide the committee with additional flexibility of operation. Emergence of the vine-ripened and pink "deal", repacking operations in the production area, and the preference in intrastate markets for more mature fruit than is ordinarily moved to out-of-state outlets would seem to dictate the need for this type of authority in the hands of the committee.

Unusual weather conditions may arise during a crop year in one portion of the production area as compared with other portions of such area. This possibility is particularly true with respect to such things as hail, wind, and violent rain storms. Hazards of these natures are obviously beyond the control or reasonable expectation of the tomato growers in such localities. Because of these circumstances, and to provide equity among producers and handlers insofar as any regulation under the marketing agreement and order are concerned, authority should be provided for the committee to consider such differences, to make appropriate recommendations in that regard to the Secretary, and for the Secretary to issue different regulations to accommodate any such differences in the crop arising out of actions beyond human control. It is contemplated, however, that any such relaxation for a portion of the production area in those circumstances will still require that the tomatoes shipped will be the best quality available. It has been a common prac-

tice in the production area for some years to prepare specific packs of tomatoes for market. For example, the standard packs, as specified in the U. S. Standards for Fresh Tomatoes, have been in common usage for years. Since the trend in recent years has been toward the "jumble" packs (a pack without any particular arrangement of individual fruit) which are not spelled out in the standards, the committee may wish to establish and define the packs for which the handling thereof may be permitted. It is presumed that the establishment and definition of such packs, to be set forth in rules and regulations, will spell out the grades and ranges of sizes permitted to be handled in conjunction with specified containers. Certain combinations of grade, size, and containers, which factors constitute packs, should be kept out of specified market channels, at the discretion of the committee with the approval of the Secretary, because such packs contribute to disorderly marketing of tomatoes. For example, it might be desirable to withhold a shipment of pack "A", containing large ripe tomatoes in field crates, from interstate outlets because such pack would reach destination in a condition tending to demoralize the prices of tomatoes of superior packs and condition. The committee should be empowered to recommend both maximum and minimum sizes and minimum grades with respect to the handling of certain packs. The marketing agreement and order should authorize different regulations for different packs so that this part of the marketing program may help to assist the industry in furthering present merchandising approaches if they are found to be sound.

The marketing agreement and order should permit regulations differently for different types of containers. The establishment of such regulation is authorized by virtue of an amendment to the act in Public Law 690, known as the Agricultural Act of 1954, enacted by the 83d Congress. Numerous types and sizes of containers are in current use in the handling of tomatoes within the production area. Types of shipments may range from the bulk load of loose fruit to the 8-pound fibre-board box used in the pink "deal" and may also include individual consumer-size cartons containing three, four, or five tomatoes. Should the use of certain of these containers, when moved into commercial market channels, be deemed by the committee, with approval of the Secretary, as contributing to disorderly marketing of Florida tomatoes, then the Secretary should be empowered to fix the size, weight, capacity, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of such tomatoes. For the same reason, the committee should be permitted to recommend different regulation for different containers. For example, the committee may desire to prohibit the sale or shipment of tomatoes in field crates to interstate markets while not prohibiting the movement of such containers within the production area. The committee may make a determination that certain types

of containers are unsuitable for the handling of vine-ripened tomatoes, especially to interstate markets, because their advanced state of maturity, as compared to mature green tomatoes, may subject such fruit to excessive damage. Authority for container regulation should also be provided to permit standardization of containers where deemed feasible and in the best interests of the tomato industry. The permissive use of the authority to fix the size, weight, capacity, dimensions, and pack of containers will allow the committee and the Secretary to reduce and eliminate any deceptive practices which a few members of the tomato industry may be inclined to follow. Such misleading merchandising practices, which have tended to confuse buyers and disrupt orderly marketing of tomatoes grown in the production area, include methods of misrepresenting net weight or contents of containers. The addition of cleats, variation in size of bulge, and other such practices tend to deceive buyers and to disrupt orderly marketing. Therefore, the provisions relating to container regulation should be included in the marketing agreement and order as set forth.

The marketing agreement and order should provide authority for regulation of the handling of Florida tomatoes differently for different markets. Market requirements differ as to grade, size, quality, maturity, and other factors and, therefore, different regulations should be permitted for different markets, e. g., intrastate, interstate, and foreign. For instance, evidence indicates Canadian receivers prefer small tomatoes, and Tampa consumers desire large, ripe fruit. These market preferences should be recognized and flexibility in committee operations should be permitted to give effect to such preferences.

The marketing agreement and order should authorize different regulations during any period so that the committee and the Secretary may take account of different supply and demand conditions as they may arise and become apparent.

No evidence was introduced to substantiate the proposal relating to the prohibition of unfair methods of competition and unfair trade practices in the handling of tomatoes and no further consideration can be given to it in this proceeding. It was testified that after further consideration of this proposal, it was decided that it should be abandoned.

(f) The committee should be authorized to recommend, and the Secretary to establish, such minimum standards of quality and maturity, and such grading and inspection requirements, during any and all periods when tomato prices are above parity as will be in the public interest. Some tomatoes are of such low quality that they do not give consumer satisfaction at any time because of the large amount of waste and the time consumed in preparing them. Consumers do not receive proper value for their expenditures for such low quality tomatoes, as culls, and even when prices are above parity it is not in the public interest, either of the producers, handlers, or of consumers to permit shipments of such poor quality. The shipment of immature or overripe tomatoes also tends to dis-

rupt general market conditions for the commodity and the discounted prices received for such immature or overripe tomatoes adversely affects grower prices. The marketing agreement and order should authorize the establishment of minimum standards of quality and maturity as will be in the public interest. It is also necessary that such authority should include grading and inspection requirements so that such minimum standards of quality and maturity may be determined whenever such regulations are in effect.

It was testified at the hearing that, in many Southern markets (Knoxville, Nashville, Birmingham, Columbia, and San Antonio were given as examples), a few handlers, in order to obtain temporary price advantage, have flooded such markets with poor quality and sizes and undesirable maturities of tomatoes. This practice has permitted such handlers to undercut prices of good quality tomatoes and has forced many other handlers to discontinue purchase of good quality Florida tomatoes and substitute therefore poor quality in order to remain on a competitive basis. In some instances separate lots of good and poor quality tomatoes have been bought at shipping point, transported to various Southern markets, and there have been commingled. The effect of these practices has been to reduce the total quantity of good quality tomatoes consumed in many markets, especially in the South, by the substitution of poor qualities and maturities. Such practices are undesirable under any set of demand and price conditions because (i) the market for good quality Florida tomatoes has been demoralized thereby reducing the total returns to the producers of such tomatoes and (ii) consumers have been denied the opportunity to purchase good edible fruit and, being offered only poor quality tomatoes, they buy none at all.

Most shipments of Florida tomatoes are made in carlots or in trucklots. Although some small shipments are made, they constitute only a minor percentage of total production. Some growers pick small quantities and peddle these to local stores, to tourists, or to other similar outlets. In addition, the sale of a few crates of tomatoes to accommodate friends or to take care of special purposes oftentimes is desirable. Problems of inspecting such small lots, or other problems in complying with regulations on such lots, may make it uneconomical, undesirable, and impracticable to require that such small shipments comply with any or all regulations required of the larger commercial shipments. The administrative difficulties in checking upon such shipments to see that they are inspected, or that they meet grade, size, quality, or maturity restrictions, or that they pay assessments may be such that it would be impracticable for the committee to attempt to do so. It might be necessary to permit the maintenance of one or more regulatory requirements on such minimum quantities while relaxing other regulations applicable to them. It is contemplated, of course, that any such relaxations of regulations will be applied uniformly.

(g) The Secretary, upon the basis of recommendations and information submitted by the committee, or other available information, should be authorized to modify, suspend, or terminate grade, size, or quality regulations with respect to the handling of tomatoes for purposes other than disposition in normal domestic fresh markets. The committee should be well qualified, because of the experience and knowledge of individual members, to recommend such modifications, suspensions, or terminations as will be in the best interests of the Florida tomato industry and which will tend to effectuate the declared policy of the act. Tomatoes moving to or sold in certain outlets, such as those specified in proposed § 945.54 of the marketing agreement and order, are usually handled in a different manner, or such outlets usually accept different grades, sizes, qualities, maturities, packs, containers, or different prices are returned, or combinations of such considerations may apply. The marketing agreement and order should provide authority for the committee and the Secretary to give appropriate consideration to handling of tomatoes for such purposes so that full opportunity may be taken by this program to improve orderly marketing conditions for tomatoes, thereby promoting the tendency to increase total returns to tomato growers in the production area.

Some export markets accept certain grades, and particularly some sizes, which normally are discounted in some domestic markets. It should be provided that modification, suspension, or termination of regulations may be applied to movement to export outlets so that this demand can be met and the sale of tomatoes grown in the production area will continue in such markets.

The marketing agreement and order should provide that special considerations may be given to the handling of tomatoes for relief or for charitable purposes. Such shipments are intended for special outlets and usually the shipments are by way of donation or due to some special consideration between the shippers and the receivers.

The committee and the Secretary should have authority to give special consideration to tomatoes which move to processing outlets. At present such outlets include the canning plants whence tomatoes move as a salvage operation. It is desirable to permit the committee authority to assure that such tomatoes do, in fact, end up in the outlet for which intended.

Shipment of tomatoes, among other vegetables, for the purpose of having such tomatoes processed at canning plants, are specifically exempted from regulation by the act. Any mention of tomatoes for canning or processing herein has particular reference merely to a safeguard, which requirement may cause such shipments to canners to be reported to the committee for the sole purpose of assuring the committee and the tomato industry that such shipments are, in fact, moved to the outlet for which intended. No other regulation or restriction is implied on tomatoes for canning or processing.

For purposes which may develop in the future, the committee should be empowered to provide special treatment through modification, suspension, or termination of regulation applicable thereto, for other purposes which later may be specified by the committee with the approval of the Secretary.

The requirement that the Secretary shall notify the committee of any regulations or any modifications, suspensions, or terminations of regulations is appropriate and necessary to enable the committee to be informed of such actions. The committee's obligations to give reasonable notice by such means as are deemed adequate to inform producers and handlers of regulatory orders issued by the Secretary is appropriate and necessary for proper and efficient administration of the marketing agreement and order.

The authority for modifying, suspending, or terminating grade, size, quality, assessment, or inspection regulations should be accompanied by the additional administrative authority for the committee to recommend and the Secretary to prescribe adequate safeguards to prevent shipments for such purposes from entering market channels contrary to the provisions of such special regulations. Such safeguards may be recommended by the committee and they should be administered by the committee. The authority for establishment of safeguards should include such limitations or appropriate qualifications on shipments which are necessary and incidental to the proper and efficient administration of the marketing agreement and order. Such safeguards, among others, may include inspection so that the committee may have an accurate record of the grade, size, and quality of tomatoes shipped to special outlets, applications to make such special shipments, requirements for the payment of assessments in connection with such shipments, reports by handlers on the number of such shipments and the amounts of tomatoes shipped, and assurances by purchasers that the tomatoes are to be used for the purpose designated.

In order to maintain appropriate identification of shipments of tomatoes to special outlets, the safeguards authorized herein may provide for the issuance of certificates of privilege to handlers of such tomatoes and, in addition, require that such handlers shall obtain such certificates on all shipments by them to such special outlets. Certificates of privilege may be issued by the committee as an indication of the authority for a handler to make such shipments and as a means of identifying specific shipments. Such certificates of privilege should be issued in accordance with rules and regulations established by the Secretary on the basis of committee recommendations, or other available information, so that the issuance of such certificates may be handled in an orderly and efficient manner which can be made known to all handlers. The committee should be authorized by the marketing agreement and order to deny or rescind certificates of privilege when such action is necessary to prevent abuse of the privileges conferred thereby. The

committee should be authorized to exercise the authority necessary and incidental to the proper administration of the marketing agreement and order which should include the authority to rescind or deny certificates upon evidence satisfactory to it that a handler to whom a certificate of privilege has been issued has handled tomatoes contrary to the provisions of the certificate previously issued to him. If the committee rescinds or denies a certificate of privilege to any handler, such action should be in terms of a specified period of time. Handlers affected by the denial of a certificate or the rescinding of such a certificate should have the right of appeal to the committee for a reconsideration.

The Secretary should have the right to modify, change, alter, or rescind any safeguards prescribed or any certificates of privilege issued by the committee in order that the Secretary may retain all rights necessary to carry out the declared policy of the act. The Secretary should give prompt notice to the committee of any action taken by him in connection therewith and the committee should currently notify all persons affected by the indicated action.

The committee should maintain records relevant to safeguards and to certificates of privilege and should submit reports thereon to the Secretary when requested in order to supply pertinent information requisite for him to discharge his duties under the act and the marketing agreement and order.

(h) Inspection of tomatoes grown in the production area by the Federal-State inspection service is a common and usual practice for the purpose of determining officially the grade, size, quality, and maturity of such tomatoes. Federal-State inspection service has operated in the State of Florida for a number of years. The tomato growers and handlers throughout the production area are acquainted with the service and with the inspection which it offers on shipments of tomatoes. Federal-State inspection is available throughout the entire production area and reasonably prompt inspection can be given at all points within the production area at a reasonable time prior to the anticipated shipment of the tomatoes to be inspected.

Provision is made in the marketing agreement and order for inspection by the Federal-State inspection service, or such other inspection service as the Secretary may approve, of the handling of tomatoes grown in the production area during any period in which handling of tomatoes is regulated under the program. Such inspection requirements should apply to all tomatoes handled under regulations issued under the marketing agreement and order, except when any such handling is relieved from inspection requirements pursuant to § 945.53 or § 945.54 of the marketing agreement and order. Provision for inspection of handling subject to regulation establishes a means for providing the handler, the buyer, the committee, the Secretary, and other interested parties with a means of determining

whether such handling of tomatoes complies with the requirements of any particular grade, size, quality, and maturity regulation which may be in effect under the marketing agreement and order. Effective regulation of the handling of tomatoes grown in the production area requires that the grade, size, quality, and maturity of each sale or shipment of such tomatoes should be authoritatively established so that the administration of the marketing agreement and order shall be efficient and effective. The provision for inspection and the certificates which are issued pursuant to inspection offer an appropriate and practical means of establishing and identifying the grade, size, quality, and maturity of tomatoes handled pursuant to the terms and conditions of the proposed marketing agreement and order.

Copies of inspection certificates issued pursuant to the requirements of the marketing agreement and order should be supplied to the committee promptly so that such committee may properly discharge its administrative responsibilities under the program.

Provision should be made in the marketing agreement and order for authority to inspect tomatoes not only by personnel of the Federal-State inspection service but also by personnel of such inspection service as the Secretary may designate so that sufficient flexibility for successful operation can be provided through appropriate inspection if Federal-State inspection is not available.

The requirement that no handler shall handle tomatoes unless each lot of tomatoes is inspected by an authorized inspection service approved under the marketing agreement and order is reasonable and it is necessary for the proper administration of the program. Such requirements should apply except to those tomatoes which may be relieved of inspection requirements pursuant to § 945.53 or § 945.54, or both.

Responsibility for obtaining inspection should fall primarily on the handler who first handles such tomatoes after they have been prepared for market because each lot of such tomatoes must be identified and certified with respect to grade, size, quality, and maturity. Such identification and certification is essential to proper administration of the marketing agreement and order so that a determination may be made as to whether such shipment accords with the grade, size, quality, and maturity regulations issued under such order. The handler who so first handles tomatoes is required to obtain inspection and subsequent handlers may not handle tomatoes unless a properly issued inspection certificate valid under the terms of the marketing agreement and order applies to such shipments. Each handler must bear responsibility for determining that each of his shipments is inspected. If a handler should receive tomatoes which have not been inspected, he should be responsible for having them inspected. Such requirement is necessary so that the committee can obtain evidence in the form of inspection certificates which it needs to carry out its appropriate functions in determining if specific shipments have

been inspected and if they otherwise meet requirements of the marketing agreement and order and regulations issued pursuant thereto.

Whenever any shipment of tomatoes subject to the terms and provisions of the marketing agreement and order have been inspected at the time of first shipment but such tomatoes are later dumped from the containers in which they were inspected, such tomatoes lose their identity insofar as the original inspection certificate for them is concerned. If any such lot of tomatoes is thereafter repacked, such repacked tomatoes may have a new identity and the subsequent handling of such tomatoes should comply with regulations issued under the marketing agreement and order. Such requirement is necessary to effectuate the declared policy of the act. Therefore, the marketing agreement and order should provide that the committee may require any person who handles Florida tomatoes after they have been repacked, resorted, or regraded shall not ship such tomatoes unless they have been inspected. A reinspection of regraded, resorted, or repacked tomatoes may be necessary, in certain cases, so that the shipper thereof, as well as subsequent handlers, and the committee may determine if such shipments comply with the regulations then in effect and applicable thereto.

The committee, with the approval of the Secretary, should be authorized to determine the length of time the inspection certificate is valid insofar as the requirements of the marketing agreement and order are concerned. Such requirement is appropriate and necessary especially with respect to lot inspections which may be administratively desirable to accommodate handlers and truckers because tomatoes are an extremely perishable commodity.

(1) Certain hazards are encountered in the production of tomatoes grown in the production area which are beyond the control or reasonable expectation of the producer of such tomatoes. Because of these circumstances, and to provide equity among producers and handlers insofar as any regulations under the marketing agreement and order are concerned, the committee should be given authority to issue exemption certificates to producer applicants to permit such applicants to sell their equitable proportion of all shipments from the production area. It is contemplated, however, that such an exemption will require the approved applicant to sell his best quality tomatoes.

The committee, by reason of its knowledge of the conditions and problems applicable to the production of tomatoes in the production area and the information which it will have available in each case, will be well qualified to judge each applicant's case in a fair and equitable manner and to fix the quantity of exempted tomatoes which each such applicant may sell.

The provisions contained in the notice of hearing relevant to the procedure to be followed in issuing exemption certificates, in investigating exemption claims, in appealing exemption claim determinations, and in recording and reporting

exemption claim determinations to the Secretary are necessary to the orderly and equitable operation of the marketing agreement and order and they should, therefore, be incorporated in the agreement and order.

Provision should be made for the Secretary to modify, change, alter, or rescind any procedure established by the committee for granting of exemptions and of exemptions granted pursuant to such procedure. This is desirable to guard against inequities in the granting of exemptions and to preclude the issuance of exemption certificates in unjustifiable cases.

(j) The committee should have authority, with approval of the Secretary, to require that handlers submit to the committee such reports and information which are needed to perform such agency's functions under the marketing agreement and order. It is difficult to anticipate every type of report, or kind of information, which the committee may need in administering the program, but it should have the authority, subject to the approval of the Secretary, to request reports and information if needed, of the type set forth in the proposed marketing agreement and order. The standards to be followed by the committee in requesting handlers to furnish reports should be along the lines set forth in § 945.80 of the proposed order and such reports should be those necessary for operation of the committee in carrying out the terms and conditions of the order. Reports furnished to the committee should be submitted in such manner and at such times as may be designated by the committee. Such reporting procedures should accord with the needs and requirements of the committee which are essential to administration of the proposed order, because changing conditions may warrant changes in the forms and methods of reporting to the committee. The Secretary should retain the right to approve, also to modify, change, or rescind any requests by the committee for information in order to protect handlers from unreasonable requests for reports.

Permissive use of the specified reporting requirements, and verifications of such reports and records by the committee will provide a means for the committee to check on compliance with and operation of the marketing agreement and order.

Since it is possible that a question might arise with respect to compliance with the marketing agreement and order, handlers should maintain complete records on the handling and disposition of tomatoes for not less than two years subsequent to the termination of each crop year.

Any and all reports and records submitted for committee use by handlers should remain under appropriate protective classifications and be disclosed to none other than persons authorized by the Secretary.

(k) Except as provided in the marketing agreement and order, no handler should be permitted to handle tomatoes, the handling of which is prohibited pursuant to the marketing agreement and order, and no handler should be per-

mitted to handle tomatoes except in conformity with the marketing agreement and order. If the program is to be effective, no handler should be permitted to evade its provisions since such action on the part of one handler, although possibly of small impact on the industry measured by the proportion of tomatoes handled by him, would be demoralizing to other handlers and would tend to impair operation of the program.

(1) The provisions of §§ 945.82 through 945.95, as published in the FEDERAL REGISTER of February 10, 1955 (20 F. R. 862), are common to marketing agreements and orders now operating. Each of such sections sets forth certain rights, obligations, privileges, or procedures which are necessary and appropriate for the effective operation of the marketing agreement and order. These provisions are incidental to, and not inconsistent with, section 8c (6) and (7) of the act, and are necessary to effectuate the other provisions of the marketing agreement and order and to effectuate the declared policy of the act. The substance of such provisions, therefore, should be included in the marketing agreement and order.

General findings. Upon the basis of evidence introduced in the hearing and record thereof it is found that:

(1) The marketing agreement and order as hereinafter set forth, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act with respect to tomatoes produced in the production area, by establishing and maintaining such orderly marketing conditions therefor as will tend to establish, as prices to the producers thereof, parity prices and by protecting the interest of the consumer (i) by approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (ii) by authorizing no action which has for its purpose the maintenance of prices to producers of such tomatoes above the parity level, and (iii) by authorizing the establishment and maintenance of such minimum standards of quality and maturity, and such grading and inspection requirements as may be incidental thereto, as will tend to effectuate such orderly marketing of such tomatoes as will be in the public interest;

(2) Such marketing agreement and order authorizes regulation of the handling of tomatoes grown in the production area in the same manner as, and is applicable only to, persons in the respective classes of industrial and commercial activity specified in a proposed marketing agreement and order upon which the hearing has been held;

(3) The said marketing agreement and order are limited in application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act; and the issuance of the several marketing agreements and orders applicable to any subdivision of the production area

would not effectively carry out the declared policy of the act;

(4) The said marketing agreement and order prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of tomatoes grown in the production area;

(5) All handling of tomatoes as defined in the said marketing agreement and order, is in the current of interstate or foreign commerce, or directly burdens, obstructs or affects such commerce.

Ruling on proposed findings and conclusions. Interested parties were allowed until April 8, 1955, to file briefs with respect to findings of fact and conclusions based on evidence introduced at the hearing. No such brief was filed; hence, no ruling is necessary.

Recommended marketing agreement and order. The following marketing agreement and order are recommended as the detailed means by which the aforesaid conclusions may be carried out.

DEFINITIONS

§ 945.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 945.2 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

§ 945.3 *Person.* "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 945.4 *Production area.* "Production area" means all territory in the State of Florida south or east of the Suwannee River.

§ 945.5 *Tomatoes.* "Tomatoes" means all varieties of the edible fruit (*Lycopersicon esculentum*) commonly known as tomatoes and grown within the production area.

§ 945.6 *Handler.* "Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of tomatoes owned by another person) who handles tomatoes or causes tomatoes to be handled.

§ 945.7 *Handle.* "Handle" or "ship" means to transport, sell, or in any other way to place tomatoes in the current of commerce within the production area or between the production area and any point outside thereof: *Provided*, That such terms shall not include: (a) The transportation, sale, or delivery of tomatoes by a producer to a handler registered as such with the committee and who has adequate facilities within the production area for grading; or (b) the transportation to and sale of tomatoes at auction markets designated by the committee. In the event a producer sells tomatoes other than is indicated in paragraphs (a) and (b) of this section, such pro-

ducer shall be the first handler of such tomatoes.

§ 945.8 *Producer.* "Producer" means any person engaged in a proprietary capacity in the production of tomatoes for market.

§ 945.9 *Grading.* "Grading" is synonymous with "preparation for market" and means the sorting or separation of tomatoes into grades, sizes, maturities, and packs for market purposes.

§ 945.10 *Grade and size.* "Grade" means any one of the established grades of tomatoes and "size" means any one of the established sizes of tomatoes as defined and set forth in U. S. Standards for Fresh Tomatoes (§§ 51.1855 to 51.1876 of this title) or U. S. Consumer Standards for Fresh Tomatoes (§§ 51.1900 to 51.1913 of this title), both issued by the United States Department of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon recommended by the committee and approved by the Secretary.

§ 945.11 *Pack.* "Pack" means any of the packs of tomatoes as defined and set forth in the United States Standards for Fresh Tomatoes issued by the United States Department of Agriculture (§§ 51.1855 to 51.1876 of this title), or any pack of tomatoes recommended by the committee and approved by the Secretary.

§ 945.12 *Maturity.* "Maturity" means various degrees of ripeness for tomatoes as established by the committee with approval of the Secretary.

§ 945.13 *Container.* "Container" means a box, bag, crate, hamper, basket, package, tube, bulk load or any other type of unit used in the packaging, transportation, sale, shipment, or handling of tomatoes.

§ 945.14 *Varieties.* "Varieties" means and includes all classifications or subdivisions of tomatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 945.15 *Committee.* "Committee" means the Florida Tomato Committee, established pursuant to § 945.22.

§ 945.16 *Fiscal period.* "Fiscal period" means the period beginning August 1 and ending July 31 following.

§ 945.17 *District.* "District" means each one of the geographic divisions of the production area initially established pursuant to § 945.24, or as reestablished pursuant to § 945.25.

§ 945.18 *Export.* "Export" means shipment of tomatoes beyond the boundaries of continental United States.

COMMITTEE

§ 945.22 *Establishment and membership.* (a) The Florida Tomato Committee, consisting of 15 producer members, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Each person selected as a committee member or alternate shall be an individual who is a producer, or an officer

or an employee of a corporate producer, in the district for which selected and a resident of the production area.

§ 945.23 *Term of office.* (a) The term of office of committee members, and their respective alternates, shall be for 1 year and shall begin as of August 1 and end as of July 31.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 945.24 *Districts.* For the purpose of determining the basis for selecting committee members the following districts of the production area are hereby initially established:

District No. 1. The counties of Broward and Dade in the State of Florida;

District No. 2. The counties of Brevard, Glades, Indian River, Martin, Osceola, Okeechobee, Palm Beach, and St. Lucie in the State of Florida;

District No. 3. The counties of Charlotte, Collier, Hendry, Lee and Monroe in the State of Florida;

District No. 4. The counties of De Soto, Hardee, Highlands, Hillsborough, Manatee, Pinellas, Polk and Sarasota in the State of Florida; and

District No. 5. All the remaining counties within the production area not included in Districts 1, 2, 3, and 4.

§ 945.25 *Redistricting.* The committee may recommend, and pursuant thereto, the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the committee shall give consideration to: (a) Shifts in tomato acreage within districts and within the production area during recent years; (b) the importance of new production in its relation to existing districts; (c) the equitable relationship of committee membership and districts; (d) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and (e) other relevant factors. No change in districting or in apportionment of members within districts may become effective within less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

§ 945.26 *Selection.* The Secretary shall select initially 3 members of the committee with their respective alternates, from each district.

§ 945.27 *Nomination.* The Secretary may select the members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers shall be held in each district to nominate members and alternates for the committee. For nominations to the initial committee, the meetings may be sponsored by the United States Depart-

ment of Agriculture or by any agency or group requested to do so by such department. For nominations for succeeding members and alternates on the committee, the committee shall hold such meetings or cause them to be held prior to June 15 of each year, after the effective date of this subpart;

(b) At each such meeting at least two nominees shall be designated for each position as member and for each position as alternate member on the committee and eligible voters at such meetings may ballot to indicate the ranking of their choice for each nominee;

(c) Nominations for committee members and alternates, shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 15, of each year;

(d) Only producers may participate in designating nominees for members and alternates on the committee. In the event a person is engaged in producing tomatoes in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees; and

(e) Regardless of the number of districts in which a person produces tomatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

§ 945.28 *Failure to nominate.* If nominations are not made within the time and in the manner specified in § 945.27, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 945.24 through 945.26 inclusive.

§ 945.29 *Acceptance.* Any person selected as a committee member or alternate shall qualify by filing a written acceptance with the Secretary within ten days after being notified of such selection.

§ 945.30 *Vacancies.* To fill committee vacancies, the Secretary may select such members or alternates from unselected nominees on the current nominee list from the district involved, or from nominations made in the manner specified in § 945.27. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in §§ 945.24 through 945.26 inclusive.

§ 945.31 *Alternate members.* An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified.

§ 945.32 *Procedure.* (a) Ten members of the committee shall be necessary to constitute a quorum and the same number of concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing; *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

§ 945.33 *Expenses and compensation.* Committee members and alternates may be reimbursed for expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part.

§ 945.34 *Powers.* The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 945.35 *Duties.* It shall be, among other things, the duty of the committee:

(a) At the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to tomatoes;

(f) To prepare a marketing policy;

(g) To recommend marketing regulations to the Secretary;

(h) To recommend rules and procedures for, and to make determinations in connection with, issuance of certificates of privilege or exemptions, or both;

(i) To investigate an applicant's claim for exemptions;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary or his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(k) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(l) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period,

and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(m) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

EXPENSES AND ASSESSMENTS

§ 945.40 *Expenses.* The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of tomatoes handled by him as the first handler thereof during a fiscal period and the total quantity of tomatoes handled by all handlers as first handlers thereof during such fiscal period.

§ 945.41 *Budget.* At the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 945.42 *Assessments.* (a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles tomatoes shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all tomatoes which were regulated under this part and which were shipped by the first handler thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective whether particular provisions thereof are suspended or become inoperative.

§ 945.43 *Accounting.* (a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member of the committee or alternate, he shall account to his successor, the committee, or to the person designated by the Secretary, for all receipts, disbursements, funds and property (including but not being limited to books and other records) pertaining to the committee's activities for which he is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, committee, or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

§ 945.44 *Refunds.* At the end of each fiscal period or other representative period used by the committee as a basis for seasonal accounting, monies arising from the excess of assessments over expenses shall be accounted for as follows:

(a) Each handler entitled to a proportionate refund of the excess assessments at the end of a fiscal period shall be credited with such refund against the operations of the following fiscal period unless he demands payment thereof, in which event such proportionate refund shall be paid to him; or

(b) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that some of the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve for possible liquidation. Upon approval by the Secretary, such reserve may be used upon termination of this order to liquidate the affairs of the committee; *Provided*, That upon termination of this part any monies in the reserve for liquidation which are not required to defray the necessary expenses of committee liquidation shall be returned upon

a pro rata basis to all persons from whom such funds were collected.

RESEARCH AND DEVELOPMENT

§ 945.48 *Research and development.* The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of tomatoes. The expenses of such projects shall be paid from funds collected pursuant to § 945.42.

REGULATION

§ 945.50 *Marketing policy.* Prior to or at the same time as initial recommendations are made pursuant to § 945.51, the committee shall submit to the Secretary a report setting forth the marketing policy it deems desirable for the industry to follow in shipping tomatoes from the production area during the ensuing season. Additional reports shall be submitted from time to time if it is deemed advisable by the committee to adopt a new or modified marketing policy because of changes in the demand and supply situation with respect to tomatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

(a) Market prices of tomatoes, including prices by grades, sizes, and quality in different packs, and such prices by foreign competing areas;

(b) Supply of tomatoes, by grade, size, and quality in the production area, and in other production areas, including foreign competing production areas;

(c) Trend and level of consumer income;

(d) Marketing conditions affecting tomato prices; and

(e) Other relevant factors.

§ 945.51 *Recommendations for regulations.* The committee, upon complying with the requirements of § 945.50, may recommend regulations to the Secretary whenever it finds that such regulations, as are provided for in this subpart, will tend to effectuate the declared policies of the act.

§ 945.52 *Issuance of regulations.* The Secretary shall limit the handling of tomatoes whenever he finds from the recommendation and information submitted by the Committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such regulation may:

(a) Limit, in any or all portions of the production area, the handling of particular grades, sizes, qualities, or packs of any or all varieties of tomatoes during any period; or

(b) Limit the handling of particular grades, sizes, qualities, or packs of tomatoes differently, for different varieties, for different stages of maturity, for different portions of the production area, for different containers, for different

markets, for different purposes specified in § 945.54, or any combination of the foregoing, during any period; or

(c) Limit the handling of tomatoes by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity; or

(d) Fix the size, weight, capacity, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of tomatoes.

§ 945.53 *Minimum quantities.* The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which handling will be free from regulations issued or effective pursuant to §§ 945.42, 945.52, 945.54, 945.60, or any combination thereof.

§ 945.54 *Shipments for special purposes.* Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, whenever he finds that it will tend to effectuate the declared policy of the act, shall modify, suspend, or terminate regulations issued pursuant to §§ 945.42, 945.52, 945.53, 945.60, or any combination thereof, in order to facilitate handling of tomatoes for the following purposes:

(a) For export;

(b) For relief or for charity;

(c) For processing; or

(d) For other purposes which may be specified by the committee, with the approval of the Secretary.

§ 945.55 *Notification of regulation.* The Secretary shall notify the committee of any regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

§ 945.56 *Safeguards.* (a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent handling of tomatoes pursuant to § 945.53 or § 945.54 from entering channels of trade for other than the specific purpose authorized therefor, and rules governing the issuance and the contents of Certificates of Privilege if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall file applications with the committee to ship tomatoes pursuant to §§ 945.53 and 945.54; or

(2) Handlers shall obtain inspection provided by § 945.60, or pay the assessment levied pursuant to § 945.42, or both, in connection with shipments made under § 945.54; or

(3) Handlers shall obtain Certificates of Privilege from the committee to handle tomatoes effected or to be effected under the provisions of §§ 945.53 and 945.54.

(b) The committee may rescind or deny Certificates of Privilege to any handler if proof is obtained that tomatoes handled by him for the purposes stated in §§ 945.53 and 945.54 were handled contrary to the provisions of this part.

(c) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certifi-

ates issued by the committee pursuant to the provisions of this section.

(d) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of tomatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of tomatoes handled under duly issued certificates, and such other information as may be requested.

INSPECTION

§ 945.60 *Inspection and certification.*

(a) During any period in which handling of tomatoes are regulated pursuant to §§ 945.42, 945.52, 945.54, or any combination thereof, no handler shall handle tomatoes unless each such handling is inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate, except when relieved from such requirements pursuant to § 945.53, or § 945.54, or both.

(b) Regrading, resorting, or repacking any lot of tomatoes shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall handle tomatoes after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless each lot of such tomatoes is inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate: *Provided*, That the committee, with approval of the Secretary, may provide for waiving inspection requirements on any tomatoes in circumstances where it appears reasonably certain that, after regrading, resorting, or repacking, such tomatoes meet the applicable quality and other standards then in effect.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(d) When tomatoes are inspected in accordance with the requirements of this section a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

EXEMPTIONS

§ 945.70 *Procedure.* The committee may adopt, with approval of the Secretary, the procedures pursuant to which certificates of exemption will be issued to producers or handlers.

§ 945.71 *Granting exemptions.* The committee shall issue certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee, that by reason of a regulation issued pursuant to § 945.52 he will be prevented from handling as large a proportion of his production as the average proportion of production handled during the entire season, or such portion thereof as may be determined by the committee, by all producers in said applicant's immediate production area and that the grade, size, or quality of the applicant's tomatoes

have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the producer to handle the amount of tomatoes specified thereon. Such certificate shall be transferred with such tomatoes at time of transportation or sale.

§ 945.72 *Investigation.* The committee shall be permitted at any time to make a thorough investigation of any producer's or handler's claim pertaining to exemptions.

§ 945.73 *Appeal.* If any applicant for exemption certificates is dissatisfied with the determination by the committee with respect to his application, said applicant may file an appeal with the committee. Such an appeal must be taken promptly after the determination by the committee from which the appeal is taken. Any applicant filing an appeal shall furnish evidence satisfactory to the committee for a determination on the appeal. The committee shall thereupon reconsider the application, examine all available evidence, and make a final determination concerning the application. The committee shall notify the appellant of the final determination, and shall furnish the Secretary with a copy of the appeal and a statement of considerations involved in making the final determination.

§ 945.74 *Records.* (a) The committee shall maintain a record of all applications submitted for exemption certificates, a record of all exemption certificates issued and denied, the quantity of tomatoes covered by such exemption certificates, a record of the amount of tomatoes handled under exemption certificates, a record of appeals for reconsideration of applications, and such information as may be requested by the Secretary. Periodic reports on such records shall be compiled and issued by the committee upon request of the Secretary.

(b) The Secretary shall have the right, to modify, change, alter, or rescind any procedure and any exemptions granted pursuant to §§ 945.70, 945.71, 945.72, 945.73, or any combination thereof.

REPORTS

§ 945.80 *Reports.* Upon request of the committee, made with approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of tomatoes received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such tomatoes; and (4) identification of the inspection certificates and the exemption certificates, if any, pursuant to which the tomatoes were handled, together with the destination of each ex-

empted disposition, and of all tomatoes handled pursuant to §§ 945.53 and 945.54.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the tomatoes received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

MISCELLANEOUS PROVISIONS

§ 945.81 *Compliance.* Except as provided in this subpart, no handler shall handle tomatoes, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no handler shall handle tomatoes except in conformity to the provisions of this subpart.

§ 945.82 *Right of the Secretary.* The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 945.83 *Effective time.* The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 945.84 *Termination.* (a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operations of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers, who during a representative period, have been engaged in the production for market of tomatoes: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the

volume of such tomatoes produced for market.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 945.85 *Proceedings after termination.* (a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 945.86 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 945.87 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 945.88 *Agents.* The Secretary may, by designation in writing, name any person, including any officer or employee of the United States, or name any agency in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 945.89 *Derogation.* Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 945.90 *Personal liability.* No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 945.91 *Separability.* If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 945.92 *Amendments.* Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

§ 945.93 *Counterparts.* This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.¹

§ 945.94 *Additional parties.* After the effective date hereof, any handler who had not previously executed this agreement may become a party hereto if a counterpart hereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.¹

§ 945.95 *Order with marketing agreement.* Each signatory handler favors and approves the issuance of an order, by the Secretary, regulating the handling of tomatoes in the same manner as is provided for in this agreement; and each signatory handler hereby requests the Secretary to issue, pursuant to the act, such an order.¹

Done at Washington, D. C., this 24th day of May 1955.

[SEAL] ROY W. LENNARTSON,
Acting Administrator.

[F. R. Doc. 55-4306; Filed, May 26, 1955;
8:50 a. m.]

¹ Applicable only to the proposed marketing agreement.

[7 CFR Part 1003]

[Docket No. AO-269]

HANDLING OF DOMESTIC DATES PRODUCED OR PACKED IN LOS ANGELES AND RIVERSIDE COUNTIES OF CALIFORNIA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Correction

In Federal Register Document 55-4141, published at page 3531, of the issue dated May 20, 1955, the following changes should be made:

1. In the third column, page 3531, the first sentence of paragraph (1) should read: "As will appear in the discussion of the definition of 'handler' under (3) (a) below it is intended to regulate under the proposed program the handling of dates, regardless of whether in the current of intrastate, interstate, or foreign commerce."

2. In the first column, page 3540, the word "quality" in the fifth line of the first paragraph should read "quantity".

3. Paragraph (e) of § 1003.21, page 3541, should read as follows:

(e) Two to represent producers who are not members of a cooperative marketing association.

CIVIL AERONAUTICS BOARD

[14 CFR Parts 4b, 40, 41, 42, 43, 45]

[Draft Release 55-14]

POSITION AND ANTI-COLLISION LIGHT SYSTEMS ON TRANSPORT CATEGORY AIRPLANES

NOTICE OF PROPOSED RULE MAKING

Pursuant to authority delegated by the Civil Aeronautics Board to the Bureau of Safety Regulation, notice is hereby given that the Bureau will propose to the Board the issuance of a Special Civil Air Regulation to extend the authority contained in Special Civil Air Regulation No. SR-392 as hereinafter set forth.

Interested persons may participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should be submitted in duplicate to the Civil Aeronautics Board, attention Bureau of Safety Regulation, Washington 25, D. C. In order to insure their consideration by the Board before taking further action on the proposed rule, communications must be received by June 20, 1955. Copies of such communications will be available after June 22, 1955, for examination by interested persons at the Docket Section of the Board, Room 5412, Department of Commerce Building, Washington, D. C.

On April 9, 1953, the Board adopted Special Civil Air Regulation No. SR-392 which permits experimentation projects on a limited number of airplanes for the purpose of improving position light and anti-collision light systems. SR-392

terminates on June 30, 1955. The Bureau of Safety Regulation considers that further improvement of the conspicuity of transport airplanes is desirable and that continued experimentation along these lines should be permitted.

This proposed special regulation would authorize continued experimentation on a limited number of transport category airplanes with position light and anti-collision light systems which deviate from the specifications prescribed in presently effective Part 4b of the Civil Air Regulations, provided such deviations are within limitations prescribed by the Administrator to be necessary for safety and for avoiding confusion in air navigation.

In view of the foregoing, notice is hereby given that it is proposed to promulgate a Special Civil Air Regulation to read as follows:

Contrary provisions of the Civil Air Regulations notwithstanding, any air carrier may, subject to the approval of the Administrator, engage, while operating airplanes in scheduled or other service, in experimentation on a limited number of airplanes, with projects designed to improve the position light and anti-collision light systems presently specified in Part 4b of the Civil Air Regulations. The Administrator shall prescribe such conditions and limitations as may be necessary to assure safety and to avoid confusion in air navigation, and shall require each carrier to disclose publicly its deviations from the requirements of Part 4b at times and in a manner which he deems consistent with the best interests of safety.

This regulation supersedes Special Civil Air Regulation No. SR-392, and

shall terminate June 30, 1960, unless sooner superseded or rescinded.

This regulation is proposed under the authority of Title VI of the Civil Aeronautics Act of 1938, as amended, and may be changed in the light of comments received in response to this notice of proposed rule making.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601-610, 52 Stat. 1007-1012, as amended; 49 U. S. C. 551-560)

Dated at Washington, D. C., May 18, 1955.

By the Bureau of Safety Regulation.

[SEAL] JOHN M. CHAMBERLAIN,
Director.

[F. R. Doc. 55-4301; Filed, May 26, 1955;
8:49 a. m.]

FEDERAL TRADE COMMISSION

[16 CFR Ch. I]

[File No. 461]

CORSET, BRASSIERE, AND ALLIED PRODUCTS INDUSTRY

NOTICE OF HEARING AND OF OPPORTUNITY TO PRESENT VIEWS, SUGGESTIONS, OR OBJECTIONS ON PROPOSED TRADE PRACTICE RULES

Opportunity is hereby extended by the Federal Trade Commission to any and all persons, firms, corporations, organizations, or other parties, including farm, labor, and consumer groups, affected by or having an interest in the proposed

trade practice rules for the corset, brassiere, and allied products industry, to present to the Commission such pertinent information, suggestions, or objections as they may desire to submit, and to be heard in the premises. For this purpose they may obtain copies of the proposed rules upon request to the Commission. Such views, information, suggestions, or objections may be submitted by letter, memorandum, brief, or other communication, to be filed with the Commission not later than June 23, 1955. Opportunity to be heard orally will be afforded at the hearing beginning at 10 a. m., d. s. t., June 23, 1955, in Suite 135 of the Biltmore Hotel, 43d Street and Madison Avenue, New York City, to any person who desires to appear and be heard. After due consideration of all matters presented in writing or orally, the Commission will proceed to final action on the proposed rules.

The industry for which trade practice rules are sought to be established through these proceedings is composed of persons, firms, corporations, and organizations engaged in the manufacture, importation, or marketing at any level of distribution, of corsets, brassieres, girdles, combinations, garter belts, bust pads, and related foundation garments.

By direction of the Commission.

Issued: May 24, 1955.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 55-4305; Filed, May 26, 1955;
8:49 a. m.]

NOTICES

CIVIL AERONAUTICS BOARD

[Docket No. 6600 et al.]

HELICOPTER AIR SERVICE, INC., AND MIDWAY AIRLINES, INC.; CHICAGO AREA SERVICE CASE

NOTICE OF HEARING

In the matter of the applications of Helicopter Air Service, Inc., for renewal and amendment of its temporary certificate of public convenience and necessity and of Midway Airlines, Inc., for a certificate of public convenience and necessity and/or exemption authority.

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, particularly sections 401 and 1001 of said act, that a hearing in the above-entitled proceeding is assigned to be held on June 13, 1955, at 10:00 a. m., local time, in Room 224, U. S. Court House, 219 South Clark Street, Chicago, Illinois.

Without limiting the scope of the issues, particular attention will be directed to the following matters and questions:

1. Whether the public convenience and necessity require the renewal and amendment of the temporary certificate of public convenience and necessity of Helicopter Air Service, Inc., as set forth in its application, and amendments

thereto, filed with the Board in Docket No. 6600.

2. Whether the public convenience and necessity require the grant of the application, as amended, filed with the Board by Midway Airlines, Inc. in Docket No. 6852.

3. Are the applicants fit, willing, and able to perform such transportation properly and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board thereunder.

For further details of the service proposed, and the authorizations requested, interested parties are referred to the applications, the Board's order No. E-8963, and the prehearing conference report which are on file with the Civil Aeronautics Board.

Notice is further given that any person other than parties of record desiring to be heard in support or opposition to questions involved in this proceeding must file with the Board on or before June 13, 1955, a statement setting forth the matters of fact or law which he desires to advance or controvert. Any person filing such a statement may appear at the hearing in accordance with § 302.14 of the Board's rules of practice in Economic Proceedings.

Dated at Washington, D. C., May 23, 1955.

By the Civil Aeronautics Board.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 55-4304; Filed, May 26, 1955;
8:49 a. m.]

[Docket No. 6615]

PAN AMERICAN WORLD AIRWAYS, INC.; GUATEMALA-LOS ANGELES-SAN FRANCISCO SERVICE

NOTICE OF ORAL ARGUMENT

In the matter of the application of Pan American World Airways, Inc., for amendment of certificate of public convenience and necessity under section 401 of the Civil Aeronautics Act of 1938, as amended.

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, that oral argument in the above-entitled proceeding is assigned to be held on June 14, 1955, at 10:00 a. m., e. d. s. t., in Room 5042, Commerce Building, Constitution Avenue, between Fourteenth and Fifteenth Streets NW., Washington, D. C., before the Board.

Dated at Washington, D. C., May 24, 1955.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 55-4302; Filed, May 26, 1955;
8:49 a. m.]

[Docket No. 6848]

DELTA-C & S

NOTICE OF ORAL ARGUMENT

In the matter of the Delta-C & S application to make Fort Wayne, Ind., an alternate intermediate point to Anderson/Muncie/New Castle, Ind.

Notice is hereby given, pursuant to the provisions of the Civil Aeronautics Act of 1938 as amended, that oral argument in the above-entitled proceeding is assigned to be held on June 8, 1955, at 10:00 a. m., e. d. s. t., in Room 5042, Commerce Building, Constitution Avenue, between Fourteenth and Fifteenth Streets NW., Washington, D. C., before the Board.

Dated at Washington, D. C., May 24, 1955.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 55-4303; Filed, May 26, 1955;
8:49 a. m.]

DEPARTMENT OF COMMERCE

Maritime Administration

PACIFIC FAR EAST LINE, INC.

NOTICE OF APPLICATION

Notice is hereby given of the application of Pacific Far East Line, Inc., seeking the written permission of the Maritime Administrator under section 805 (a) Merchant Marine Act, 1936, 46 U. S. C. 1223, to load approximately 3,000 tons of newsprint at Port Angeles, Washington, on or about May 30, 1955, for discharge at San Francisco and Long Beach, California.

Under the provisions of section 805 (a), the Maritime Administrator may not grant any such application if the Administrator finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it will be prejudicial to the objects and policy of the act.

Any person, firm or corporation having any interest in such application and desiring a hearing on issues pertinent to section 805 (a) should notify the Acting Secretary, Maritime Administration, on or before noon, May 31, 1955, and should file petitions for leave to intervene in accordance with § 201.81 of the Federal Maritime Board/Maritime Administration's rules of procedure (18 F. R. 3716).

In the absence of receipt of any such request for hearing and petition for leave to intervene, the Maritime Administrator will grant the requested permission.

Dated: May 25, 1955.

No. 104—11

By order of the Maritime Administrator.

[SEAL] THOS. E. STAKEM, JR.,
Acting Secretary.

[F. R. Doc. 55-4340; Filed, May 26, 1955;
8:51 a. m.]

FEDERAL COMMUNICATIONS
COMMISSION

[Amdt. 0-5; FCC 55-585]

CHIEF HEARING EXAMINER

DELEGATION OF CERTAIN AUTHORITIES PRESENTLY DELEGATED TO MOTIONS COMMISSIONER AND HEARING EXAMINER

In the matter of amendment of Part 0 of the Commission's rules and regulations, by delegating to the Chief Hearing Examiner certain authorities presently delegated to the Motions Commissioner and the Hearing Examiner.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 18th day of May 1955:

The Commission having under consideration the delegation to the Chief Hearing Examiner of certain authorities presently delegated to the Motions Commissioner and the Hearing Examiner; and

It appearing, that the amendment herein ordered would be in aid of orderly administrative procedure; and

It further appearing, that the amendment herein ordered is procedural in nature, and, therefore, compliance with the public notice and rule making procedure required by sections 4 (a) and (b) of the Administrative Procedure Act is not required;

It is ordered, That pursuant to section 4 (i) and 303 (r) of the Communications Act, as amended, and section 3 (a) of the Administrative Procedure Act, Part 0 of the Commission's rules is hereby amended, effective immediately, as set forth below.

Released: May 20, 1955.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

1. Section 0.222 of the Commission's rules and regulations is amended by deleting in subsection (a) thereof after the words "In cases designated for hearing" the words "but before a hearing examiner has been designated to preside at a hearing and." As amended, section 0.222 (a) reads as follows:

(a) In cases designated for hearing after issuance of an initial decision, on all motions, petitions or other pleadings except (1) those requesting final disposition of any case on its merits, (2) those having the nature of an appeal to the Commission, en banc, (3) those changing the issues upon which the hearing was ordered, and (4) those requesting change or modification of a final order made by the Commission.

2. Section 0.224 of the Commission's rules and regulations is amended by substituting in subsection (c) for the words

"After a hearing examiner has been designated to preside at a hearing and before he" the following phrase "After a case has been designated for hearing and before the hearing examiner."

3. Section 0.224 of the Commission's rules and regulations is further amended by adding to subsection (c) a new number (5). As amended, section 0.224 (c) reads as follows:

(c) After a case has been designated for hearing and before the hearing examiner has issued an initial decision, on motions, petitions and other pleadings concerning

(1) Petitions to intervene.

(2) Petitions filed by applicant requesting that its application or the proceeding thereon be dismissed.

(3) Dismissal of cease and desist and revocation proceedings.

(4) Requests for leave to file additional pleadings provided for in § 1.730 and pleadings in excess of the length specified in § 1.751.

(5) In the absence of the hearing examiner who has been designated to preside in a proceeding, to discharge the hearing examiner's functions delegated to him under section 0.231.

[F. R. Doc. 55-4274; Filed, May 25, 1955;
8:52 a. m.]

[Docket Nos. 11392, 11393; FCC 55-574]

BARTLETT AND REED MANAGEMENT AND
BLACKHILLS VIDEO CO.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Bartlett and Reed Management, Rapid City, South Dakota, Docket No. 11392, File Nos. 557/558/559/560/561/562/563-C1-P-55; and Blackhills Video Company, Rapid City, South Dakota, Docket No. 11393, File Nos. 1096/1097/1098/1099/1100/1101/1102/1103/1104/1105-C1-P-55; for construction permits for radio relay facilities.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 18th day of May 1955;

The Commission, having under consideration the above-entitled applications for construction permits to establish separate common carrier microwave systems, from points within the signal contour area of television stations located at Denver, Colorado, to Rapid City, South Dakota, for the purpose of transmitting television program material to the latter point; and

It appearing that neither applicant has submitted a satisfactory showing that its proposed facility is required to serve the public interest, convenience or necessity; and

It further appearing that the establishment of two separate and competing systems for the provision of service to the same area may result in wasteful duplication of facilities; and,

It further appearing that the Commission has advised each of the above-entitled applicants by letters, dated April

14 and April 18, 1954, respectively, pursuant to the provisions of section 309 (b) of the Communications Act of 1934, as amended, as to the reasons why its applications cannot be granted without hearing, and has carefully considered the responses thereto:

It is ordered, That, pursuant to the provisions of section 309 (b) of the Communications Act of 1934, as amended, the above-entitled applications are designated for hearing in a consolidated proceeding at the offices of the Commission in Washington, D. C., commencing at 10:00 a. m., on July 5, 1955, upon the following issues:

1. To determine the need for either or both services in the respective areas to be served.
2. To determine the facts with respect to the proposed facilities, personnel, rates, regulations, practices and services of each applicant.
3. To determine the comparative qualifications of the principals of both applicants to construct and operate the proposed microwave relay circuits.
4. To determine, in the light of the evidence adduced on the foregoing issues, whether the public interest, convenience or necessity would be served by a grant of any of the applications and whether either or both of the respective system applications should be granted.

Released: May 23, 1955.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 55-4272; Filed, May 25, 1955;
8:52 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. E-6191, E-6295]

LUZ Y FUERZA DE REYNOSA S. A. AND
CENTRAL POWER AND LIGHT CO.

NOTICE OF APPLICATIONS

MAY 23, 1955.

In the matters of Luz y Fuerza de Reynosa S. A., Docket No. E-6295; Central Power and Light Co., Docket No. E-6191.

Take notice that on May 16, 1955, Luz y Fuerza de Reynosa S. A. and Central Power and Light Company (Applicants), filed a joint application in each of the above dockets for authority, pursuant to section 202 (e) of the Federal Power Act, to increase the amount of electric energy which they may transmit from the United States to Mexico.

By one of these applications Applicants seek authority to export from a point near Hidalgo, Texas, to the vicinity of Reynosa, Tamulipas, Mexico, up to 20,000,000 kwh of electric energy annually at a maximum rate of transmission of 4,000 kw; the authorization to supersede that heretofore granted by order of the Commission dated May 3, 1950, in Docket No. E-6191. In the other application Applicants seek authority to export from a point near Donna River Pumping Station at Progresso, Texas, to the vicinity of Rio Bravo, Tamaulipas, Mexico, up to 25,000,000 kwh of electric energy annually at a maximum rate of

transmission of 5,000 kw; the authorization to supersede that heretofore granted by order of the Commission dated December 18, 1950, in Docket No. E-6295.

Any person desiring to be heard, or to make any protest with reference to these applications should, on or before the 13th day of June 1955, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's general rules and regulations. The applications are on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-4291; Filed, May 26, 1955;
8:47 a. m.]

[Docket No. E-6624]

EL PASO ELECTRIC CO.

NOTICE OF APPLICATION

MAY 23, 1955.

Take notice that on May 9, 1955, an application was filed with the Federal Power Commission, pursuant to section 204 of the Federal Power Act, by El Paso Electric Company, a corporation organized under the laws of the State of Texas and doing business in the States of Texas and New Mexico, with its principal business office at El Paso, Texas, seeking an order authorizing the issuance of \$3,000,000 face amount of unsecured Promissory Notes, payable to such bank or banks from which the Company may borrow funds for periods not exceeding twelve months from date of original issue or renewal thereof. Said notes will bear maturity dates not later than December 31, 1956, and will bear interest at a rate per annum not in excess of one quarter of one per cent over the prime rate in effect at the time of the borrowing or the renewal or extension of the loans; all as more fully appears in the application on file with the Commission.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before the 6th day of June 1955, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-4292; Filed, May 26, 1955;
8:47 a. m.]

[Docket No. G-1783]

TRANSCONTINENTAL GAS PIPELINE CORP.
NOTICE OF PETITION TO AMEND AND DATE
OF HEARING

MAY 23, 1955.

Take notice that on April 29, 1955, Transcontinental Gas Pipeline Corporation (Petitioner), a Delaware corporation, having its principal place of

business at Houston, Texas, filed a petition to amend the certificate of public convenience and necessity heretofore issued to Petitioner in the above-entitled matter in the manner hereinafter indicated.

By the decision of the Commission's Presiding Examiner, filed April 17, 1952, as modified and affirmed by the Commission in its order issued June 25, 1952, Petitioner was granted a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, to construct and operate facilities for the transportation and sale of natural gas to the Duke Power Company.

Petitioner seeks to amend Paragraph (A) of said Decision, which provided for the delivery of natural gas to the Duke Power Company as follows,

(A) The facilities herein authorized shall be used for the transportation and delivery of natural gas on an interruptible basis, and gas so transported and delivered shall be limited to the natural gas that is available as the difference between the Applicant's pipeline delivery capacity of 50,000 Mcf per day, which was specifically authorized by the Commission in Docket No. G-1411 and the volume of gas actually delivered under such authorization, but not in any event to exceed 30,000 Mcf in any one calendar day, and not more than the following total annual quantities:

First year 5,529,000 Mcf.
Second year 3,000,000 Mcf.
Third year 2,520,000 Mcf.
Fourth year 2,520,000 Mcf.
Fifth year 2,520,000 Mcf.

by substituting the following:

(A) The facilities herein authorized shall be used for the transportation and delivery, on an interruptible basis and subject to the terms and conditions hereinafter ordered, of such volumes of natural gas as Transcontinental may have available south of Compressor Station No. 15 and as Duke Power may be willing to purchase, but in no event shall such volumes exceed 50,000 Mcf per day.

In addition, Petitioner requests that Paragraph (C) of said Decision should be deleted. Said paragraph reads as follows:

(C) The operation of the facilities herein authorized is hereby limited to a period of five years from the date of the first delivery of natural gas to Duke Power Company unless such period shall hereafter be extended by order of the Commission.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on June 15, 1955, at 10:00 a. m., e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such petition.

Protests, petitions to intervene, or notices of intervention may be filed with the Federal Power Commission, Wash-

ington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10), on or before June 13, 1955.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-4293; Filed, May 26, 1955;
8:47 a. m.]

[Docket No. G-8709]

LENOIR M. JOSEY, INC., ET AL.

NOTICE OF APPLICATION AND DATE OF
HEARING

MAY 23, 1955.

In the matter of Lenoir M. Josey, Inc., Houston Oil Well Service Company, R. A. Josey Estate, Pine Lodge Oil Company, Inc., Jack S. Josey, M. F. Brown, N. E. Payne, Jack W. Craig, Robert H. Park, W. R. Donaho; Docket No. G-8709.

Take notice that Lenoir M. Josey, Inc., a Texas corporation whose address is C & I Life Building, Houston 2, Texas, filed an application on April 1, 1955, for itself and as agent for the above-entitled applicants for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing the Applicants to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicants propose to sell natural gas produced from the North Hungerford Field, Fort Bend and Wharton Counties, Texas, to Tennessee Gas Transmission Company. Tennessee will transport and sell the gas in interstate commerce. The delivery point will be at Tennessee's pipe line in the field. It is estimated that the rate of delivery will be approximately 105,000 Mcf per month. The initial price will be 13.47548 cents per Mcf at 14.65 psia.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on June 17, 1955, at 9:30 a. m. e. d. s. t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before June 9, 1955. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediary

decision procedure in cases where a request therefor is made.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-4294; Filed, May 26, 1955;
8:47 a. m.]

[Project No. 2059]

EUGENE WATER & ELECTRIC BOARD

NOTICE OF POSTPONEMENT OF HEARING

MAY 20, 1955.

In the matter of City of Eugene, Oregon, by and thru its Eugene Water & Electric Board; Project No. 2059.

Upon consideration of the telegraphic request, filed May 19, 1955, by the Eugene Water & Electric Board, for postponement of the hearing now scheduled for June 7, 1955, in the above-designated matter:

Notice is hereby given that the hearing now scheduled for June 7, 1955, is hereby postponed to 10:00 a. m., P. s. t., June 27, 1955, in Room 200, Veterans Memorial Building, 1600 Williamette Street, Eugene, Oregon.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 55-4295; Filed, May 26, 1955;
8:47 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

[Vesting Order 16580, Amdt.]

LUDWIG EDWARD DAVID

In re: Estate of Ludwig Edward David, deceased, File No. D-28-12795; E. & T. sec. 16969.

Vesting Order 16580 dated December 19, 1950, is hereby amended as follows and not otherwise:

1. By inserting immediately after the words "That Dr. Alice David and Ludwig David," the designations "or the domiciliary personal representatives, heirs, next of kin, legatees and distributees, names unknown, of Ludwig David,"

All other provisions of said Vesting Order 16580 and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C., on May 23, 1955.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 55-4300; Filed, May 26, 1955;
8:48 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR
RELIEF

MAY 24, 1955.

Protests to the granting of an application must be prepared in accordance

with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT-HAUL

FSA No. 30658: Livestock, London, Ohio, to Atlanta, Ga. Filed by H. R. Rinsch, Agent, for interested rail carriers. Rates on cattle, calves, goats, kids, hogs, lambs and sheep, carloads, from London, Ohio, to Atlanta, Ga.

Grounds for relief: Short-line distance formula and circuitry.

Tariff: Supplement 70 to Agent Hirsch's I. C. C. 4510.

FSA No. 30659: Motor-rail-motor rates, Pennsylvania Railroad. Filed by Eastern Central Motor Carriers Association, Agent, for Pennsylvania Railroad Company and interested motor carriers. Rates on various commodities, truckloads and less-truck loads, in highway trailers, loaded on railroad flat cars, between Chicago, Ill., and East St. Louis, on the one hand, and Philadelphia, Pa., and Kearny, N. J., on the other.

Grounds for relief: "Trailer-on-flat-car" motor competition.

Tariff: Eastern Central Motor Carriers Association I. C. C. No. 4.

FSA No. 30660: Fine coal, Belleville, Ill., groups to Chamois, Mo. Filed by Missouri Pacific Railroad Company (Guy A. Thompson, Trustee), for itself and on behalf of the Missouri-Illinois Railroad Company. Rates on bituminous fine coal, carloads, from Belleville, Ill., and other points in the Belleville group, to Chamois, Mo.

Grounds for relief: Rail-barge competition and circuitry.

Tariff: Supplement 12 to Missouri Pacific Railroad Company, I. C. C. A-10454.

FSA No. 30661: Fullers earth, Faceville, Ga., to Norfolk and Portsmouth, Va. Filed by J. G. Kerr, Agent, for interested rail carriers. Rates on fullers earth, carloads, from Faceville, Ga., to Norfolk and Portsmouth, Va.

Grounds for relief: Circuitous routes. Tariff: Supplement 30 to Agent C. A. Spaninger's I. C. C. 1323.

FSA No. 30662: Merchandise to Memphis, Tenn. Filed by J. G. Kerr, Agent, for interested rail carriers. Rates on various articles of merchandise, in mixed carloads, from Birmingham, Ala., Charlotte, N. C., and Greenville, S. C., to Memphis, Tenn.

Grounds for relief: Motor truck competition and circuitry.

Tariff: Supplement 10 to Agent C. A. Spaninger's I. C. C. 1458.

FSA No. 30663: Merchandise, New Orleans, La., to the South. Filed by J. G. Kerr, Agent, for interested rail carriers. Rates on various commodities, in mixed carloads, from New Orleans, La., to specified points in Georgia and Florida.

Grounds for relief: Motor truck competition and circuitry.

Tariff: Supplement 10 to Agent C. A. Spaninger's I. C. C. 1458.

FSA No. 30664: Merchandise, Southern points to Philadelphia, Pa. Filed by J. G. Kerr, Agent, for interested rail carriers. Rates on various commodities, in mixed carloads, from Charlotte and Gas-

tonia, N. C., Greenville and Spartanburg, S. C., to Philadelphia, Pa.

Grounds for relief: Motor carrier competition and circuitry.

Tariff: Supplement 10 to Agent C. A. Spaninger's I. C. C. 1458.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 55-4297; Filed, May 26, 1955;
8:48 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-867]

MAINE CENTRAL RAILROAD CO.

NOTICE OF APPLICATION TO WITHDRAW FROM
LISTING AND REGISTRATION, AND OF
OPPORTUNITY FOR HEARING

MAY 23, 1955.

In the matter of Maine Central Railroad Company, Common Stock, \$100 Par Value; File No. 1-867.

The above named issuer, pursuant to section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 (b) pro-

mulgated thereunder, has made application to withdraw the specified security from listing and registration on the Boston Stock Exchange.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The management wishes to encourage the holding of its common stock for investment in the vicinity of the railroad, which operates principally in the State of Maine. Accordingly it wishes to dispense with the more general market afforded by an exchange listing. Over 73,000 of the 120,000 shares are owned by directors and principal stockholders, leaving too few shares publicly held to be appropriate for an exchange market in any event.

At the annual meeting of stockholders, April 27, 1955, for which proxies were solicited, 72,058 shares were voted in favor of, and 7,095 against, delisting. The 7,095 shares were voted by 27, or 4 percent, of the 680 holders of record. An additional 7,000 shares in favor of delisting arrived too late to be voted.

The bonds and preferred stock of the applicant will remain listed on the New York and Boston Stock exchanges, respectively.

The Boston Stock Exchange has no applicable delisting rule, but has been notified of the proposed delisting.

Upon receipt of a request, on or before June 8, 1955, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D. C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official file of the Commission pertaining to the matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 55-4290; Filed, May 26, 1955;
8:46 a. m.]