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Part II begins on page 10787

PART I

FEDERAL REGISTER

VOLUME 22 NUMBER 250

Washington, Friday, December 27, 1957

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

DEPARTMENT OF THE INTERIOR

Effective upon publication in the FEDERAL REGISTER, paragraph (e) (1) of § 6.110 is amended as set out below.

§ 6.110 *Department of the Interior.* * * *

(e) *Office of Territories.* (1) Until December 31, 1958, all positions in Alaska in the Alaska Railroad and four technical positions in the Alaska Railroad Office in Seattle, Washington.

(R. S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U. S. C. 631, 633)

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

[F. R. Doc. 57-10721; Filed, Dec. 26, 1957; 8:56 a. m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

HOUSING AND HOME FINANCE AGENCY

Effective upon publication in the FEDERAL REGISTER, paragraphs (a) (3) and (c) (1) and (2) of § 6.142 are amended as set out below.

§ 6.142 *Housing and Home Finance Agency*—(a) *Office of the Administrator.* * * *

(3) Until June 30, 1958, six Regional Administrators.

* * * * *

(c) *Federal Housing Administration.* (1) Until June 30, 1958, 80 Field Directors (State, District, and Territorial).

(2) Until June 30, 1958, six Zone Operations Commissioners.

(R. S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U. S. C. 631, 633)

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

[F. R. Doc. 57-10711; Filed, Dec. 26, 1957; 8:54 a. m.]

This issue includes two parts bound together. Part II contains a republication of 22 CFR Chapter I, Department of State.

TITLE 6—AGRICULTURAL CREDIT

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

Subchapter B—Loans, Purchases, and Other Operations

PART 472—WOOL

SUBPART—1958 PAYMENT PROGRAM FOR SHORN WOOL AND UNSHORN LAMBS (PULLED WOOL)

This bulletin states the requirements with respect to the 1958 payment program for shorn wool and unshorn lambs (pulled wool), formulated by Commodity Credit Corporation (referred to in this bulletin as CCC) and the Commodity Stabilization Service (referred to in this bulletin as CSS).

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FEDERAL REGISTER

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AUTHORITY: §§ 472.901 to 472.957 issued under sec. 4, 62 Stat. 1070, as amended; 15 U. S. C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, sec. 702–709, 68 Stat. 910–912; 15 U. S. C. 714c, 7 U. S. C. 1781–1787, 1446.

PROGRAM OPERATION

§ 472.901 *Administration.* The program will be carried out by CSS under the general supervision and direction of the Executive Vice President of CCC. In the field, the program will be administered through the Agricultural Stabilization and Conservation (referred to in this subpart as ASC) state and county offices. ASC state and county offices do not have authority to modify any of the provisions of this subpart or any of the amendments or supplements thereto. Neither are they authorized to waive any such provisions unless the power to waive is expressly included in the pertinent provision.

SHORN WOOL

§ 472.902 *Incentive level and payments.* For the 1958 marketing year (beginning April 1, 1958, and ending March 31, 1959, both dates inclusive (§ 472.957), the price level which has been determined to meet the requirements of the National Wool Act of 1954 is 62 cents per pound of shorn wool, grease basis. Announcement of this price level was made by the Department of Agriculture on October 4, 1957, in accordance with section 703 of the National Wool Act of 1954, which states that the Secretary shall, to the extent practicable, announce the support price levels for wool sufficiently in advance of each marketing year as will permit producers to plan their production for such marketing year. For the 1958 marketing year, price support on shorn wool will be furnished by means of payments to the producer in accordance with the provisions of this subpart on the shorn wool he markets in that marketing year. Payments will not be made on marketings of the pelts of sheep or lambs.

§ 472.903 *Eligibility for incentive payments.* Before payments under this program can be approved pursuant to any application for payment covering any lot or lots of wool, the following requirements must be satisfied:

(a) Except as provided in § 472.949, the applicant must be the producer, and in the case of a joint application each applicant must be a producer (as defined in § 472.957), of the shorn wool.

(b) The wool must have been shorn in the continental United States, its territories or possessions on or after January 1, 1955, and must have been marketed within the 1958 marketing year. For the purpose of this program, shorn wool is deemed to include murrain and other wool removed from dead sheep and other off wools such as black wool, tags, and crutchings.

(c) The wool as well as the sheep or lambs from which it was shorn, must have been owned by the producer at the time of shearing, and the sheep or lambs must have been owned by him for not less than 30 days at any time prior to his filing the application for payment (§ 472.943), with the following exception: The ownership specified in the preceding sentence is not required of an applicant for payment who has an agreement with the owner of the animals pursuant to which the applicant, in return for furnishing labor in connection with caretaking, lamb production, or feeding, is entitled either to a share in the ownership of the wool shorn from such animals or a share of the sales proceeds of the wool: *Provided,* That the owner of the animals who joins in the application meets the ownership requirements. Ownership of wool or animals as used in this paragraph does not include the ownership which in some states is held by a person having a security interest, such as a mortgage or other lien.

(d) Beneficial interest in the wool must always have been in the producer from the time the wool was shorn up to the time of its sale. A producer has beneficial interest in wool (1) when he owns it without any other person being entitled to the wool or its proceeds and without his having authorized any other person to sell or otherwise dispose of the wool; (2) when the producer has authorized another person to sell or otherwise dispose of the wool, even transferring legal title to such other person, but the producer continues to be entitled to the proceeds from such sale or other disposal of the wool; or (3) when the producer is entitled to a share of the wool or of the proceeds thereof pursuant to an agreement described in the exception in paragraph (c) of this section though he does not own the animals from which the wool was shorn. If the producer has such beneficial interest, the fact that the wool may be mortgaged or subject to another lien does not change his position as having a beneficial interest.

(e) The producer must either report, in accordance with § 472.910, that the wool sold includes wool obtained by a first shearing of lambs (defined in § 472.957) he purchased on or after April 1, 1956, or certify that the wool sold does not include any wool so obtained.

§ 472.904 *Marketing within the 1958 marketing year.* (a) The National Wool Act of 1954 provides that price support under that act shall be limited to wool and mohair marketed during the period beginning April 1, 1955, and ending March 31, 1959. Since this program covers only the 1958 marketing year, payments under this program will be limited to wool marketed during the period beginning April 1, 1958, and ending March 31, 1959.

(b) Marketing shall be deemed to have taken place in the 1958 marketing year if, pursuant to a sale or a contract to sell, the last of the following three events in the process of marketing was completed in the 1958 marketing year: (1) Title passed to the buyer; (2) the wool was delivered to the buyer (physically or through documents which transfer control to the buyer); and (3) the last of the factors (price per pound, weight, etc.) needed to determine the total purchase price payable by the buyer became available. The factors are considered available when they are known to the applicant's marketing agency if he markets through a marketing agency, or they are known to the applicant if he markets directly. Any one of the three events previously mentioned may be the last event completed.

(c) Delivery of wool on consignment to a marketing agency (defined in § 472.957) to be sold for the producer's account does not constitute a marketing. This is so even though the consignee may guarantee the producer a minimum sales price or may give him an advance against the prospective sales price or may do both. Wool delivered on consignment shall not be deemed marketed by the producer until it has been marketed by the marketing agency. When a producer transfers title to his wool to a marketing agency and provides that such agency shall market the wool and that the producer shall be entitled to the proceeds of such marketing, the producer shall be deemed to have consigned the wool.

(d) The exchange of wool for merchandise or services (for instance, shearing) will be considered a sale, provided a definite price is established for the wool.

§ 472.905 *Rate of incentive payment.* Upon expiration of the 1958 marketing year and after the Department of Agriculture has determined the national average price for wool received by producers in that marketing year, the Department will announce the rate of the incentive payment under this program. The rate of payment will be the percentage of the national average price received by producers required to bring such national average price up to the announced incentive price. For example, if the reported national average price received by producers for wool sold during the 1958 marketing year should be 50 cents, the difference between that figure and the incentive price of 62 cents previously announced (§ 472.902) would be 12 cents, and this figure would constitute 24 percent of the national average price of 50 cents. In such a case, the rate of incentive payment would be 24 percent of the net sales proceeds received by each producer.

§ 472.906 *Computation of payment.* (a) In order to determine the amount of the incentive payment due to a producer on the wool he marketed during the 1958 marketing year, the percentage computed pursuant to § 472.905 will be applied to

the net sales proceeds for the wool determined in accordance with paragraph (b) of this section. The amount so computed may be reduced on account of purchasers of unshorn lambs (defined in § 472.957), in accordance with paragraph (c) of this section.

(b) The net sales proceeds shall be determined by deducting from the gross sales proceeds of the wool all marketing expenses, such as for transportation from the local shipping point; handling (including commissions); grading; scouring; or carbonizing. Items, however, listed in § 472.908 (a) (7) as "other deductions" shall not be deducted. The figure so arrived at will express the net proceeds received by the producer at his farm, ranch, or local shipping point (defined in § 472.957). For example, if the producer marketed his clip of 500 pounds at 50 cents per pound, he received $250 as gross proceeds and, if the marketing deductions totaled $25, his net proceeds of sale (after marketing deductions) amounted to $225. For the purpose of this program, the producer is expected to deliver his wool packed in bags to his local shipping point and to bear the storage expenses until the wool is sold. Consequently, charges made for furnishing wool bags, storing wool, or transporting wool to the producer's local shipping point shall not be considered deductible marketing charges. Neither are other charges, not directly related to marketing of the wool, such as interest on advances or dues owing an association, to be considered marketing charges.

(c) If pursuant to § 472.910, the producer reports, in his application for payment, the purchase on or after April 1, 1956, of any unshorn lambs, his incentive payment computed in accordance with paragraph (a) of this section shall be reduced by an amount resulting from multiplying the reported liveweight of the animals purchased on or after April 1, 1956, as unshorn lambs, by the announced rate per hundredweight to be paid producers under the pulled wool program (§ 472.921).

§ 472.907 *Supporting documents*—(a) *General.* The application for payment on account of shorn wool (§ 472.909) shall be supported by the original sales document (defined in § 472.957) for the wool sold.

(b) *Original sales document retained.* If the applicant does not wish the original sales document to remain with the ASC county office, he may submit a photostat or similarly reproduced or carbon or typewritten copy of the original document. However, he must show the original document to the ASC county office where the statements on the copy will be confirmed by comparison with the original. The original sales document will be appropriately stamped or marked to indicate that it had been used in support of an application for payment under this program and will be returned to the applicant. He will be required to retain it in accordance with § 472.948.

(c) *Practice of issuing carbon or photostat copies.* If it is the practice of the person or firm that prepared the sales document to furnish a carbon or photostat copy to the seller in place of the original, the producer may submit that copy in support of his application, provided the copy bears a signature, in accordance with § 472.908 (a) (10), of the person or of the representative of the firm that prepared the original sales document. Such copy shall be treated like an original for the purposes mentioned in this section.

(d) *Lost or destroyed sales document.* If the original sales document has been lost or destroyed, the applicant may submit a copy, certified by the buyer or the applicant's marketing agency, and such certified copy shall be treated like an original for the purposes mentioned in this section.

§ 472.908 *Contents of sales documents.* The sales documents attached to each application for an incentive payment must contain a final accounting, meeting the requirements of paragraph (a) or (b) of this section, for the wool covered by the sales document. Contracts to sell as well as tentative or pro forma settlements will not be acceptable as sales documents meeting such requirement. Except as provided in § 472.949, sales documents must cover wool sold by the applicant.

(a) *Sales other than at farm, ranch, or local shipping point.* Each sales document, except a document covering an outright sale at the producer's farm, ranch, or local shipping point and described in paragraph (b) of this section, must be prepared by the purchaser or the applicant's marketing agency and must contain at least the following information:

(1) Name and address of seller.

(2) Date of sale. In case the producer's shipment to a marketing agency is sold in parts within the 1958 marketing year, the date when final settlement is made within that marketing year for the wool that was sold within that marketing year may be shown on the sales document as the date of sale instead of the various dates on which the sales actually took place.

(3) Net weight of wool sold. If the wool was sold as scoured or carbonized wool, the original grease weight must be shown as well as the scoured or carbonized weight.

(4) The gross sales proceeds or sufficient information from which the gross sales proceeds can be determined, except when the practice is otherwise as provided in subparagraph (5) of this paragraph.

(5) Marketing deductions, if any (see § 472.906 (b)), except as otherwise provided in this subparagraph. The marketing deductions may be itemized or they may be shown on the sales document as a composite figure for all marketing charges with an explanation of what services are included in that figure. If it is the practice of a marketing agency to show, on the sales document, only the net proceeds after marketing deductions, the gross sales proceeds and the amount of the marketing deductions need not be shown, provided the sales document contains a statement reading substantially as follows: "The net sales proceeds after marketing deductions shown herein were computed by deducting from the gross sales proceeds charges for the following marketing services: _____. Details of these charges will be furnished on request." All the services for which deductions are made shall be enumerated in the blank space indicated. If a sales document shows charges without specifying their nature, they will be considered marketing charges and will thus diminish the net proceeds on which the incentive payment is computed.

(6) Net proceeds after marketing deductions. If a sales document contains a figure for net proceeds after marketing deductions computed for a location other than the producer's farm, ranch, or local shipping point, the person preparing the sales document shall show thereon the name of the location for which the net proceeds have beeen computed.

(7) Other deductions, such as those for bags, storage, interest, association dues, and charges not directly related to marketing of the wool.

(8) Amount paid to the seller.

(9) Name and address of the purchaser or marketing agency issuing the sales document.

(10) Signature. The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by his last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(11) A sales document issued by a marketing agency and covering sales made on various dates within the 1958 marketing year shall contain a statement that the wool was marketed during the 1958 marketing year as required by the regulations issued pursuant to the National Wool Act of 1954.

(b) *Sales at farm, ranch, or local shipping point.* Each sales document, covering an outright sale at the producer's farm, ranch, or local shipping point and attached to an application for incentive payment, shall be prepared by the purchaser and must contain at least the following information: Name and address of seller, date of sale, net weight of wool sold, the net amount received by the producer for the wool at his farm, ranch, or local shipping point, any applicable nonmarketing deductions, such as association dues or interest on advances, the name and address of the purchaser, and the signature of the purchaser or his agent.

§ 472.909 *Preparation of application.* (a) The application for payment on account of shorn wool, to be filed in the original only, shall be prepared on CCC Wool Form 55, "Application for Incentive Payment—Shorn Wool". The form consists of two parts. Part I is designed to give the ASC county office general information about the wool production of the applicant and contains his certification as to facts relating to the production and ownership of the wool marketed. Part II contains details about the marketing of the wool which is the basis for the application and contains another certification which covers these details. If the applicant paid any marketing charges (§ 472.908 (a) (5)) not shown on the sales document, such as for scouring or carbonizing, grading, or

freight from the applicant's local shipping point, such charges shall be considered with the marketing charges shown on the sales document in arriving at the net proceeds.

(b) The applicant may, in his discretion, fill out both parts and sign both certifications. He may, however, fill out only Part I, sign the certification included therein, forward the application to his marketing agency, and request it to fill out Part II, to sign the certification included in this part, and to file the application with the required attachments on behalf of the applicant in the appropriate ASC county office in accordance with § 472.943 (a). If the applicant chooses this method of submitting his application, he will be responsible for the correctness of the information furnished by the marketing agency as well as for compliance by it with the requirements as to the time and manner of filing the application.

§ 472.910 *Report of purchases of unshorn lambs.* In making application for payment on the sale of shorn wool, the producer shall report, as prescribed in this section, with reference to animals purchased by him as unshorn lambs on or after April 1, 1956, the date of each purchase as well as the number and liveweight of the animals purchased.

(a) *Report on actual basis.* (1) If wool removed in the first shearing of animals purchased by the applicant as unshorn lambs on or after April 1, 1956, is included in the application, and the applicant's operations are conducted in such a manner that he is able to identify the lambs from which such wool was shorn, he shall report the date of purchase as well as the number and liveweight of the animals that he purchased as unshorn lambs on or after April 1, 1956, from which such wool was subsequently shorn and included in the application. Among the lambs purchased he shall include those which died after purchase and from which the wool was removed and included in the application.

(2) If the applicant knows that his application does not include any wool which was removed in the first shearing of the animals purchased by him on or after April 1, 1956, as unshorn lambs, he will report no purchases of unshorn lambs.

(b) *Report on "first in, first out" basis.* (1) In the event the applicant does not know whether or not wool removed in the first shearing from animals purchased by him on or after April 1, 1956, as unshorn lambs is included in the application, or knows that some such wool is included, but is unable to report the exact date of purchase of such lambs, he shall report on a "first in, first out" basis, as hereinafter explained, the date of purchase as well as the number and liveweight of a quantity of unshorn lambs equal to the number of lambs from which wool was shorn and included in the application. The reporting of purchased lambs shall be continued in subsequent applications for incentive payment on shorn wool and applications for payment on unshorn lambs until the applicant has accounted for all animals purchased by him on or after April 1, 1956, as unshorn lambs and not reported in an application for payment for shorn wool or unshorn lambs under the 1956 or 1957 payment program, except that he need not report such animals if he has not applied for a payment under the 1956, 1957 or this program on the sale of the animals or on the sale of wool shorn therefrom. If the producer does not have sufficient marketings of wool and unshorn lambs during the 1958 marketing year to cover all of his purchases of animals purchased as unshorn lambs on or after April 1, 1956, that had not been reported in the 1956 or 1957 payment program, and consequently does not report all of his purchases of unshorn lambs in applications based on sales during the 1958 marketing year, the balance shall be carried forward and reported in succeeding marketing years for which similar payment programs may be established.

(2) For example, if the producer's first application for the 1958 marketing year covers the sale of wool shorn from 200 sheep or lambs, he shall report in that application the date of purchase, the number, and the liveweight of the first 200 animals he purchased on or after April 1, 1956, as unshorn lambs that were not reported on an application for payment filed under the 1956 or 1957 payment program for shorn wool or unshorn lambs; if, for example, his second application covers the sale of 300 unshorn lambs, he shall report in that application the same information for the next 300 animals that he purchased on or after April 1, 1956, and that were not reported on an application for payment under the 1956 or 1957 program or in the first application under the 1958 program; and as additional applications are filed either on shorn wool or unshorn lambs under the 1958 program, he shall report his purchases in chronological order until all purchases up to the date of his application are accounted for, in accordance with subparagraph (1) of this paragraph.

(3) If the producer makes application for a payment on the sale of either shorn wool or unshorn lambs after he has reported his total purchases of unshorn lambs on or after April 1, 1956, he will report no purchases of unshorn lambs in such an application.

UNSHORN LAMBS (PULLED WOOL)

§ 472.921 *Rate of payment.* The National Wool Act of 1954 provides in section 703 that the support price for pulled wool shall be established at such a level, in relationship to the support price for shorn wool, as the Secretary determines will maintain normal marketing practices for pulled wool. The support price for shorn wool has been determined to be 62 cents per pound, grease basis (§ 472.902). Payments on shorn wool will be made on a percentage basis, by applying to the net sales proceeds received by the producer, a percentage which is based on the difference between the national average price received by producers during the 1958 marketing year and the incentive price of 62 cents (§ 472.905). Payments under the pulled wool program will be made in accordance with this subpart for wool on live lambs that have never been shorn and are sold or moved to slaughter in the 1958 marketing year, and will be at a flat rate per hundredweight of live animals. Payments will not be made on the sale of the pelts of sheep or lambs. The payments will be based on the average weight of wool per hundredweight of animals (5 pounds) multiplied by 80 percent of the difference between the national average price received by producers for shorn wool and the 1958 incentive price of 62 cents per pound of shorn wool. The exact rate of payment will be determined after the end of the 1958 marketing year. For example, if the reported national average price received by producers for wool sold during the 1958 marketing year should be 50 cents, the rate of payment per hundredweight of live lambs would be 48 cents.

§ 472.922 *Eligibility for payments on lambs.* Before payments under this program can be approved pursuant to an application covering any lot or lots of lambs, the following requirements must be satisfied:

(a) *Fed or pastured in United States.* The lambs must have been fed or pastured in the continental United States, its territories, or possessions.

(b) *Thirty days' ownership.* If a producer is to qualify for a payment, he must have owned the lambs for 30 days or more, and if a slaughterer (as defined in § 472.957) is to qualify for a payment, he must have owned the lambs for 30 days or more prior to their moving to slaughter, with the following exception: Ownership interest in the lambs for the 30-day period is not required of an applicant for payment who has an agreement with the owner of the lambs pursuant to which the applicant, in return for furnishing labor in connection with caretaking or feeding of the lambs, is entitled either to a portion of the lamb production or to a share in the proceeds from the sale of the lambs: *Provided,* That the owner of the lambs who joins in the application meets the 30-day ownership requirement. Ownership of lambs, as used in this paragraph, does not include the ownership which in some states is held by a person having a security interest, such as a mortgage or other lien.

(c) *Never shorn.* The lambs must never have been shorn at the time of sale or, in the case of an application by a slaughterer, at the time of moving to slaughter.

(d) *Sold or moved to slaughter in 1958 marketing year.* The lambs must have been sold, that is, title to the lambs must have passed to the buyer within the 1958 marketing year or, in the case of lambs that are owned by a slaughterer for 30 or more days before moving to slaughter, the lambs must have moved to slaughter within the 1958 marketing year.

(e) *Report of purchased lambs.* The applicant must either report his purchases of unshorn lambs on or after April 1, 1956, in accordance with § 472.926, or certify that the lambs sold do not include any lambs purchased after that date.

§ 472.923 *Computation of payment.* In order to determine the amount of the payment due to an applicant, the rate of

payment, computed pursuant to § 472.921, shall be applied to the liveweight (defined in § 472.957) of the lambs sold or moved to slaughter (§ 472.922 (d)), during the 1958 marketing year. Such liveweight, however, shall be reduced by the liveweight of any lambs reported in the application for payment, pursuant to § 472.926, as having been purchased by the applicant on or after April 1, 1956, as unshorn lambs. For example, if the applicant sells, during the 1958 marketing year, 100 unshorn lambs weighing 8,000 pounds which he produced on his farm or ranch, he will be entitled to a payment on a liveweight of 8,000 pounds. On the other hand, if the applicant sells, during the 1958 marketing year, 100 unshorn lambs weighing 8,000 pounds, having purchased those lambs at a weight of 6,000 pounds on June 30, 1958, he will be entitled to a payment on a liveweight of 2,000 pounds (i. e., 8,000 pounds minus 6,000 pounds).

§ 472.924 *Application for payment and supporting documents*—(a) *General.* The application for a payment on account of unshorn lambs, to be filed in the original only, shall be made on CCC Wool Form 56, "Application for Payment—Unshorn Lambs (Pulled Wool)." The application shall be supported by an original sales document, as set forth in paragraph (a) of § 472.925 or, in case of application by a slaughterer, by the substitute document as set forth in paragraph (b) of that section, and such other evidence as may show compliance with the program.

(b) *Applicant retains original sales document.* If the applicant does not wish the original sales document to remain with the ASC county office, he may submit a photostat or similarly reproduced or carbon or typewritten copy of the original document. However, he must show the original document to the ASC county office where the statements on the copy will be confirmed by comparison with the original. The original sales document will be appropriately stamped or marked to indicate that it had been used in support of an application for payment under this program and will be returned to the applicant. He will be required to retain it in accordance with § 472.948.

(c) *Practice of issuing carbon or photostat copies.* If it is the practice of the person or firm that prepared the sales document to furnish a carbon or photostat copy to the seller in place of the original, the producer may submit that copy in support of his application, provided the copy bears a signature, in accordance with § 472.925 (a) (6), of the person or the representative of the firm that prepared the original sales document. Such copy shall be treated like an original for the purposes mentioned in this section.

(d) *Lost or destroyed sales document.* If the original sales document has been lost or destroyed, the applicant may submit a copy, certified by the person who issued the original, and such certified copy shall be treated like an original for the purposes mentioned in this section.

§ 472.925 *Contents of sales documents*—(a) *Sale by producers.* Each sales document supporting the application must cover lambs sold by the applicant, except as provided in § 472.949; must be issued by the purchaser or the producer's marketing agency; and must show the following:

(1) Name and address of seller.

(2) Date of sale.

(3) Number of unshorn lambs sold. If the sales document does not clearly identify the animals as lambs that had never been shorn at the time of sale, the person issuing the sales document shall add a statement to that effect. If the sales document refers to the animals as "unshorn lambs," this will indicate that the lambs were never shorn, in accordance with the definition in § 472.957. Likewise, if the document is issued in connection with the sale of unshorn lambs but also covers the sale of other animals, the person preparing the sales document shall clearly indicate therein in some manner the number and the liveweight of unshorn lambs included in the sale.

(4) Liveweight of unshorn lambs sold. If the weight is not determined by scales, this weight may be an estimated weight agreed to by the buyer and the seller.

(5) Name and address of the purchaser or marketing agency issuing the sales document.

(6) Signature. The sales document must bear a handwritten signature by or on behalf of the person or firm issuing the sales document. Acceptable signatures will consist of at least one initial or name by which the person is generally known, followed by his last name in full. A carbon impression or facsimile of a handwritten signature is not acceptable.

(b) *Substitute for sales document in case of slaughterer.* If the application is made by a slaughterer who owned the animals for 30 days or more prior to his moving them to slaughter (§ 472.922 (d)), it shall be supported by a scale ticket instead of a sales document. The scale ticket shall indicate that it covers unshorn lambs which moved to slaughter and must show the information normally appearing on scale tickets issued by stockyards (that is, date, number of head and classification, weight, scale ticket number, if any, place of weighing, and name of weigher).

§ 472.926 *Report of purchases of unshorn lambs.* In making application for payment on the sale of lambs, the producer shall report, as prescribed in this section, with reference to animals purchased by him as unshorn lambs on or after April 1, 1956, the date of each purchase as well as the number and liveweight of the animals purchased.

(a) *Report on actual basis.* (1) If the application is based on the sale of lambs purchased by the applicant on or after April 1, 1956, and the applicant's operations are conducted in such a manner that he is able to identify such lambs, he shall report the date of purchase, the number, and the liveweight of such sold lambs.

(2) If the applicant knows that his application is not based on the sale of any animals which were purchased by him on or after April 1, 1956, he will report no purchases of unshorn lambs.

(b) *Report on "first in, first out" basis.* (1) In the event the applicant does not know whether or not the application is based on the sale of lambs that he purchased on or after April 1, 1956, or he knows that some such lambs are included but is unable to report the exact date of purchase of such lambs, he shall report on a "first in, first out" basis, as hereinafter explained, the date of purchase as well as the number and liveweight of a quantity of animals purchased by him on or after April 1, 1956, as unshorn lambs, equal to the number of lambs on the sale of which his application is based. This reporting of purchased lambs shall be continued in subsequent applications for payment on unshorn lambs and applications for incentive payment or shorn wool until the applicant has accounted for all animals purchased by him on or after April 1, 1956, as unshorn lambs and not reported in an application for payment for shorn wool or unshorn lambs under the 1956 or 1957 program, except that he need not report such animals if he has not applied for a payment under the 1956, 1957, or this program on the sale of the animals or on the sale of wool shorn therefrom. If the producer does not have sufficient marketings of unshorn lambs and wool during the 1958 marketing year to cover all of his purchases of animals as unshorn lambs on or after April 1, 1956, that had not been reported in the 1956 or 1957 payment program, and consequently does not report all of his purchases of unshorn lambs in applications based on sales during the 1958 marketing year, the balance shall be carried forward and reported in succeeding marketing years for which similar payment programs may be established.

(2) For example, if the prdoucer's first application for the 1958 marketing year covers the sale of 300 lambs, he shall report in that application the date of purchase as well as the number and liveweight of the first 300 animals he purchased on or after April 1, 1956, as unshorn lambs that were not reported in an application for payment filed under the 1956 or 1957 program for shorn wool or unshorn lambs; if, for example, his second application covers the sale of wool shorn from 200 animals, he shall report in that application the same information for the next 200 animals that he purchased on or after April 1, 1956, as unshorn lambs and that were not reported in an application for payment under the 1956 or 1957 program or in the first application under the 1958 program; and as additional applications are filed under either the pulled wool or the shorn wool program, he shall report his purchases on or after April 1, 1956, in chronological order until all purchases up to the date of each application are accounted for, in accordance with subparagraph (1) of this paragraph.

(3) If the producer makes application for a payment on the sale of either shorn wool or unshorn lambs after he has accounted for his total purchases of unshorn lambs on and after April 1, 1956,

he will report no purchases of unshorn lambs in such an application.

GENERAL PROVISIONS

§ 472.941 *Sales in good faith.* Payments provided for under this program shall be made on the basis of sales of shorn wool or unshorn lambs executed in good faith, and no payment shall be made on that part of any sale which has been cancelled or on the basis of sales at prices or weights increased in bad faith for the purpose of obtaining higher payments under this program. Examples of sales of wool in bad faith are those wherein the purchaser obtains a rebate or any benefit in form of money, property, or otherwise. Application for payment on the basis of a sale in bad faith may also subject the parties involved to civil and criminal liability.

§ 472.942 *Joint applicants, successors, and representatives*—(a) *Joint applicants*—(1) *Joint owners.* When the applicants for a shorn wool payment are joint owners of the wool and were also joint owners of the sheep from which the wool was shorn, all of them must sign any application based on the sale of their wool. When the applicants for a payment on unshorn lambs are joint owners of the lambs, all of them must sign any application based on the sale of their lambs. If one such owner refuses to join in an application and wishes to release CCC from any obligation to make him a payment, he shall sign a form of release prescribed by CCC for that purpose. Such release shall be attached to, and shall be referred to in, the application signed by those joint owners who apply for a payment.

(2) *Producers who did not own the animals from which the wool was shorn or did not own the lambs for 30 days.* Each application for a payment on shorn wool prepared by producers some of whom did and some did not own the animals from which the wool was shorn, as described in the exception in § 472.903 (c), shall be a joint application, irrespective of whether the wool was divided among such producers prior to sale or whether it was sold without division. Similarly, each application for a payment on unshorn lambs prepared by producers some of whom did and some did not own the lambs for 30 days, as described in the exception in § 472.922 (b), shall be prepared as a joint application, irrespective of whether the lambs were divided among such producers prior to sale or whether they were sold without division. All producers who are entitled to a share of the wool under the shorn wool program or of the lambs under the pulled wool program or are entitled to a share of the sales proceeds of the wool or the lambs, as the case may be, shall sign each joint application, except that where a producer releases his right to a payment by signing a form prescribed by CCC for that purpose, he will not join in the application and will not be entitled to a payment. Each joint application filed by such producers shall be supported by a properly executed CCC Wool Form 55–1 and 56–1, "Attachment to CCC Wool Form 55 for Producers Who Did Not Own the Animals from Which the Wool Was Shorn and Attachment to CCC Wool Form 56 for Producers Who Did Not Own the Lambs for 30 Days."

(3) *Other provisions.* If a producer entitled to join in an application fails to do so, does not release his right to a payment, and—because the application does not indicate his interest—payment is made by CCC to those who apply, he shall have no claim against CCC for a payment. Neither will CCC be responsible for a division among the applicants of a payment made by CCC to all of them jointly.

(b) *Successors and representatives.* (1) In case any person entitled to payment under this subpart dies, disappears, or is declared incompetent before applying for payment and therefore the application is made, in accordance with § 472.949 (a), by a person listed in 7 CFR Part 1108 in the order of precedence, such application, if it is for a shorn wool payment, shall be made on CCC Wool Form 55 and, if it is for an unshorn lamb payment, shall be made on CCC Wool Form 56. Each such application shall also include Standard Form 1055—Revised and, if necessary in accordance with paragraph (a) (2) of this section, CCC Wool Form 55–1 and 56–1. The application shall be filed with the ASC county office serving the county which includes the headquarters of the farm, ranch, or feed lot owned or operated by the person that died, disappeared or was declared incompetent.

(2) When CCC Wool Form 55 is part of an application described in subparagraph (1) of this paragraph and refers to delivery of wool by, or sale of wool for the account of, the applicants; or states that they ranged, pastured, or fed sheep and lambs; or that they purchased, owned, or had beneficial interest in, wool; or that they agreed as to the weight of animals in certain cases; or the marketing agency states in the application that it has not furnished sales documents to any person other than the applicants and that as agent for the applicants it complied with the program; or when it is stated in CCC Wool Form 55–1 and 56–1 that the applicants purchased unshorn lambs, in all those statements the words "the applicants" or "the undersigned" shall be deemed to refer to the applicants; or, to the best of the knowledge, information and belief of the applicant or marketing agency making the statement, to the person that died, disappeared or was declared incompetent; or to both. The reference in section A of CCC Wool Form 55 to the headquarters of applicant's farm, ranch, or feed lot shall be deemed to refer to the headquarters of the farm, ranch, or feed lot owned or operated by the person that died, disappeared, or was declared incompetent. The statements in section D (b), (c), (d), and (e) of CCC Wool Form 55 about shearing the wool and ownership of the wool and lambs and in section F (2) about marketing in a particular marketing year shall be deemed to be made to the best of the knowledge, information, and belief of the applicants.

(3) When CCC Wool Form 56 or CCC Wool Form 55–1 and 56–1 is part of an application described in subparagraph (1) of this paragraph and states that the applicants ranged, pastured, or fed sheep and lambs; purchased unshorn lambs; or owned such lambs for not less than 30 days, the words "the applicants" or "the undersigned" shall be deemed to refer to the applicants; or, to the best of their knowledge, information, and belief, to the person that died, disappeared, or was declared incompetent; or to both. The reference in section A of CCC Wool Form 56 to the headquarters of applicant's farm, ranch, or feed lot shall be deemed to refer to the headquarters of the farm, ranch, or feed lot owned or operated by the person that died, disappeared, or was declared incompetent. The statements in section D (c) and (e) of CCC Wool Form 56 about shearing the animals and purchases of unshorn lambs shall be deemed to be made to the best of the knowledge, information, and belief of the applicants.

(4) In case any person entitled to payment under this subpart dies, disappears, or is declared incompetent after applying for payment, application may be made in accordance with § 472.949 (a) (1).

§ 472.943 *Filing application for payment*—(a) *Place of filing.* The application for payment on either shorn wool or unshorn lambs shall be filed by the producer entitled thereto with the ASC county office serving the county where the headquarters of the applicant's farm, ranch, or feed lot—as the case may be—is located. If the producer has more than one farm, ranch, or feed lot, with headquarters in more than one county, separate applications for payment shall be filed with the ASC county office serving each such headquarters, except that (1) if the producer sells his entire clip of wool in a single sale or if his entire clip is sold for his account by one marketing agency, he may file his application(s) for payment on shorn wool in any one of those ASC county offices, or (2) if the producer includes in one sale unshorn lambs that were ranged, pastured, or fed in more than one county, he may file his application(s) for payment on such animals in any one of those ASC county offices. In the event the producer conducts all his business transactions from his residence or office, and his farm or ranch has no other headquarters, his office or residence may be considered the farm or ranch headquarters. Applications by producers located in Alaska shall be filed with the Alaska ASC State Office, University of Alaska, Box B, College, Alaska, and applications by producers located in Hawaii shall be filed with the Hawaiian Area ASC Office, 303 Dillingham Building, Honolulu 13, Territory of Hawaii.

(b) *Time of filing.* An application for payment should be filed as soon as possible after the producer's sales of shorn wool or unshorn lambs for the 1958 marketing year have been completed or, if the applicant is a slaughterer, as soon as possible after the last of his lambs moved in the 1958 marketing year to slaughter, and all applications must be filed not later than 30 days after the end of the marketing year, that is, not later than April 30, 1959. If delayed filing of

an application is due to causes beyond the control of the applicant, the ASC county office may waive this 30-day limitation on applications filed before October 1, 1959.

§ 472.944 *Signature of applicant.* No payment will be made unless an application for payment on shorn wool or unshorn lambs is signed. The ASC county office will determine with respect to each person who signs an application for payment in a representative or fiduciary capacity as agent, attorney-in-fact, officer, executor, etc., whether he was properly authorized to sign in such capacity.

§ 472.945 *Payment.* After the ASC county office has reviewed the application with the documents attached thereto and approved it for payment in whole or in part, and after the appropriate rate of payment has been announced by the Department of Agriculture, payment will be made. If one or more of the producers jointly entitled to a payment, release the right thereto, payment will be made jointly to the other producers who apply, and the payment will be for the amounts due them. Payment of less than $3.00 to an applicant, or to joint applicants, will not be made in connection with sales either of shorn wool or unshorn lambs. Likewise, payment of less than $3.00 will not be made to an assignee in connection with any assignment. If the ASC county office determines that for any reason an application for payment on shorn wool or unshorn lambs should be rejected in whole or in part, including the reason that it was not filed within the time provided for in accordance with § 472.943 (b), the ASC county office shall mail a notice to the applicant, and to each applicant who signed a joint application, that his application has been rejected for a specified reason and shall retain a copy of such notice.

§ 472.946 *Deductions for promotion.* If the Department of Agriculture has approved deductions for an advertising and sales promotion program in accordance with section 708 of the National Wool Act of 1954, the rate of such deductions will be announced and deductions will be made from the payment.

§ 472.947 *Appeals*—(a) *To ASC county committee.* Within 15 days from the date of mailing of the notice that an application for payment on either shorn wool or unshorn lambs has been rejected in whole or in part (§ 472.945), the applicant may appeal in writing to the ASC county committee, stating the serial number of the application, the number of pounds of wool marketed and the net proceeds, or the number and liveweight of unshorn lambs, involved in the application, and such pertinent facts as he may deem proper, and indicating in what respect the action of the ASC county office is considered erroneous. If the appeal is from the failure of the ASC county office to waive the final date for filing provided for in § 472.943 (b), the applicant shall also state the reason for his delay in filing the application. The ASC county committee shall notify the applicant, and each applicant who signed a joint application, in writing of its decision within 15 days after receipt of the appeal, and a copy of the notice shall be retained in the ASC county office.

(b) *To the ASC state committee.* If the ASC county committee sustains the decision of the ASC county office, the applicant may appeal in writing to the ASC state committee within 15 days after the date of mailing of the notice by the ASC county committee. The ASC state committee shall notify the applicant, and each applicant who signed a joint application, in writing of its decision within 30 days after receipt of the appeal, and a copy of the notice shall be retained in the ASC state office.

(c) *To Washington office.* If the ASC state committee sustains the decision of the ASC county committee, the applicant may appeal in writing to the Director, Livestock and Dairy Division, Commodity Stabilization Service, United States Department of Agriculture, Washington 25, D. C., within 15 days after the date of mailing of the notice by the ASC state committee. On this appeal, a determination by the Director as to a question of fact shall be deemed final and conclusive unless it is found by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessarily to imply bad faith, or it is not supported by substantial evidence.

(d) *Joint applications.* If a joint application is rejected, an appeal may be taken by all applicants jointly or by one or more of them acting in behalf of all. An appeal by one or more joint applicants shall be considered an appeal in behalf of all.

§ 472.948 *Records and inspection thereof.* The applicant for a payment under this subpart as well as his marketing agency and any other person who furnishes evidence to such an applicant for the purpose of enabling him to receive a payment under this program, shall maintain until April 1, 1962, books, records, and accounts showing the purchases of lambs by the applicant on or after April 1, 1956, and the marketing of wool or lambs, as the case may be, on which an application for payment may be based. CCC shall at all times during regular business hours have access to the premises of the applicant for a payment, of his marketing agency, and of the person who furnished evidence to an applicant for the purpose of enabling him to receive a payment under this program, in order to inspect, examine, and make copies of their books, records, accounts, and other written data.

§ 472.949 *Death, incompetency, or other disability*—(a) *Death, disappearance, or incompetency.* (1) Except as provided in paragraph (b) of this section, in case any person who is entitled to a payment under this subpart dies, disappears, or is declared incompetent, before receiving such payment, whether before or after making application therefor, payment may be made upon proper application, without regard to claims of creditors other than the United States, in accordance with the regulations contained in 7 CFR Part 1108, Payments of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, except as follows: References in 7 CFR 1108.1 to section 8 of the Soil Conservation and Domestic Allotment Act, as amended, and to statutes authorizing parity payments, shall be deemed to refer to the National Wool Act of 1954. The reference in the last sentence of 7 CFR 1108.2 to the Agricultural Conservation Program Service shall be deemed to refer to the Commodity Stabilization Service. The reference in 7 CFR 1108.7 to Standard Form 1055 shall be deemed to be a reference to Standard Form 1055-Revised, Claim Against the United States for Amounts Due in the Case of a Deceased Creditor.

(2) If the person entitled to payment died, disappeared, or was declared incompetent before making application therefor, the application by his successor or representative shall be in accordance with § 472.942.

(b) *Incompetent Indians.* Applications for payments on shorn wool or unshorn lambs may be filed on behalf of Indians who are incompetent by the Superintendent of the Indian Field Service of the reservation on which the Indian resides or by the authorized representative of such Superintendent. In such cases, the application for payment will be filed in the ASC county office where the headquarters of the Indian's farm or ranch is located.

(c) *Other disability.* In cases of bankruptcy, dissolution, or other disability, payments will be made to a representative only in accordance with specific instructions issued by CCC.

§ 472.950 *Set-off.* (a) If the county debt record shows that the applicant for payment is indebted to CCC, to any other agency within the United States Department of Agriculture, or to any other agency of the United States, such indebtedness will be set off against the payment due to the applicant. Such set-off shall not deprive the applicant of the right to contest the justness of the indebtedness involved, either by administrative appeal or by legal action.

(b) If the payment due to the applicant has been assigned by him, the ASC county office will accept the assignment subject to setting off such debts as exist at the time of acceptance by the ASC county office with interest, where applicable, to the date of set-off.

§ 472.951 *Assignments*—(a) *Form.* The producer may assign payments which may be determined to be due him under this program in connection with sales of shorn wool or unshorn lambs during the 1958 marketing year by filing with the ASC county office the original and two copies of CCC Wool Form 57, "Assignment of Payment Under National Wool Act of 1954," duly executed by both parties. Such assignment shall be null and void unless it is freely made and (1) is executed by the producer in the presence of at least two attesting witnesses neither of whom shall be an employee or agent of, or by consanguinity or marriage related to, the assignee; or (2) is acknowledged by the producer before a notary public, a member of the ASC county committee, the ASC county office manager, or a designated employee of

such committee. In the case of a joint application for payment, an assignment shall be executed by all those who signed the application.

(b) *Provisions.* An assignment of a shorn wool payment may only be given as security for cash advanced or to be advanced on sheep, lambs, or wool by a financing agency (as defined in § 472.957) or a marketing agency. An assignment of a payment on unshorn lambs may only be given as security for cash advanced or to be advanced by a financing agency on sheep, lambs, or wool. An assignment made to a financing agency shall cover all payments earned by the producer under the 1958 program on the sale of shorn wool or unshorn lambs, as the case may be. An assignment made to a marketing agency shall cover all incentive payments earned by the producer in connection with all wool marketed by the agency for the producer's account during the 1958 marketing year, but shall not cover payments earned by the producer in connection with his marketing his wool directly or through other agencies during the 1958 marketing year. The assignee shall not reassign to another person any payment which has been assigned to him pursuant to this section. CCC will make payment pursuant to an accepted assignment unless the ASC county office is furnished evidence of a mutual cancellation of the assignment by both parties thereto or unless the assignee releases the assignment, that is, asks the ASC county office in writing that payment be made to the assignor and not to the assignee.

§ 472.952 *Liens on sheep or wool not applicable to payments.* If a producer grants a lien on his sheep, lambs, or wool, such lien shall not be deemed to extend to payments made to the producer pursuant to this subpart.

§ 472.953 *Forms.* CCC Wool Form 55, "Application for Incentive Payment—Shorn Wool"; CCC Wool Form 56, "Application for Payment—Unshorn Lambs (Pulled Wool)"; CCC Wool Form 55–1 and 56–1, "Attachment to CCC Wool Form 55 for Producers Who Did Not Own the Animals from Which the Wool Was Shorn and Attachment to CCC Wool Form 56 for Producers Who Did Not Own the Lambs for 30 Days"; CCC Wool Form 57, "Assignment of Payment Under National Wool Act of 1954", and other forms issued by the United States Department of Agriculture for use in connection with this program may be obtained from ASC county offices. These forms may be reproduced, provided the reproduced forms retain the same language, format, and size as the official forms, except that the printer's identification on the official forms must not be reproduced. In CCC Wool Form 56, "Application for Payment—Unshorn Lambs (Pulled Wool)," the following exception shall be deemed to be added immediately after the provision in section D (e): "except that if lambs purchased by the applicant on or after April 1, 1956, were reported by him as so purchased in a previous application for payment under the National Wool Act of 1954, they are not recorded in section B."

§ 472.954 *Instructions and interpretations.* CCC shall have the right to clarify any provision of this subpart by the issuance of instructions or interpretations.

§ 472.955 *Violation of program.* Whoever issues a false sales document or otherwise acts in violation of the provisions of this program, shall become liable to CCC for any payment which CCC may have made in reliance on such sales document or as a result of such other action in violation of the program, apart from any other civil or criminal liability he may incur by such action.

§ 472.956 *Waiver by Executive Vice President or other official.* The Executive Vice President of CCC or his designee and the Deputy Administrator, Production Adjustment, of CSS are authorized to approve waivers covering the submission of evidence by sales documents or by other procedural methods, with the same force and effect as if they were approved by the President of CCC.

§ 472.957 *Definitions.* As used in this subpart, the terms enumerated in this section have the following meaning.

(a) "Financing agency" means any bank, trust company, or Federal lending agency. It also includes any other financing institution which customarily makes loans or advances to finance production of sheep, lambs, or wool.

(b) "Joint ownership" of wool or lambs also includes ownership in common.

(c) "Lamb", for the purposes of this program, means a young ovine animal which has not cut the second pair of permanent teeth. The term includes animals referred to in the livestock trade as lambs, yearlings, or yearling lambs.

(d) "Liveweight", for the purpose of this program, is the weight of live lambs which a producer purchases or sells. In the event the price for the lambs is based on weight, the weight actually used in determining the total amount payable shall be considered the liveweight.

(e) "Local shipping point" means the point at which the producer delivers his wool to a common carrier for further transportation or, if his wool is not delivered to a common carrier, the point at which he delivers it to his marketing agency or a purchaser.

(f) "Marketing agency" with reference to shorn wool means a person or firm that sells a producer's wool for his account, and with reference to lambs, it means a commission firm, auction market, pool manager, or any other person or firm that sells a producer's lambs for his account.

(g) The "1958 marketing year" means the period beginnig April 1, 1958, and ending March 31, 1959, both dates inclusive.

(h) "Person" means an individual, partnership, association, business trust, corporation, or any organized unincorporated group of individuals, and includes a State and any subdivision thereof.

(i) "Producer" of shorn wool under this program means a person who is either a producer, feeder, or pasturer of sheep or lambs and who shears his animals. "Producer" of lambs under this program means a person who is a breeder, feeder, or pasturer of lambs. The term "producer" also includes a person participating in the production of shorn wool pursuant to an agreement with a person who owned the sheep or lambs as described in the exception in § 472.903 (c) and a person participating in the production of lambs pursuant to an agreement with an owner of the lambs, as described in the exception in § 472.922 (b).

(j) "Sales document" means the account of sale, bill of sale, invoice, and any other document evidencing the sale by the producer of shorn wool or unshorn lambs.

(k) "Slaughterer" means a commercial slaughterer, that is, a person who slaughters for sale as distinguished from a person who slaughters for home consumption.

(l) "Unshorn lambs" means lambs which have never been shorn.

NOTE: The reporting and record-keeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Issued this 18th day of December 1957.

[SEAL] WALTER C. BERGER,
Executive Vice President, CCC, and Administrator, CSS.

[F. R. Doc. 57–10679; Filed, Dec. 26, 1957; 8:45 a. m.]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

Subchapter A—Meat Inspection Regulations

PART 17—LABELING

MISCELLANEOUS AMENDMENTS

On October 30, 1957 there was published in the FEDERAL REGISTER (22 F. R. 8741) a notice of proposed amendments of Part 17 of the Federal Meat Inspection Regulations. After due consideration of all relevant matters submitted in connection with the notice and pursuant to the authority conferred by the Meat Inspection Act, as amended and extended (21 U. S. C. 71–91, 96) §§ 17.2 and 17.8 of the regulations (9 CFR 17.2 and 17.8, as amended) are hereby further amended as follows:

1. The portion of § 17.2 (b) preceding subparagraph (1) is amended to read:

(b) Labels shall contain, prominently and informatively displayed, the true name of the product; the word "ingredients" followed by a list of the ingredients when the product is fabricated from two or more ingredients, except in the case of products for which definitions and standards of identity have been prescribed under Part 28 of this subchapter; the name and place of business of the manufacturer, packer, or person for whom the product is prepared; and an inspection legend and the number of the establishment in the form shown in this paragraph, on that portion of the label featuring the name of the product, or, when there are two or more panels, then

on the principal display panels: *Provided*, That in lieu of showing the inspection legend and the establishment number in such form, in the case of large size fiberboard immediate containers, a domestic meat label may be printed directly on such containers in size, form and substance as provided in § 16.15 (a) of this subchapter for use on fiberboard shipping containers: *Provided further*, That the name and place of business of the manufacturer, packer, or person for whom the product was prepared may be omitted from labels for product not required to be labeled under § 17.1: *Provided further*, That the establishment number may be omitted from labels on cartons used as outer containers of edible fats, such as lard and oleomargarine, when such articles are enclosed in wrappers which bear an inspection legend and establishment number; and from a label lithographed directly on a can bearing the embossed or lithographed establishment number: *And provided further*, That a metal container on which an inspection legend is embossed or lithographed may, with the approval of the Director of the Division, bear an inspection legend of different design and in abbreviated form.

* * * * *

2. Section 17.2 (b) is further amended by deleting subparagraph (4).

3. Section 17.8 is amended by adding a new paragraph (d) as follows:

(d) When a statement of quantity of contents is shown on a label it shall not be false or deceptive. Except as provided in § 17.7, it shall meet the following requirements. It shall represent in terms of avoirdupois weight or liquid measure the quantity of product in the package exclusive of materials packed with it. When no general consumer usage to the contrary exists, the statement shall be in terms of liquid measure, if the product is liquid, or in terms of weight if the product is solid, semisolid, viscous, or a mixture of solid and liquid. Unless the statement is so qualified as to show that it expresses the minimum quantity, it shall be taken to express the actual quantity. When the statement expresses the minimum quantity, no variation below the stated minimum shall be permitted, and variations above the stated minimum shall be no greater than consistent with filling the container to the stated minimum in accordance with good commercial practice. When the statement expresses actual quantity, variations incident to packaging in accordance with good commercial practice shall be allowed but the average shall not be less than the quantity stated.

4. The heading for § 17.8 is amended to read "False or deceptive labeling and practices".

The foregoing amendments remove the requirement that a statement of quantity of contents be shown as a part of the required labeling features and provide that when a statement of quantity of contents is shown on the label it shall not be false or deceptive.

Since the amendments relieve certain restrictions presently imposed under section 4 of the Administrative Procedure Act (5 U. S. C. 1003), they may be made effective less than 30 days after publication in the FEDERAL REGISTER.

(Ch. 2907, 34 Stat. 1264, sec. 306, 46 Stat. 689; 19 U. S. C. 1306, 21 U. S. C. 89)

The foregoing amendments shall become effective upon publication in the FEDERAL REGISTER.

Done at Washington, D. C., this 23d day of December 1957.

[SEAL] M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F. R. Doc. 57-10745; Filed, Dec. 26, 1957; 8:57 a. m.]

TITLE 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

PART 21—COMMISSIONED OFFICERS

RESTRICTED GRADES

a. Section 21.115 of Subpart G is amended as follows:

§ 21.115 *Restricted grades.* Officers of the Regular Corps in the nurse, dietitian, therapist, pharmacist, and sanitarian categories shall be permanently promoted to the senior grade only if vacancies exist in such grade.

b. The permanent service promotions which are authorized by virtue of the amendment made to § 21.115 by subsection a, above, for those officers of the Regular Corps having 10 years or more of service for purposes of promotion on the effective date of such amendment shall be effective, for purposes of pay and seniority in grade, as of the effective date of such amendment.

(Sec. 215, 58 Stat. 690; 42 U. S. C. 216)

[SEAL] OTIS L. ANDERSON,
Acting Surgeon General.

Approved: December 18, 1957.

M. B. FOLSOM,
Secretary.

[F. R. Doc. 57-10718; Filed, Dec. 26, 1957; 8:55 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

[Civil Air Regs., Amdt. 40-9]

PART 40—SCHEDULED INTERSTATE AIR CARRIER CERTIFICATION AND OPERATION RULES

HIGH-ALTITUDE OPERATIONS

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 20th day of December 1957.

Part 40 of the Civil Air Regulations presently permits scheduled air carriers to operate off-airways under both IFR and VFR within the continental limits of the United States at altitudes above 12,500 feet east of longitude 100° W. and 14,500 feet west of longitude 100° W. Approval by the Administrator of such high-altitude routes is not required.

In recent years, however, there has been a marked increase in air carrier and other flight operations conducted above 12,500 feet, and it has become apparent that positive traffic separation at these altitudes is increasingly important. Accordingly, a notice of proposed rule making was published in the FEDERAL REGISTER (22 F. R. 3418) and circulated to the industry as Civil Air Regulations Draft Release No. 57-8 to afford interested parties opportunity to comment on a proposed rule which would prohibit high-altitude operations by air carriers operating under Part 40 of the Civil Air Regulations in uncontrolled airspace within the continental limits of the United States in weather conditions less than those prescribed for VFR flight.

The comments received by the Board in response to the notice of proposed rule making were generally favorable. However, there was comment to the effect that the proposed rule is unnecessary inasmuch as the airlines have voluntarily imposed certain restrictions on their high-altitude operations. In view of the importance of traffic separation at these high altitudes, the Board deems it necessary in the interest of safety to provide for such separation through regulation.

This regulation is limited in its application to air carrier operations conducted under Part 40 of the Civil Air Regulations. However, this does not mean that air carriers subject to this part are necessarily to be governed by a different standard for these operations than are air carriers operating under Parts 41 and 42 of the Civil Air Regulations. Attention is directed to the fact that air carriers operating within the continental limits of the United States under Parts 41 and 42 who desire to conduct flights over off-airways routes must secure the approval of the Administrator of Civil Aeronautics for such routes. the Board has been advised by the Administrator that he intends to exercise this authority consistent with the restrictions imposed on Part 40 operators by this regulation.

Interested persons have been afforded an opportunity to participate in the making of this amendment (22 F. R. 3418), and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 40 of the Civil Air Regulations (14 CFR Part 40, as amended) effective January 25, 1958.

1. By amending the proviso in § 40.30 to read as follows: "*Provided*, That high-altitude VFR operations may be conducted over any route."

2. By amending the proviso in § 40.31 to read as follows: "*Provided*, That for high-altitude VFR operations courses need not be approved and the width of navigable airspace on each side thereof need not be designated by the Administrator."

3. By amending the proviso in § 40.32 to read as follows: "*Provided*, That IFR routes outside of control areas shall not be approved for high-altitude operations."

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interpret or apply secs. 601, 604, 52 Stat. 1007, 1010, as amended, 49 U. S. C. 551, 554)

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 57-10748; Filed, Dec. 26, 1957; 8:57 a. m.]

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 50]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

PROCEDURE ALTERATIONS

The standard instrument approach procedures 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 (L/MFR, ADF, VOR, TerVOR, VOR/DME, ILS, or RADAR), 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 cancelled, the existing procedure is revoked; new procedures are to be placed in appropriate alphabetical sequence within the section amended.

1. The low or medium frequency range procedures prescribed in § 609.100 (a) are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type 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 for such airport authorized by the Administrator of Civil Aeronautics. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Int SW crs Mitchell LFR and SE crs Newark LFR.	Asbury Park FM (final)	Direct	1100	T-dn C-dn A-dn	300–1 600–2 1000–2		

Procedure turn *E side NE crs, 062 Outbnd, 242 Inbnd, 1500′ within 10 mi. NE of Asbury Park FM.
*Procedure turn conducted to the E to avoid traffic on Red 3.
Minimum altitude over facility on final approach crs, 1100′ (over Asbury Park FM).
Crs and distance, facility to airport, 258—4.4 (from Asbury Park FM).
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.4 mi. after passing Asbury Park FM, turn left, climb to 1500′ on NE (outbnd) crs.

City, Belmar; State, N. J.; Airport Name, Monmouth County; Elev, 180′; Fac. Class, SBMRLZ; Ident., NEL; Procedure No. 1, Amdt. 1; Eff., Date, 18 Jan. 58; Sup. Amdt. No. Orig.; Dated, 23 Nov. 57.

Barbers Point FM HNL-VOR	HNL-LFR (final) HNL-LFR	Direct Direct	*800 3500	T-dn C-dn S-dn-8 A-dn	400–1 500–1 500–1 800–2	400–1 500–1 500–1 800–2	400–1 500–1½ 500–1 800–2

Radar vectoring to Barbers Point FM for final approach authorized in accordance with established Terminal Area Radar Sector Altitudes.
*Maintain 2000′ on final until abeam HN "HW" or VOR inbnd; if not received, maintain 2000′ to LFR.
Procedure turn S side of c s, 250 Outbnd, 070 Inbnd, 3000′ within 12 mi.
Minimum altitude over facility on final approach crs, 800′*.
Crs and distance, facility to airport, 075—2.3.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.3 miles execute right climbing turn to intercept S crs and proceed to Southgate Int at 2000′.

City, Honolulu; State, Hawaii; Airport Name, Honolulu Int'l.; Elev., 10′; Fac. Class, SB RAZ; Ident., HNL; Procedure No. 1, Amdt. 12; Eff. Date, 20 Dec. 57; Sup. Amdt. No. 11; Dated, 19 Dec. 57

2. The automatic direction finding procedures prescribed in § 609.100 (b) are amended to read in part:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type 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 for such airport authorized by the Administrator of Civil Aeronautics. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Evanston Int Glenview LFR Dundee Int Midway LOM Northbrook VOR O'Hare VOR	LOM LOM LOM LOM LOM LOM	Direct Direct Direct Direct Direct Direct	2500 2500 2500 2500 2500 2500	T-dn C-dn S-dn-14L A-dn	300–1 400–1 400–1 800–2	300–1 500–1 400–1 800–2	200–½ 500–1¼ 400–1 800–2

Radar transition to final approach crs authorized. Aircraft will be released for final approach without procedure turn on inbound final approach at least 3.0 mi from LOM. Refer to O'Hare Radar procedures if sector altitude information is desired.
Procedure turn West side NW crs, 308° Outbnd, 128° Inbnd, 2500′ within 10 mi.
Minimum altitude over facility on final approach crs, 2000′.
Crs and distance, facility to airport, 128°—6.4 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 6.4 mi, make left turn, climb to 2500′ or higher altitude specified by ATC and proceed to Northbrook VOR, via R-030 O'Hare VOR and R-135 Northbrook VOR; or if directed by ATC (1) make immediate left turn, climb to 3500′ proceeding to Evanston Int via R-075 O'Hare VOR; (2) make immediate left turn, climb to 2500′, proceed to Glenview LFR via crs 030 and SE crs Glenview LFR.

City, Chicago; State, Ill.; Airport Name, O'Hare Int'l.; Elev., 666′; Fac. Class, LOM; Ident., OR; Procedure No. 2, Amdt., Orig.; Eff. Date, 19 Dec. 57

ADF STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
				T-dn	400-1	400-1	NA
				C-d	600-1	600-1	NA
				C-n	600-1½	600-1½	NA
				A-dn	NA	NA	NA

Procedure turn South side of crs, 232° Outbnd, 052° Inbnd, 2000′ within 10 mi.
Minimum altitude over facility on final approach crs, 1500′.
Crs and distance, facility to airport, 052°—2.7.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.5 miles, make left 180° climbing turn to 2000′ return to MWO MHW and hold on 232° outbnd bearing.
CAUTION NOTE: Sod Field. 1170′ tower 3 mi East of airport. 900′ msl unlighted smoke stack SW of airport.
NOTES: No weather reporting. Contact Cincinnati Approach Control for clearance. Communications on 122.8 available from sunrise to sunset. Facility owned and operated by City of Middletown.

City, Middletown; State, Ohio; Airport Name, Middletown Mun.; Elev., 647′; Fac. Class, MHW; Ident., MWO; Procedure No. 1, Amdt., Orig.; Eff. Date, 18 Jan. 58

Gardner VOR	ORE RBn (Final)	Direct	2000	T-d	800-1	800-1	800-1
				T-n	NA	NA	NA
				C-d	1000-2	1000-2	1000-2
				C-n	NA	NA	NA
				S-dn	NA	NA	NA
				A-dn	NA	NA	NA

Procedure turn N side of crs, 111° Outbnd, 291° Inbnd, 3000′ within 10 mi.
Minimum altitude over facility on final approach crs, 2000′.
Crs and distance, facility to airport, 291°—3.5.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.8 mi, climb to 3000′ on crs 291° from Orange RBn within 10 mi of facility.
IFR CLIMBOUT PROCEDURE: Climb to 3000′ within 2 mi of airport before departing on course.
AIR CARRIER NOTE: Visibility below one mile not authorized: (1) By application of sliding scale; (2) For local visibility conditions for landings; (3) For reduction of takeoff minimums.
NOTES: Contact Gardner Radio for ATC clearance. Facility must be monitored aurally during this procedure. Weather and Communications available on 122.8 from 0930-1800. Facility owned and operated by Town of Orange.

City, Orange; State, Mass.; Airport Name, Municipal; Elev., 555′; Fac. Class, MHW; Ident., ORE; Procedure No. 1, Amdt., Orig.; Eff Date, 18 Jan. 58

3. The very high frequency omnirange (VOR) procedures prescribed in § 609.100 (c) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
If an instrument approach procedure of the above type 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 for such airport authorized by the Administrator of Civil Aeronautics. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Austin RBn	AUS-VOR	Direct	2000	T-dn	300-1	300-1	*300-1
3 mi DME fix R-355	AUS-VOR (Final)	Direct	1600	C-dn	400-1	500-1	500-1½
				S-dn-16R	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Radar terminal area maneuvering altitude within 20 mi and clockwise around AUS radar antenna site: 345° to 215°—2000′; 215° to 345°—2500′.
Radar control must provide 3 mi or 1000′ vertical separation; or 3 to 5 mi and 500′ vertical separation from radio towers 1680′ msl 23 mi WNW, 2049′ msl 9 mi NW and 1054′ msl 14 mi N.
* 200—½ authorized on Runways 16R, 34L, 12R and 30L only.
Procedure turn W side crs, 355 Outbnd, 175 Inbnd, 2000′ within 10 mi. Beyond 10 mi NA.
Minimum Altitude over facility on final approach crs, VOR 1600′; AUS FM or DME fix 2.4 on R-175 AUS VOR 1300′**.
** Descent below 1300 authorized only after passing AUS FM, DME fix 2.4 on R-175.
Crs and distance, facility to airport, 175—4.9 VOR to airport; 175—2.5 from 2.4 DME fix to airport.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.9 mi, turn left, climb to 2000′ on R-100 within 20 mi.
CAUTION: Tank 855′ MSL 1.2 mi W final approach crs 2.3 mi NW of airport.

City, Austin; State, Tex.; Airport Name, Mueller; Elev., 631′; Fac. Class, BVOR; Ident., AUS; Procedure No. 1, Amdt. 8; Eff. Date, 18 Jan. 58; Sup. Amdt. No. 7; Dated, 29 Aug. 57

SSM-LFR	SSM-VOR	Direct	1800	T-d	300-1	300-1	NA
				C-d	500-1	500-1½	NA
				S-d-32	500-1	500-1	NA
				A-d	800-2	800-2	NA

Procedure turn E side SE crs, 159 Outbnd, 339 Inbnd, 1800′ within 10 mi.
Minimum altitude over facility on final approach crs, 1300′.
Crs and distance, facility to airport, 339—4.1 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.1 miles climb to 2500′ on R-339 Sault Ste. Marie VOR within 20 mi.
CAUTION: 895′ tower .3 miles, 025° from airport. 936′ tower 2.4 miles, 205° from airport.

City, Sault Ste. Marie; State, Mich.; Airport Name, Sault Ste. Marie; Elev., 722′; Fac. Class, VOR; Ident., SSM; Procedure No. 1, Amdt. 1; Eff. Date, 20 Dec. 57, or date of com of fac; Sup. Amdt. No. Orig.; Dated, 19 Dec. 57

4. The instrument landing system procedures prescribed in § 609.400 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type 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 for such airport authorized by the Administrator of Civil Aeronautics. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
AUS VOR	Plateau Int	Direct	3000	T-dn#	300–1	300–1	200–½
Lake Travis Int	Plateau Int	Direct	2300	C-dn	400–1	500–1	500–1½
Plateau Int	Burnet Int (Final)	Direct	1400	S-dn-12R	400–1	400–1	400–1
				A-dn	800–2	800–2	800–2

Radar terminal area maneuvering altitude within 20 mi and clockwise around AUS radar antenna site: 345° to 215°—2000′; 215° to 345°—2500′.

Radar control must provide 3 mi or 1000′ vertical separation; or 3 to 5 mi and 500′ vertical separation from radio towers 1680′ msl 23 mi WNW, 2049′ msl 9 mi NW and 1054′ msl 14 mi N.

#Not less than 300–1 authorized for take-off on runways 3–21, 16L–34R, and 12L–30R.

Procedure turn W side NW crs, 305 Outbnd, 125 Inbnd, 3000′ within 10 mi of Plateau Int. Beyond 10 mi NA.

No glide slope. Minimum altitude at Plateau Int 2300′, Burnet Int 1400′.

Distance, Burnet Int to Rny 12, 2.4 mi.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.4 miles of Burnet Int., climb to 2000′ on SE crs ILS within 20 miles, or when directed by ATC, turn left, climb to 2000′, proceed direct to AUS–VOR, or turn right, climb to 2100′ on R–175 within 20 mi.

City, Austin; State, Tex.; Airport Name, Mueller; Elev., 631′; Fac. Class, ILS–IAUS NW crs ILS; Ident. VOR–AUS; Procedure No. ILS–12R, Amdt. 4; Eff. Date, 18 Jan. 58; Sup. Amdt. No. 3; Dated, 29 Aug. 57

Austin VOR	LOM	Direct	2000	T-dn#	300–1	300–1	200–½
Austin RBn	LOM	Direct	2000	C-dn	400–1	500–1	500–1½
Smithville RBn	Webberville Int	Direct	1900	S-dn-30L:			
Bergstrom RBn	LOM	Direct	2000	ILS	300–¾	300–¾	300–¾
Webberville Int	LOM (Final)	Direct	2000	ADF	400–1	400–1	400–1
				A-dn:			
				ILS	600–2	600–2	600–2
				ADF	800–2	800–2	800–2

Radar terminal area, maneuvering altitude within 20 mi and clockwise around AUS radar antenna site: 345° to 215°—2000′; 215° to 345°—2500′.

Radar control must provide 3 mi or 1000′ vertical separation; or 3 to 5 mi and 500′ vertical separation from radio towers 1680′ msl 23 mi WNW, 2049′ msl 9 mi NW and 1054′ msl 14 mi N.

#All aircraft are restricted to 300–1 minima for take-off on Runways 3–21, 16L–34R, and 12L–30R.

Procedure turn E side SE crs, 125 Outbnd, 305 Inbnd, 2000 within 10 miles. Beyond 10 mi NA.

Minimum altitude at G. S. int inbnd, 2000* ILS, minimum altitude over LOM inbnd final 1200 ADF.

*2000 will intercept glide slope 0.5 mi after passing OM.

Altitude of G. S. and distance to approach end of Rny at OM 2120—5.1; at MM 820—0.4.

Crs and distance, LOM to airport, 305—5.1.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 5.1 mi of LOM (ADF) climb to 3000′ on NW crs ILS (305) within 20 miles, or when directed by ATC, turn right, climb to 2000′, proceed direct to VOR.

NOTE: 400–1 required when glide slope not used. No approach lights. All installed components of ILS must be operating or alternate minima of 800–2 apply.

City, Austin; State, Tex.; Airport Name, Mueller; Elev., 631′; Fac. Class, ILS–IAUS; Ident., LOM–AU; Procedure No. ILS–30L, Comb. ILS–ADF; Amdt. 15; Eff. Date, 18 Jan. 58; Sup. Amdt. No. 14; Dated 29 Aug. 57

Midland VOR	LMM	Direct	4200	T-dn	300–1	300–1	*200–½
Midland VOR	OM	Direct	4200	C-dn	400–1	500–1	500–1½
Midland LFR	OM	Direct	4000	S-dn-4:			
Midland LFR	LMM	Direct	4000	ILS	200–½	200–½	200–½
				ADF	400–1	400–1	400–1
				A-dn:			
				ILS	600–2	600–2	600–2
				ADF	800–2	800–2	800–2

AIR CARRIER NOTE: *300–1 required Runways 16L and 34R.

Procedure turn S side SW crs, 223 Outbnd, 043 Inbnd, 4400′ within 10 mi. Beyond 10 mi NA.

Minimum altitude at glide slope int inbnd—4100′ ILS. Min. alt. over OM inbnd final—3800′ ADF; over LMM, 3300′ ADF.

Altitude of glide slope and distance to approach end of rny at OM—4010–4.1; at MM—3070–0.6.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.6 mi after passing LMM (ADF), climb to 4400′ on NE crs ILS (043) within 20 mi. When directed by ATC, turn right, climb to 4000′ on SE crs LFR or R–150 within 20 mi. If OM not received altitude over LMM is 3800′ and straight in minima NA. 400–¾ required when glide slope not utilized.

City, Midland; State, Tex.; Airport Name, Air Terminal; Elev., 2867′; Fac. Class, ILS–IMAF; Ident., LMM–AF; Procedure No. ILS–4, Comb. ILS–ADF, Amdt. 8; Eff. Date, 18 Jan. 58; Sup. Amdt. No. 7; Dated, 14 Dec. 57

Radar terminal area transition altitude	NW ILS	All directions within 20 mi.	2600	T-dn	300–1	300–1	200–½
6 mi radar fix	App. end Rnwy 11R (Final)		2600	C-dn	500–1	500–1	500–1½
5 mi radar fix	App. end Rnwy 11R (Final)		2500	S-dn-11R	400–1	400–1	400–1
3 mi radar fix	App. end Rnwy 11R (Final)		1800	A-dn	800–2	800–2	800–2
2 mi radar fix	App. end Rnwy 11R (Final)		1500				

Procedure turn not authorized. All maneuvering to back course approach must be under control of surveillance Radar.

No glide slope or markers.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished on final approach within 2 mi after passing 2 mi radar fix, make right climbing turn, climb to 2500′ on SW crs.

MSP LFR to Jordan fan marker.

NOTE: This procedure authorized only when airport surveillance radar is operating and utilized.

CAUTION: Do not descend below 1700′ MSL until radar controller has advised passing 1085′ tower 2.5 mi from app. end Runway 11R.

City, Minneapolis; State, Minn.; Airport Name, Minneapolis-St. Paul International; Elev., 840′; Fac. Class, ILS–MSP; Ident., Radar MSP; Procedure No. ILS–11, Amdt. 4; Eff. Date, 18 Jan. 58; Sup. Amdt. No. 3; Dated, 21 Dec. 57

These procedures shall become effective on the dates indicated on the procedures.

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

[SEAL]

WILLIAM B. DAVIS,
Acting Administrator of Civil Aeronautics.

DECEMBER 13, 1957.

[F. R. Doc. 57–10505; Filed, Dec. 26, 1957; 8:45 a. m.]

TITLE 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

[Sugar Reg. 811]

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

REQUIREMENTS AND QUOTAS FOR 1958

Basis and purpose. The purpose of Sugar Regulation 811 is to determine, pursuant to section 201 of the Sugar Act of 1948, as amended (hereinafter called the "act"), the amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1958 and to establish, pursuant to section 202 of the act, sugar quotas for the supplying areas in terms of short tons of sugar, raw value, equal to the quantity determined by the Secretary of Agriculture to be needed in 1958 and to prescribe the time in which quotas may be filled. Further, this regulation establishes (1) the amounts of certain quotas that may be filled by direct-consumption sugar, pursuant to section 207 of the act, (2) liquid sugar quotas pursuant to section 208, and (3) limitations on total importations to effectuate Article 7 of the International Sugar Agreement pursuant to section 411 of the act.

The determination of sugar requirements set forth in this regulation is made pursuant to the requirement of section 201 of the act that the Secretary of Agriculture make such determination for the calendar year 1958 during December of 1957. The determination has been based, insofar as required by section 201 of the act, on official statistics of the Department of Agriculture and statistics published by other agencies of the Federal Government.

Sugar quotas, the amounts thereof that may be filled by direct-consumption sugar, and liquid sugar quotas are established by the procedures prescribed or at levels specified in sections 202, 207 and 208 of the act.

Section 411 of the act provides for the issuance of regulations to carry out Article 7 of the International Sugar Agreement. Article 7 requires limiting the total importations from non-participating countries as a group to the total of such importations in any one of the years 1951, 1952 or 1953. All of the countries for which quotas are established hereunder are now members of the International Sugar Agreement except Costa Rica and Peru. Imports into the United States from each of these two countries were larger in 1953 than in either 1951 or 1952. Therefore, 1953 imports constitute the maximum quantity of sugar as defined in the International Sugar Agreement, as amended, that may be imported from non-member countries.

Article 7, also, provides that upon notification by this country to the International Sugar Council, the import limitations on non-member countries may be suspended during a specified period when the prevailing world price of sugar, as defined in Article 20 of said Agreement, exceeds 4.00 cents and that the limitations shall be restored when such prevailing sugar price no longer exceeds 4.00 cents. The limitation in § 811.9 automatically ceases to apply when the country becomes a member.

Prior to the issuance of this regulation, notice was given (22 F. R. 8540) that the Secretary of Agriculture was preparing, among other things, to determine the sugar requirements and to establish quotas for the calendar year 1958 and that an interested person might present any data, views or arguments with respect thereto at a public hearing to be held in Washington, D. C., on November 19, 1957. In addition, the notice stated that any interested person might present any data, views or arguments with respect thereto in writing not later than November 29, 1957. In making this determination due consideration has been given to the data, views and arguments expressed at the hearing held on November 19, 1957, and to the data, views and arguments submitted in writing on or before November 29, 1957, in accordance with the Administrative Procedure Act (60 Stat. 237).

Since the Sugar Act of 1948 requires that the Secretary of Agriculture determine sugar requirements for the calendar year 1958 during the month of December 1957, and since the sugar quotas for some areas are relatively small, thereby making it possible for such areas to exceed their quotas within a few days after the beginning of the quota year, compliance with the 30-day effective date requirements of the Administrative Procedure Act is impracticable and contrary to the public interest. Accordingly, this regulation shall be effective on January 1, 1958.

Sec.

811.1 Sugar requirements, 1958.
811.2 Quotas for domestic areas.
811.3 Quotas for foreign countries.
811.4 [Reserved.]
811.5 [Reserved.]
811.6 Liquid sugar quotas for foreign countries.
811.7 Applicability of quotas.
811.8 Restrictions on importations and marketings.
811.9 International Sugar Agreement import limitations.

AUTHORITY: §§ 811.1 to 811.9 issued under sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interpret or apply secs. 201, 202, 204, 207, 208, 209, 210, 212 and 411; 61 Stat. 923, as amended, 924, as amended, 925, as amended, 927, as amended, 928, as amended, 929, as amended, 933, as amended; 7 U. S. C. 1111, 1112, 1114, 1117, 1118, 1120, 1122.

§ 811.1 *Sugar requirements, 1958.* The amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1958 is hereby determined to be 8,800,000 short tons, raw value.

§ 811.2 *Quotas for domestic areas.* (a) For the calendar year 1958 quotas for sugar to be brought into or marketed for consumption in the continental United States from domestic areas are established in column (1) and the amounts of such quotas for offshore areas that may be filled by direct-consumption sugar are established in column (2) as follows:

[Short tons, raw value]

Area	Quota (1)	Direct-consumption limit (2)
Domestic beet sugar	1,909,188	(1)
Mainland cane sugar	587,476	(1)
Hawaii	1,065,513	29,996
Puerto Rico	1,114,130	130,016
Virgin Islands	15,193	0

[1] No limit.

(b) Of the quantity established in paragraph (a) of this section for Puerto Rico which may be filled by direct-consumption sugar, 126,033 short tons, raw value, may be filled only by sugar principally of crystalline structure.

§ 811.3 *Quotas for foreign countries.* For the calendar year 1958, quotas for sugar to be imported into the continental United States for consumption therein from foreign countries are established in column (1) and the amount of each such quota that may be filled by direct-consumption sugar is established in column (2), as follows:

[Short tons, raw value]

Country	Quotas (1)	Direct-consumption limits (2)
Republic of the Philippines	980,000	59,920
Cuba	2,942,115	375,000
Peru	69,547	9,292
Dominican Republic	51,757	8,285
Mexico	34,209	15,048
Nicaragua	10,584	9,923
Haiti	5,761	5,761
Netherlands	3,313	3,313
China	3,267	3,267
Panama	3,267	3,267
Costa Rica	3,264	3,264
Canada	631	631
United Kingdom	516	516
Belgium	182	182
British Guiana	84	84
Hong Kong	3	3
All other countries	0	0

§ 811.4 [Reserved.]

§ 811.5 [Reserved.]

§ 811.6 *Liquid sugar quotas for foreign countries.* For the calendar year 1958 quotas for liquid sugar to be imported into the continental United States for consumption therein are hereby established as follows:

Country:	*Liquid sugar, wine gallons, 72 percent total sugar content*
Cuba	7,970,558
Dominican Republic	830,894
British West Indies	300,000
Other foreign countries	0

§ 811.7 *Applicability of quotas.* The provisions of §§ 811.1 through 811.6 shall apply to all sugar and liquid sugar brought or imported into or marketed in the continental United States in 1958 except as provided in section 212 of the act and subject to the provisions of the regulations in this chapter, which prescribe the time, manner, and conditions under which quotas are filled by the marketing or importation of sugar.

§ 811.8 *Restrictions on importations and marketings within quotas.* With respect to any sugar or liquid sugar which is subject to the provisions of §§ 811.1 through 811.6 as provided in § 811.7, all persons are prohibited during the calendar year 1958 from bringing or importing into or marketing in the continental United States any of such sugar or liquid sugar after the applicable quota has been filled, or any of such sugar or liquid sugar as direct-consumption sugar after the direct-consumption portion of the applicable quota has been filled.

§ 811.9 *International Sugar Agreement Import Limitations.* Notwithstanding any other provision of this part or of Sec. 212 of the act and to give effect to Article 7 of the International Sugar Agreement, total importations of sugar, as defined in the International Sugar Agreement, as amended, from countries which are not members of the Agreement shall be limited to the quantities shown below during such portion of 1958 that import limitations on such countries are not suspended, pursuant to Article 7, by the issuance of a public notice by the Director, Sugar Division, Commodity Stabilization Service, and such country is not a member of the International Sugar Agreement:

Country:	"ISA Limit" (short tons, raw value)
Costa Rica	1,123
Peru	55,588
Other non-member countries	0

STATEMENT OF BASES AND CONSIDERATIONS

Requirements. Section 201 of the Sugar Act of 1948, as amended, provides that in determining the quantity of sugar needed to meet the requirements of consumers in the continental United States (total of quotas) consideration must be given to (a) the distribution of sugar in the twelve months ended October 31 prior to the year to which the requirements apply, (b) any surplus or deficiency in inventories of sugar (c) changes in consumption because of changes in population and demand conditions, and (d) the relationship between wholesale prices for refined sugar and the Consumers' Price Index.

Consideration of these factors brings out the following facts and conclusions:

Distribution of sugar by refiners, importers and processors of sugar beets and sugarcane during the twelve months ended October 31, 1957, totalled approximately 8,650,000 short tons, raw value. At the beginning of the period distribution was running well in excess of consumption while toward the end of the period the reverse situation prevailed. A study of monthly distribution data for the year ended October 31, 1957, indicates that invisible inventories (those held by wholesalers, retailers and industrial users) were reduced during the period and that actual consumption exceeded distribution by at least 100,000 tons.

Past rates of consumption together with probable increases in population after October 31, 1957, indicate sugar consumption in 1958 totaling 8,900,000 short tons, raw value.

The demand upon 1958 quota supplies will be reduced by anticipated large deliveries of beet sugar in the closing weeks of 1957 which may not be physically received by buyers until 1958. Such constructive deliveries or deliveries in transit are expected to approach 150,000 tons.

Refiners' inventories of quota sugar at the beginning of 1958 will be higher than a year earlier but much of the increase is related to the quantity of new-crop sugar available after October 1 within the quota for the Mainland Cane Sugar Area and to other factors which also may be substantially the same at the end of 1958. Neither the direction nor the degree of any change in quota sugar inventories of refiners during 1958 can be foreseen at this time.

The average wholesale price of refined sugar at New York for the first 10 months of 1957 was 9.15 cents per pound, 0.38 cents or four percent above the average for 1956. It was about one-half cent per pound below the price indicated in relation to the Consumers' Price Index as referred to in Sec. 201 of the Act. In terms of percentages, the monthly average prices ranged from 94.3 to 96.2 percent of the level referred to in Sec. 201.

After making allowance for large year-end deliveries of beet sugar and providing for minor changes in other inventories and potential refining losses, it is determined that 8,800,000 short tons, raw value, of sugar will be needed to meet the requirements of consumers in the continental United States in 1958 at prices that are not excessive to consumers and that will protect and maintain the welfare of the domestic sugar industry.

Quotas. The quotas herein established were determined in compliance with the specific procedures provided in section 202 of the act for translating the total sugar requirements into quotas for individual areas and countries.

The amounts of the quotas which may be filled by direct-consumption sugar were established pursuant to section 207 of the act, which specifies the quantity for some countries and provides the procedure for determining the others.

The liquid sugar quotas established are as specified in section 208 of the act.

As a member of the International Sugar Agreement the United States is obligated to restrict importations from non-member countries pursuant to Article 7 of the Agreement. Though such import limitation applies to all non-member countries as a group, the entire limitation has been assigned specifically to Costa Rica and Peru thus permitting no importations of sugar from all other non-member countries during 1958. The two countries named accounted for all of the importations during 1953 on which the total limitation is based and applied to each country specifically the limitation can be most effectively administered.

Done at Washington, D. C., this 20th day of December 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57-10685; Filed, Dec. 26, 1957; 8:49 a. m.]

[Sugar Reg. 814.24, Amdt. 6]

PART 814—ALLOTMENT OF SUGAR QUOTAS

MAINLAND CANE SUGAR AREA, 1957

Basis and purpose. This amendment is issued under section 205 (a) of the Sugar Act of 1948, as amended (hereinafter called the "act"), for the purpose of further amending Sugar Regulation 814.24 (22 F. R. 5, 3700, 4133, 4641, 7677, 8301, 10431) which established allotments of the 1957 sugar quota for the Mainland Cane Sugar Area totaling 637,172 short tons, raw value, and prorated deficits in the allotments of six allottees amounting to 9,363 short tons, raw value.

This amendment is necessary to prorate deficits in the allotments of individual allottees totaling 3,268 short tons, raw value, in addition to the deficits previously prorated. On the basis of advice from each allottee, the Secretary of Agriculture has determined that seven allottees are unable to fully utilize their respective allotments of the Mainland Cane Sugar Area quota as established in S. R. 814.24, Amendment 5 (22 F. R. 10431), and that there is a deficit in the allotments of such allottees amounting to 3,268 short tons, raw value, as follows: Billeaud Sugar Factory 829 tons; Breaux Bridge Sugar Coop., Inc., 392 tons; Iberia Sugar Coop., Inc., 308 tons; Levert-St. John, Inc., 550 tons; Loisel Sugar Company, Inc., 350 tons; Vida Sugars, Inc., 562 tons and Young's Industries, Inc., 277 tons. Thus, a deficit of 3,268 short tons, raw value, is declared and prorated to other allottees, exclusive of Louisiana State University, who can effectively use additional allotments, on the basis of the allotments they would otherwise receive.

It was found after notice and public hearing that this order shall be revised, without further notice or hearing, for the purpose of adjusting allotments to take account of any deficit in the allotments of individual allottees. The allotments set forth herein have been established in accordance with findings heretofore made by the Secretary in the course of this proceeding (22 F. R. 3700, 4133, 4641).

Effective date. Because of the limited time remaining in the quota year to which the allotments apply, it is imperative that this amendment become effective at the earliest possible date in order to permit the continued orderly marketing of sugar. Accordingly, it is hereby found that compliance with the 30-day effective date requirement of the Administrative Procedure Act (60 Stat. 237) is impracticable and contrary to the public interest and, consequently, this amendment shall be effective when filed with the FEDERAL REGISTER.

Order. Pursuant to the authority vested in the Secretary of Agriculture by section 205 (a) of the act, it is hereby ordered, that paragraph (a) of § 814.24, as amended, be further amended to read as follows:

§ 814.24 *Allotment of the 1957 sugar quota for the Mainland Cane Sugar Area*—(a) *Allotments.* The 1957 sugar quota for the Mainland Cane Sugar Area of 637,172 short tons, raw value, is hereby allotted to the following processors in the

quantities which appear opposite their respective names:

Processors:	*Allotments (short tons, raw value)*
Albania Sugar Coop., Inc	6,940
Alma Plantation, Ltd	8,808
J. Aron & Co., Inc	14,263
Billeaud Sugar Factory	8,127
Breaux Bridge Sugar Coop	6,843
J. M. Burguieres Co., Ltd., The	8,274
Burton-Sutton Oil Co., Inc	8,261
Caire & Graugnard	3,600
Caldwell Sugar Coop., Inc	11,744
Catherine Sugar Co., Inc	8,815
Columbia Sugar Company	6,419
Cora-Texas Mfg. Co., Inc	2,995
Dugas & LeBlanc, Ltd	12,994
Duhe & Bourgeois Sugar Co., Inc	10,351
Erath Sugar Co., Ltd	5,260
Evan Hall Sugar Coop., Inc	23,091
Evangeline Pepper & Food Products, Inc	5,143
Fellsmere Sugar Producers Assoc	8,828
Frisco Cane Co., Inc	937
Glenwood Coop., Inc	16,158
Gulf States Land & Industries, Inc	20,717
Helvetia Sugar Coop., Inc	9,309
Iberia Sugar Coop., Inc	15,004
LaFourche Sugar Company	15,259
Harry L. Laws & Co., Inc	11,392
Levert-St. John, Inc	9,015
Loisel Sugar Co., Inc	3,795
Louisiana State Penitentiary	3,086
Lula Factory, Inc	11,907
Meeker Sugar Coop., Inc	4,928
Milliken & Farwell, Inc	13,567
National Sugar Refining Co	13,287
Okeelanta Sugar Refinery, Inc	18,475
M. A. Patout & Son, Ltd	10,195
Poplar Grove Pltg. & Ref. Co., Inc	7,610
St. James Sugar Coop., Inc	13,345
St. Mary Sugar Coop., Inc	12,655
South Coast Corp	45,218
Southdown Sugars, Inc	43,695
Sterling Sugars, Inc	21,255
J. Supple's Sons Pltg. Co., Inc	5,429
United States Sugar Corp	123,331
Valentine Sugars, Inc	6,787
Vermilion Sugar Co., Inc	1,000
Vida Sugars, Inc	4,143
A. Wilbert's Sons Lbr. & Sh. Co	10,045
Young's Industries, Inc	4,772
Louisiana State University	100
All other persons	00
Total	637,172

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interprets or applies secs. 205, 209; 61 Stat. 926, 929; 7 U. S. C. 1115, 1120)

Done at Washington, D. C., this 23d day of December 1957.

[SEAL] CLARENCE L. MILLER,
Acting Administrator,
Commodity Stabilization Service.

[F. R. Doc. 57-10755; Filed, Dec. 24, 1957; 12:30 p. m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 908—MILK IN CENTRAL ARKANSAS MARKETING AREA

ORDER TERMINATING CERTAIN PROVISIONS

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), hereinafter referred to as the "Act", and of the order, as amended (7 CFR Part 908), regulating the handling of milk in the Central Arkansas marketing area, hereinafter referred to as the "order", it is hereby found and determined that:

(a) The provisions of subparagraphs (2) and (3) of § 908.43 (d):

(2) The handler attaches tags or labels to each container of such cream bearing the words, "for manufacturing uses only,"

(3) The handler gives the market administrator sufficient notice to allow him to verify such Class II disposition in advance,

do not tend to effectuate the declared policy of the Act.

There has been no difficulty in verifying cream sales to nonpool plants by regular audit procedure. Nonpool plants buying cream from regulated handlers are manufacturing dairy products exclusively. The provisions to be terminated serve no purpose for promotion of orderly marketing conditions in the market, and termination of said provisions will not impair effective regulation under this order.

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of the effective date hereof, are impracticable, unnecessary, and contrary to the public interest for reasons stated under (a) above and in that:

(1) This termination order does not require of persons affected substantial or extensive preparation prior to its effective date. Therefore, good cause exists for making this order effective immediately.

It is therefore ordered, that the provisions, "(2) the handler attaches tags or labels to each container of such cream bearing the words, 'for manufacturing uses only', (3) the handler gives the market administrator sufficient notice to allow him to verify such Class II disposition in advance," contained in § 908.43 (d) of the order, as amended, regulating the handling of milk in the Central Arkansas marketing area, are hereby terminated effective immediately.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Done at Washington, D. C., this 20th day of December 1957.

[SEAL] DON PAARLBERG,
Assistant Secretary.

[F. R. Doc. 57-10683; Filed, Dec. 26, 1957; 8:49 a. m.]

PART 909—HANDLING OF ALMONDS GROWN IN CALIFORNIA

ORDER TERMINATING A CERTAIN PROVISION

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), Marketing Agreement No. 119 and Marketing Order No. 9, as amended (7 CFR Part 909; 22 F. R. 8485), regulating the handling of almonds grown in California, it is hereby determined that the provisions of § 909.16 reading "and the Canal Zone" does not effectuate the declared policy of the Act. It is, therefore, ordered that the provision "and the Canal Zone" in said § 909.16 is hereby terminated and deleted from said § 909.16.

It is hereby found and determined that notice of proposed rule making, public participation therein, and deferment of the effective date of this document beyond the date of its publication in the FEDERAL REGISTER is impracticable, unnecessary, and contrary to the public interest (See section 4 of the Administrative Procedures Act; 5 U. S. C. 1001 et seq.) for the reasons that (1) regulation of persons in the Canal Zone is not authorized by the Act (7 U. S. C. 608c) and (2) control provisions of the program could not appropriately be enforced in the Canal Zone.

(Sec. 5, 48 Stat. 31, as amended; 7 U. S. C. 608c)

Dated, December 23, 1957, to become effective upon publication in the FEDERAL REGISTER.

TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57-10681; Filed, Dec. 26, 1957; 8:48 a. m.]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

COMPILATION OF ORDER REGULATING HANDLING

For convenient reference, the texts of the codified portions of Order No. 33, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, and comprising Subpart—Order Regulating Handling (F. R. Doc. 39-582; 4 F. R. 971) which became effective on February 22, 1939, as amended (11 F. R. 9471; 12 F. R. 7384), and recodified (17 F. R. 1327), and as further amended (22 F. R. 8511), are hereby reprinted in the FEDERAL REGISTER in the form of a compilation.

This material was prepared in cooperation with the Federal Register Division and has been examined for completeness and accuracy.

Dated: December 23, 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

COMPILATION OF ORDER REGULATING HANDLING

SUBPART—ORDER REGULATING HANDLING

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933.0 Findings and determinations.

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AUTHORITY: §§ 933.0 to 933.89 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 933.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of this order and each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein. (See 4 F. R. 971; 11 F. R. 9471, 12 F. R. 7383; and 17 F. R. 1327.)

(a) *Findings upon the basis of the hearing record.* Pursuant to 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), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held at Lakeland, Florida, beginning on February 25, 1957, upon proposed amendments to the marketing agreement, as amended, and to Order No. 33, as amended (7 CFR Part 933) regulating the handling of oranges, grapefruit, and tangerines grown in Florida. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby further amended, regulates the handling of oranges (including Temple oranges), grapefruit, tangerines, and tangelos grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area that is practicable consistently with carrying out the declared policy of the act;

(4) The said order, as amended and as hereby further amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to differences in the production and marketing of the oranges (including Temple oranges), grapefruit, tangerines, and tangelos grown in the production area; and

(5) All handling of oranges (including Temple oranges), grapefruit, tangerines, and tangelos grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida," upon which the aforesaid public hearing was held, has been executed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the fruit covered by this order) who, during the period August 1, 1956, through July 31, 1957, handled not less than 50 percent of the volume of oranges, not less than 50 percent of the volume of grapefruit, not less than 50 percent of the volume of tangerines, and not less than 50 percent of the volume of tangelos covered by the said amended order, as hereby further amended; and

(2) The issuance of this order, amending the aforesaid amended order, is favored or approved by at least two-thirds of the respective producers who participated in a referendum on the question of its approval and who, during the determined representative period (August 1, 1956, through July 31, 1957), were engaged, within the production area specified in the aforesaid amended order, in the production for market of oranges, grapefruit, tangerines, and tangelos; such producers having also produced for market at least two-thirds of the volume of each fruit represented in such referendum.

It is, therefore, ordered, That, on and after December 2, 1957, all handling of oranges (including Temple oranges), grapefruit, tangerines, and tangelos grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended as follows:

DEFINITIONS

§ 933.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States of America.

§ 933.2 *Act.* "Act" means Public Act No. 10, 73d Congress (May 12, 1933), 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.)

§ 933.3 *Person.* "Person" means an individual, partnership, corporation, association, business trust, legal representative, or any organized group of individuals.

§ 933.4 *Fruit.* "Fruit" means the following types of citrus fruits grown in the production area:

(a) Citrus sinensis, Osbeck, commonly called "oranges;"

(b) Citrus grandis, Osbeck, commonly called "grapefruit;"

(c) Citrus nobilis deliciosa, commonly called "tangerines;"

(d) Temple oranges; and

(e) Tangelos.

§ 933.5 *Variety.* "Variety" or "varieties" means any one or more of the following classifications or groupings of citrus fruit: (a) Early and midseason oranges, including Navel and other types commonly called "round oranges", except Valencia, Lue Gim Gong, and similar late-maturing oranges of the Valencia type; (b) Valencia, Lue Gim Gong, and similar late-maturing oranges of the Valencia type; (c) Temple oranges; (d) Marsh and other seedless grapefruit, excluding pink grapefruit; (e) Duncan and other seeded grapefruit, excluding pink grapefruit; (f) pink seedless grapefruit; (g) pink seeded grapefruit; (h) tangerines; and (i) tangelos.

§ 933.6 *Producer.* "Producer" means any person engaged in the production of fruit.

§ 933.7 *Handler.* "Handler" is synonymous with "shipper" and means any person (except a common or contract carrier transporting fruit for another person) who, as owner, agent, or otherwise, handles fruit in fresh form, or causes fruit to be handled.

§ 933.8 *Prepare for market.* "Prepare for market" means to wash, grade, size, or place fruit (whether or not wrapped) into any container whatsoever; but such term shall not include the harvesting of fruit.

§ 933.9 *Handle or ship.* "Handle or ship" means (a) to sell, consign, deliver, or transport fruit, or in any other way to place fruit, in the current of the commerce between the production area and any point outside thereof in the continental United States, Canada, or Mexico; and (b) to export fruit from any continental United States port to any

destination other than Canada or Mexico.

§ 933.10 *Standard packed box.* "Standard packed box" means a unit of measure equivalent to one and three-fifths (1⅗) United States bushels of fruit, whether in bulk or in any container.

§ 933.11 *Fiscal period.* "Fiscal period" means the period of time from August 1 of any year until July 31 of the following year, both dates inclusive.

§ 933.12 *District.* "District" means any of the following areas in the State of Florida:

(a) "Citrus District One" shall include the Counties of Hillsborough, Pinellas, and Manatee.

(b) "Citrus District Two" shall include the Counties of Citrus, Sumter, Lake, Hernando, and Pasco.

(c) "Citrus District Three" shall include the Counties of Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Seminole, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwannee, and County Commissioner's Districts One, Two, and Three of Volusia County.

(d) "Citrus District Four" shall include the Counties of Orange and Osceola.

(e) "Citrus District Five" shall include the Counties of Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward, and Dade, and County Commissioner's Districts Four and Five of Volusia County.

(f) "Citrus District Six" shall include the Counties of Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, and Monroe.

(g) "Citrus District Seven" shall include the County of Polk.

§ 933.13 *Regulation Area I.* "Regulation Area I" shall include all that part of the production area not included in Regulation Area II.

§ 933.14 *Regulation Area II.* "Regulation Area II" shall include that part of the State of Florida particularly described as follows:

Beginning at a point on the shore of the Atlantic Ocean where the line between Flagler and Volusia Counties intersects said shore, thence follow the line between said two counties to the Southwest corner of Section 23, Township 14 South, Range 31 East; thence continue South to the Southwest corner of Section 35, Township 14 South, Range 31 East; thence East to the Northwest corner of Township 18 South, Range 32 East; thence South to the Southwest corner of Township 17 South, Range 32 East; thence East to the Northwest corner of Township 18 South, Range 33 East; thence South to the St. Johns River; thence along the main channel of the St. Johns River and through Lake Harney, Lake Poinsett, Lake Winder, Lake Washington, Sawgrass Lake, and Lake Helen Blazes to the range line between Ranges 35 East and 36 East; thence South to the South line of Brevard County; thence East to the line between Ranges 36 East and 37 East; thence South to the Southwest corner of St. Lucie County; thence East to the line between Ranges 39 East and 40 East; thence South to the South line of Martin County; thence East to the line between Ranges 40 East and 41 East; thence South to the West Palm Beach Canal (also known as the Okeechobee Canal); thence follow said canal eastward to the mouth thereof; thence East to the shore of the Atlantic Ocean; thence Northerly along the shore of the Atlantic Ocean to the point of beginning.

§ 933.15 *Production area.* "Production area" means that portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico.

ADMINISTRATIVE BODIES

§ 933.20 *Designation of Committees.* A Growers Administrative Committee and a Shippers Advisory Committee are hereby established. The membership shall be selected in accordance with the provisions of §§ 933.21 through 933.29, inclusive.

§ 933.21 *Growers Administrative Committee membership and term of office.* The Growers Administrative Committee shall consist of eight members, each of whom shall have an alternate, all of whom shall be producers who shall not be handlers or employed by handlers. The term of office of members and alternate members shall begin on the first day of August and continue for one year and until their successors are selected and have qualified. The consecutive terms of office of a member shall be limited to three terms: *Provided,* That such limitation shall be effective only to members who serve three consecutive terms expiring on or after July 31, 1947. The terms of office of alternate members shall not be so limited. The members, their alternates, and their respective successors shall be nominated by producers and selected by the Secretary as provided in §§ 933.22 and 933.23.

§ 933.22 *Nomination of members for Growers Administrative Committee.* (a) The Secretary shall give public notice of a meeting of producers in each district to be held not later than July 10 of each year, for the purpose of making nominations for members and alternate members of the Growers Administrative Committee. The Secretary shall prescribe uniform rules to govern such meetings and the balloting thereat. The chairman of each meeting shall publicly announce at such meeting the names of the persons nominated and the total number of votes cast for each, and the chairman and secretary of each such meeting shall transmit to the Secretary their certificate as to the number of votes so cast, the names of the persons nominated, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of July.

(b) Producers in each of Districts One, Two, Three, Four, Five, and Six shall nominate at least four producers (two of whom shall be affiliated with bona fide cooperative marketing organizations) for a member and an alternate member of the Growers Administrative Committee. Producers in District Seven shall nominate at least eight producers (four of whom shall be affiliated with bona fide cooperative marketing organizations) for two members and two alternate members of the said committee. All nominees shall be producers in the district from which they are nominated. In voting for nominees, each producer shall be entitled to cast one vote in each of the districts in which he is a producer.

§ 933.23 *Selection of members of Growers Administrative Committee.* In selecting the members and alternate members of the Growers Administrative Committee, the Secretary shall select one member and one alternate member from the nominees of each of Districts One, Two, Three, Four, Five, and Six and two members and two alternate members from District Seven. At least three such members and their alternates shall be affiliated with bona fide cooperative marketing organizations.

§ 933.24 *Shippers Advisory Committee membership and term of office.* The Shippers Advisory Committee shall consist of eight members, each of whom shall have an alternate, all of whom shall be handlers. The term of office of members of the Shippers Advisory Committee and their alternate shall begin on the first day of August and continue for one year and until their successors are selected and have qualified. The consecutive terms of office of a member shall be limited to three terms: *Provided,* That such limitation shall be effective only to members who serve three consecutive terms expiring on or after July 31, 1947. The terms of office of alternate members shall not be so limited. The members, alternate members, and their respective successors shall be nominated by handlers and shall be selected by the Secretary as provided in §§ 933.25 and 933.26.

§ 933.25 *Nominations of members for Shippers Advisory Committee.* (a) The Secretary shall give public notice of a meeting for bona fide cooperative marketing organizations which are handlers, and a meeting for other handlers, to be held not later than July 10 of each year, for the purpose of making nominations for members and alternate members of the Shippers Advisory Committee. The Secretary shall prescribe rules to govern each such meeting and balloting thereat. The chairman of each such meeting shall publicly announce the results of the voting and the names of the nominees selected. The chairman and the secretary of each such meeting shall transmit to the Secretary their certificates showing the information so announced and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of July.

(b) Nominations of at least nine persons for at least three members and alternate members shall be made by bona fide cooperative marketing organizations which are handlers. Nominations of at least fifteen persons for not more than five members and alternate members shall be made by handlers other than bona fide cooperative marketing organizations. In voting for nominees each handler shall be entitled to cast but one vote, which shall be weighted by the volume of fruit shipped by such handler during the then current fiscal period.

§ 933.26 *Selection of members of Shippers Advisory Committee.* In selecting the members and their alternate members of the Shippers Advisory Committee, the Secretary shall select at least three members and their alternates from the nominees made by bona fide cooperative marketing organizations which are handlers. The remaining number of members and their alternates shall be selected from the nominees made by handlers other than cooperative marketing organizations, and at least three such members and their alternates shall be handlers who are likewise producers.

§ 933.27 *Failure to nominate.* In the event nominations for a member or alternate member of either committee are not made pursuant to the provisions of §§ 933.22 and 933.25, the Secretary may select such member or alternate member without regard to nominations.

§ 933.28 *Acceptance of membership.* Any person selected by the Secretary as a member or alternate member of the Growers Administrative Committee or the Shippers Advisory Committee shall qualify by filing a written acceptance with the Secretary within 10 days after being notified of such selection.

§ 933.29 *Inability of members to serve.* (a) An alternate for a member of the Growers Administrative Committee or the Shippers Advisory Committee shall act in the place and stead of such member (1) in his absence, or (2) in the event of his removal, resignation, disqualification, or death, and until a successor for his unexpired term has been selected.

(b) In the event of the death, removal, resignation, or disqualification of any person selected by the Secretary as a member or an alternate member of either committee, a successor for the unexpired term of such person shall be selected by the Secretary. Such selection may be made without regard to the provisions of this subpart as to nominations.

§ 933.30 *Powers of Growers Administrative Committee.* The Growers Administrative Committee, in addition to the power to administer the terms and provisions of this subpart, as herein specifically provided, shall have power (a) to make, only to the extent specifically permitted by the provisions contained in this subpart, administrative rules and regulations; (b) to receive, investigate and report to the Secretary complaints of violations of this subpart; and (c) to recommend to the Secretary amendments to this subpart.

§ 933.31 *Duties of Growers Administrative Committee.* It shall be the duty of the Growers Administrative Committee:

(a) To select a chairman from its membership, and to select such other officers and adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To keep minutes, books, and records which will clearly reflect all of its acts and transactions, which minutes, books, and records shall at all times be subject to the examination of the Secretary;

(c) To act as intermediary between the Secretary and the producers and handlers;

(d) To furnish the Secretary with such available information as he may request;

(e) To appoint such employees as it may deem necessary and to determine the salaries and define the duties of such employees;

(f) To cause its books to be audited by one or more certified or registered public accountants at least once for each fiscal period, and at such other times as it deems necessary or as the Secretary may request, and to file with the Secretary copies of all audit reports;

(g) To prepare and publicly issue a monthly statement of financial operations of the committee;

(h) To provide an adequate system for determining the total crop of each variety of fruit, and to make such determinations, including determinations by grade and size, as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this subpart;

(i) To perform such duties in connection with the administration of section 32 of the act to amend the Agricultural Adjustment Act and for other purposes, Public Act No. 320, 74th Congress, as amended, as may from time to time be assigned to it by the Secretary; and

(j) To notify the members of the Shippers Advisory Committee in the same manner as it notifies its own members of its intention to meet to consider recommendations required of such committee pursuant to § 933.51.

§ 933.32 *Duties of Shippers Advisory Committee.* It shall be the duty of the Shippers Advisory Committee:

(a) To select a chairman from its membership, and to select such other officers and adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To keep minutes, books, and records which will clearly reflect all of its acts, which minutes, books, and records shall at all times be subject to the examination of the Secretary; and

(c) To notify the members of the Growers Administrative Committee in the same manner as it notifies its own members of the time at which it will meet to make the recommendations required by § 933.51.

§ 933.33 *Compensation and expenses of committee members.* The members of each committee, and alternate members when acting as members, shall serve without compensation but may be reimbursed for expenses necessarily incurred by them in the performance of their duties under this subpart.

§ 933.34 *Procedure of committees.* (a) Five members of a committee shall be necessary to constitute a quorum.

(b) For any decision or recommendation of either committee to be valid, five concurring votes shall be necessary, and the votes of each member cast for or against any recommendations made pursuant to this subpart shall be duly recorded. Each member must vote in person.

(c) The Growers Administrative Committee shall give to the Secretary the same notice of meetings of the committees as is given to the members thereof.

§ 933.35 *Right of the Secretary.* The members of the committees (including successors and alternates), and any agent or employee appointed or employed by the committees, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of both committees shall be subject to the continuing right of the Secretary to disapprove of the same at any time and upon his disapproval shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith.

§ 933.36 *Funds.* (a) All funds received by the Growers Administrative Committee pursuant to any provision of this subpart shall be used solely for the purposes herein specified and shall be accounted for in the manner provided in this subpart.

(b) The Secretary may, at any time, require the Growers Administrative Committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the Growers Administrative Committee, such member shall account for all receipts and disbursements and deliver all property and funds, together with all books and records, in his possession, to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this subpart.

EXPENSES AND ASSESSMENTS

§ 933.40 *Expenses.* The Growers Administrative Committee is authorized to incur such expenses as the Secretary finds may be necessary to carry out the functions of both committees under this subpart during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments upon handlers as provided in § 933.41.

§ 933.41 *Assessments.* (a) Each handler who first handles fruit shall pay to Growers Administrative Committee, upon demand, such handler's pro rata share of the expenses which the Secretary finds will be incurred by such committee for the maintenance and functioning, during each fiscal period, of the committees established under this subpart. Each such handler's share of such expenses shall be that proportion thereof which the total quantity of fruit shipped by such handler as the first handler thereof during the applicable fiscal period is of the total quantity of fruit so shipped by all handlers during the same fiscal period. The Secretary shall fix the rate of assessment per standard packed box of fruit to be paid by each such handler. The payment of assessments for the maintenance and functioning of the committees may be

required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) At any time during or after the fiscal period, the Secretary may increase the rate of assessment so that the sum of money collected pursuant to the provisions of this section shall be adequate to cover the said expenses. Such increase shall be applicable to all fruit shipped during the given fiscal period. In order to provide funds to carry out the functions of the committees established under § 933.20, handlers may make advance payment of assessments.

§ 933.42 *Handler's accounts.* (a) If at the end of a fiscal period it shall appear that assessments collected are in excess of expenses incurred, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period unless he demands payment of the sum due him, in which case such sum shall be paid to him.

(b) The Growers Administrative Committee may, with the approval of the Secretary, maintain in its own name or in the name of its members a suit against any handler for the collection of such handler's pro rata share of the said expense.

REGULATIONS

§ 933.50 *Marketing policy.* (a) Before making any recommendations pursuant to § 933.51 for any variety of fruit, the Growers Administrative Committee and the Shippers Advisory Committee shall, with respect to the regulations permitted by § 933.52, submit to the Secretary a detailed report setting forth an advisable marketing policy for such variety for the then current shipping season. Such report shall set forth the proportion of the remainder of the total crop of such variety of fruit (determined by the Growers Administrative Committee to be available for shipment during the remainder of the shipping season of such variety) deemed advisable by the Shippers Advisory Committee and the Growers Administrative Committee to be shipped during such season.

(b) In determining each such marketing policy and advisable proportion, the committees shall give due consideration to the following factors relating to citrus fruit produced in Florida and in other States: (1) The available crop of each variety of citrus fruit in Florida, and in other States, including the grades and sizes thereof, which grades and sizes in Florida shall be determined by the Growers Administrative Committee pursuant to § 933.31; (2) the probable shipments of citrus fruit from other States; (3) the level and trend in consumer income; (4) the prospective supplies of competitive commodities; and (5) other pertinent factors bearing on the marketing of fruit.

(c) In addition to the foregoing, the committees shall set forth a schedule of proposed regulations for the remainder of the shipping season for each variety of fruit for which recommendations to the Secretary pursuant to § 933.51 are contemplated. Such schedules shall recognize the practical operations of harvesting and preparation for market of each variety and the change in grades and sizes thereof as the respective seasons advance. In the event it is deemed advisable to alter such marketing policy or advisable proportion as the shipping season progresses, in view of changed demand and supply conditions with respect to fruit, the said committees shall submit to the Secretary a report thereon.

(d) The Growers Administrative Committee shall notify producers and handlers of the contents of such report by publishing a summary thereof in daily newspapers, selected by the said committee, of general circulation in the citrus-producing districts of Florida.

§ 933.51 *Recommendations for regulation.* (a) Whenever the Shippers Advisory Committee deems it advisable to regulate any variety in the manner provided in § 933.52 it shall promptly submit its recommendation, with supporting information, to the Growers Administrative Committee. In making such determination, the said committee shall give due consideration to the following factors relating to the citrus fruit produced in Florida and in other States: (1) Market prices, including prices by grades and sizes of the fruit for which regulation is recommended; (2) amount on hand at the principal markets, as evidenced by supplies on track; (3) maturity, condition, and available supply, including the grade and size thereof in the producing areas; (4) other pertinent market information; and (5) the level and trend in consumer income. The Growers Administrative Committee shall submit to the Secretary the recommendation of the Shippers Advisory Committee, together with its own recommendations and supporting information respecting the factors enumerated in this section.

(b) The failure of the Shippers Advisory Committee to make a recommendation with respect to regulations authorized by § 933.52, after having received notice of the intention of the Growers Administrative Committee to meet for the purpose of receiving such recommendations, shall not preclude the Growers Administrative Committee from submitting recommendations and supporting information to the Secretary.

(c) The Growers Administrative Committee shall give at least 24 hours notice of any meeting to consider the recommendation of regulations pursuant to § 933.52, by publication in daily newspapers, selected by the said committee, of general circulation in the citrus-producing districts of the production area, and shall mail a copy of such notice to each handler who has filed his address with said committee for this purpose. The said committee shall give the same notice of any such recommendation at least 48 hours before the time it is recommended that such regulation become effective.

§ 933.52 *Regulation by the Secretary.* (a) Whenever the Secretary shall find from the recommendations and reports of the Shippers Advisory Committee and the Growers Administrative Committee, or from other available information, that to limit the shipment of any variety would tend to effectuate the declared policy of the act, he shall so limit the shipment of such variety during a specified period or periods. Such regulations may:

(1) Provide that shipments of any variety shall be limited to such grades or sizes, or both, as shall be prescribed, and any such limitation may provide that shipments of any variety grown in Regulation Area II shall be limited to grades and sizes different from the grade and size limitations applicable to shipments of the same variety grown in Regulation Area I;

(2) Limit the shipment of any variety by establishing and maintaining, only in terms of grades or sizes, or both, minimum standards of quality and maturity;

(3) Limit the shipment of the total quantity of any variety by prohibiting the shipment thereof: *Provided*, That no such prohibition shall apply to exports other than to Canada or Mexico or be effective during any fiscal period with respect to any variety (i) for more than two periods, (ii) for more than a total of fourteen days, and (iii) during any period other than December 20 to January 20, both dates inclusive;

(4) Provide that exports of any variety, other than to Canada and Mexico, shall be limited to grades and sizes different from the grade and size limitation applicable to shipments of such variety in the United States, or to Canada and Mexico, and specify condition requirements for such variety; and

(5) Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be used in the shipment of fruit for export, other than to Canada and Mexico: *Provided*, That such regulation shall not authorize the use of any container which is prohibited for use for fruit under the provisions of the Florida Citrus Code.

(b) Prior to the beginning of any such regulation the Secretary shall notify the Growers Administrative Committee of the regulation issued by him, which committee shall notify all handlers by publication in daily newspapers, selected by the said committee, of general circulation in the citrus producing districts of the production area: *Provided*, That when the regulation as issued is different from the recommendation of the committee, notice thereof shall be given also by mailing a copy thereof to each handler who has filed his address with said committee for this purpose.

(c) Whenever the Secretary finds from the recommendations and reports of the Shippers Advisory Committee and the Growers Administrative Committee, or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of fruit in order to effectuate the declared policy of the act, he shall so modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis, and in like manner, the Secretary may terminate any such modification or suspension.

(d) Whenever any variety is regulated pursuant to paragraph (a) (3) of this section, no such regulation shall be deemed to limit the right of any person to sell, contract to sell, or export other than to Canada or Mexico such variety, but no handler shall otherwise ship any fruit of such variety which was prepared for market during the effective period of such regulation.

§ 933.53 *Inspection and certification.* (a) Whenever the handling of a variety of a type of fruit is regulated pursuant to § 933.52, each handler who handles any variety of such type of fruit shall, prior to the handling of any lot of such variety, cause such lot to be inspected by the Federal-State Inspection Service and certified by it as meeting all applicable requirements of such regulation: *Provided*, That such inspection and certification shall not be required if the particular lot of fruit previously had been so inspected and certified unless such prior inspection was not performed within such time limitations as may be prescribed pursuant to paragraph (b) of this section. Each handler shall promptly submit, or cause to be submitted, to the Growers Administrative Committee a copy of each certificate of inspection issued to him covering varieties so handled.

(b) With respect to any variety regulated pursuant to § 933.52 (a) (4), the Growers Administrative Committee may prescribe, with the approval of the Secretary, such requirements with respect to time of inspection as it may deem necessary to insure satisfactory condition of the fruit at time of export.

§ 933.54 *Exemptions.* (a) In the event any variety is regulated pursuant to § 933.52, the Growers Administrative Committee shall issue one or more exemption certificates to any producer who furnishes adequate evidence to the said committee that he will be prevented from having as large a proportion of such variety of his fruit shipped during the remainder of the shipping season for the variety, as the proportion announced by the said committee pursuant to § 933.50. Such exemption certificates shall permit such producer to have a quantity of the particular variety of fruit shipped as will permit such producer to have the said proportion of such variety of his fruit shipped during the remainder of the shipping season thereof. The Growers Administrative Committee shall adopt and announce the procedural rules by which such exemption certificates will be issued to producers. The Secretary shall have the right to modify, change, or alter any such procedural rules and any exemption granted under this section.

(b) Before issuing an exemption certificate to any producer for any variety of fruit, the Growers Administrative Committee shall determine (1) the producer's remaining crop of the variety, and the grades and sizes thereof, and (2) the total quantity of such variety the producer has disposed of during the season, and the grades and sizes thereof.

HANDLERS' REPORTS

§ 933.70 *Manifest report.* The Growers Administrative Committee may request information from each handler regarding the variety, grade, and size of each standard packed box of fruit shipped by him and may require such information to be mailed or delivered to the said committee or its duly authorized representative, within 24 hours after such shipment is made, in a manner or by such method as the said committee may prescribe, and upon such forms as may be prepared by it.

§ 933.71 *Other information.* Upon request of the Growers Administrative Committee, made with the approval of the Secretary, every handler shall furnish such committee, in such manner and at such times as it prescribes, such other information as will enable it to perform its duties under this subpart.

MISCELLANEOUS PROVISIONS

§ 933.80 *Fruit not subject to regulation.* Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 933.52 and 933.53 and the regulations issued thereunder, ship any variety for the following purposes: (a) To a charitable institution for consumption by such institution; (b) to a relief agency for distribution by such agency; (c) to a commercial processor for conversion by such processor into canned or frozen products or into a beverage base; (d) by parcel post; or (e) in such minimum quantities, types of shipments, or for such purposes as the Growers Administrative Committee with the approval of the Secretary may specify. No assessment shall be levied on fruit so shipped. The committee shall, with the approval of the Secretary, prescribe such rules, regulations, or safeguards as it may deem necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications with the committee for authorization to handle a variety pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the variety will not be used for any purpose not authorized by this section.

§ 933.81 *Compliance.* Except as provided in this part, no person shall ship fruit the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part.

§ 933.82 *Effective time.* The provisions of this subpart shall become effective on and after 12:01 a. m., e. s. t., September 1, 1946, and shall continue in force until terminated in one of the ways specified in § 933.83.

§ 933.83 *Termination.* (a) The Secretary may at any time terminate the provisions of this part 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 shall terminate the provisions of this part at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of fruit: *Provided*, That such majority have, during such period, produced for market more than 50 percent of the volume of such fruit produced for market, but such termination shall be effective only if announced on or before July 31 of the then current fiscal period.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

§ 933.84 *Proceedings after termination.* (a) Upon the termination of the provisions of this part, the then functioning members of the Growers Administrative Committee shall continue as joint trustees, for the purpose of liquidating the affairs of the said committee, of all the funds and property then in the possession of or under control of such administrative committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees (1) shall continue in such capacity until discharged by the Secretary, (2) shall, from time to time, account for all receipts and disbursements or deliver all property on hand, together with all books and records of the Growers Administrative Committee and of the joint trustees, to such person as the Secretary may direct; and (3) shall, upon the 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 Growers Administrative Committee, or the joint trustees pursuant to this part.

(c) Any funds collected pursuant to § 933.41, over and above the amounts necessary to meet outstanding obligations and expenses necessarily incurred during the operation of this part and during the liquidation period, shall be returned to handlers as soon as practicable after the termination of this part. The refund to each handler shall be represented by the excess of the amount paid by him over and above his pro rata share of the expenses.

(d) Any person to whom funds, property, or claims have been transferred or delivered by the Growers Administrative Committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon the said joint trustees.

§ 933.85 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 933.86 *Agents.* The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any bureau

or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 933.87 *Derogation.* Nothing contained in this part is, or shall be construed to be in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 933.88 *Personal liability.* No member or alternate of the committees, 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 other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.

§ 933.89 *Separability.* If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

[F. R. Doc. 57-10743; Filed, Dec. 26, 1957; 8:56 a. m.]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

GIFT PACKAGES

Notice is hereby given of the approval of the amendment, as hereinafter set forth, of the rules and regulations (7 CFR 933.120 et seq.; Subpart—Rules and Regulations) of the Growers Administrative Committee, currently in effect pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933; 22 F. R. 8511), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

It is hereby found and determined that the said amendment of the rules and regulations, which was submitted for approval by the Growers Administrative Committee (established pursuant to the said amended marketing agreement and order as the agency to administer the provisions thereof), is in accordance with provisions of the said marketing agreement and order and will tend to effectuate the declared purposes of the Agricultural Marketing Agreement Act of 1937, as amended, and the said rules and regulations are hereby amended by deleting therefrom § 933.140 *Fruit not subject to regulation* and inserting in lieu thereof the following:

§ 933.140 *Gift packages.* During any day any handler may, without regard to the provisions of § 933.52 and § 933.53 and the regulations issued thereunder, ship any variety for the following purpose, and in the following quantity, and types of shipment: (a) To any person one gift package containing such variety, individually addressed to such person, not in excess of one standard packed box if such package is shipped direct to the addressee for use by such person other than for resale; or (b) to any distributor individually addressed gift packages of such variety not in excess of one standard packed box each for distribution by such distributor to the respective addressee, but not for resale.

It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) in that (1) shipments of Florida oranges, grapefruit, tangerines, and tangelos are currently subject to regulations issued pursuant to the provisions of the said amended marketing agreement and order, and the exemption prescribed by the amendment of the rules and regulations as herein provided relieves restrictions on the handling of such fruit; (2) growers and handlers have been notified of the proposed adoption and recommendation to the Secretary of the said amendment; and (3) the changes effectuated by such amendment of the rules and regulations will not require any special preparation which cannot be completed by the effective time hereof.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: December 20, 1957, to become effective upon publication in the FEDERAL REGISTER.

[SEAL] F. R. BURKE,
Acting Deputy Administrator.

[F. R. Doc. 57-10682; Filed, Dec. 26, 1957; 8:48 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

[No. 32153]

PART 10—UNIFORM SYSTEM OF ACCOUNTS FOR RAILROAD COMPANIES

MISCELLANEOUS AMENDMENTS

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D. C., on the 19th day of December A. D. 1957.

Having under consideration an order dated November 20, 1957, which modified the Uniform System of Accounts for Railroad Companies pursuant to provisions of section 20 of the Interstate Commerce Act, as amended (24 Stat. 386, 54 Stat. 917, 49 U. S. C. 20 (3)), and which was published November 28, 1957 in the FEDERAL REGISTER (22 F. R. 9536) pursuant to provisions of section 3 (a) of the Administrative Procedure Act; and,

It appearing that in processing the order for publication certain details were omitted from the attachments thereto which were not material to the intent of the order but would cause confusion in applying its provisions, and otherwise good cause appearing:

It is ordered that attachments to the said order be, and they are hereby, supplemented to include the following details:

(1) Item (9): In correcting § 10.560 *Form of income statement* insert as a new third paragraph of the corrections making four correcting paragraphs:

Delete the reference to account 552, "Income applied to sinking and other reserve funds," where it appears under the caption, "Other Deductions."

(2) Appendix: Insert in its proper CFR section number order the following additional change which should be made to conform to new account numbers assigned by this order:

CFR Section Number—§ 10.768 Note B; Present reference—Account 761, should be changed to read—Account 763.

It is further ordered, That in all other respects the said order of November 20, 1957 shall become effective January 1, 1958 as therein ordered;

And it is further ordered, That this supplementary order shall be served on all carriers and others which were served with the order of November 20, 1957 and that notice of the supplementary order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

(Sec. 12, 24 Stat. 383, as amended; 49 U. S. C. 12)

By the Commission, division 2.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 57-10714; Filed, Dec. 26, 1957; 8:55 a. m.]

PART 123—FREIGHT COMMODITY STATISTICS

TRAILER-ON-FLAT-CAR TRAFFIC REPORT

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 12th day of December A. D. 1957.

The matter of the reporting of certain data with respect to trailers on flat cars being under consideration and, whereas the railroads have been consulted regarding the matter and generally are in possession of the necessary data, and whereas, this order calls for a special report and not for continuing reports, rule-making procedure under section 4 of the Administrative Procedure Act, 5 U. S. C. 1003, being deemed unnecessary:

It is ordered, That § 123.6 set out below be added to the Commission's regulations for reports by Class I railroads.

It is further ordered, That 49 CFR Part 123 be modified and amended by adding thereto the following § 123.6:

§ 123.6 *Trailer-on-flat-car traffic.* All Class I railroad companies, as defined in § 126.1 of this chapter, other than switching or terminal companies, shall furnish to the Commission, for the three-month period ending December 31, 1957,

a special report of trailer-on-flat-car traffic, on a form to be prepared by each such railroad, following the format and paging of Quarterly Report Form QCS, modified in respect to column headings and stubs, as set forth in Statistical Circular No. 44,[1] which is hereby referred to and made a part of this section. Shipments for which contents are known should be distributed according to commodity groups or classes and shipments for which contents are unknown should be reported under Group VII, line 955. The report, which will be held confidential, should be filed with the Bureau of Transport Economics and Statistics, Interstate Commerce Commission, Washington 25, D. C., on or before March 31, 1958.

And it is further ordered, That copies of this order and of Statistical Circular No. 44 shall be served on all Class I railroad companies, except switching and terminal companies, and upon every receiver, trustee, executor, administrator or assignee of any such railroad company, and that 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 in Washington, D. C., and by filing it with the Director of the Division of the Federal Register.

(Sec. 12, 24 Stat. 383, as amended; 49 U. S. C. 12. Interprets or applies sec. 20, 24 Stat. 386, as amended; 49 U. S. C. 20)

By the Commission, Division 2.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 57-10716; Filed, Dec. 26, 1957; 8:55 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 914]

NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

NOTICE OF PROPOSED RULE MAKING WITH RESPECT TO APPROVAL OF EXPENSES AND FIXING OF RATE OF ASSESSMENT FOR 1957-58 FISCAL YEAR

Consideration is being given to the following proposals submitted by the Navel Orange Administrative Committee, established under Marketing Agreement No. 117, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), as the agency to administer the terms and provisions thereof: (1) That the Secretary of Agriculture find that expenses not to exceed $163,000.00 will be necessarily incurred during the fiscal year November 1, 1957, through October 31, 1958, for the maintenance and functioning of the committee established under the aforesaid amended marketing agreement and order, and (2) that the Secretary of Agriculture fix, as the share of such expenses which each handler who first handles oranges shall pay during the fiscal year in accordance with the aforesaid marketing agreement and order, the rate of assessment of one cent ($0.01) per carton of oranges handled by such handler as the first handler thereof during such fiscal year.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file the same with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Room 2077, South Building, Washington 25, D. C., not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All documents should be filed in quadruplicate.

As used in this section, "handle," "handler," "oranges," "fiscal year," and "carton" shall have the same meaning as is given to each such term in said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: December 23, 1957.

[SEAL] S. R. SMITH, *Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[F. R. Doc. 57-10744; Filed, Dec. 26, 1957; 8:57 a. m.]

[7 CFR Part 963]

[AO 296]

POTATOES GROWN IN UPPER PENINSULA OF MICHIGAN

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED MARKETING AGREEMENT NO. 136 AND ORDER NO. 63

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), 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. 136 and Order No. 63, regulating the handling of Irish potatoes grown in the Upper Peninsula of Michigan, to be effective pursuant to the provisions of 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), 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 order (hereinafter referred to collectively as the "proposed order") were formulated was held at Marquette, Michigan, on August 5-6, 1957, pursuant to notice thereof which was published July 17, 1957, in the FEDERAL REGISTER (22 F. R. 5634). Such notice set forth a proposed marketing agreement and order which were sponsored by growers and handlers of Irish potatoes in the Upper Peninsula of Michigan as represented by the Upper Peninsula Potato Growers 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 proposed order;

(4) The identity of the persons and transactions to be regulated; and

(5) The specific terms and provisions of the proposed order including:

(a) Definitions of terms used therein which are necessary and incidental to attain the declared objectives of the act, and including 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 the commodity handled;

(d) The authority to establish potato marketing research and development projects;

(e) The authority for limiting the handling of potatoes grown in the production area;

(f) The authority for establishing minimum standards of quality and maturity;

(g) The authority for establishing special regulations applicable to the handling of potatoes for specified purposes or to specified outlets including modifications of, or amendments to, grade, size, quality and other regulations;

[1] Filed as part of the original document.

(h) The requirement of inspection and certification of potatoes handled;

(i) The relaxation of regulations in hardship cases and the methods and procedures applicable thereto;

(j) The establishment of reporting requirements for handlers;

(k) The requirements of compliance with all provisions of the proposed order and with regulations issued pursuant thereto; and

(l) Additional terms and conditions as set forth in §§ 963.81 through 963.92 of the notice of hearing published in the FEDERAL REGISTER (22 F. R. 5634; July 17, 1957), which are common to marketing agreements and marketing 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) Findings with respect to the right to exercise Federal jurisdiction: The Upper Peninsula of Michigan is comprised of the Counties of Alger, Baraga, Chippewa, Delta, Dickinson, Keweenaw, Gogebic, Houghton, Iron, Luce, Mackinac, Marquette, Menominee, Ontonogan and Schoolcraft. It is a distinct potato producing area, recognized as such by growers, handlers, receivers, and others in the potato industry. This is a late crop area.

Potato production in the Upper Peninsula of Michigan is not large when compared to other important potato producing areas but it is the most important cash crop in the Upper Peninsula and is very important to the general economy of the area. Because of climatic conditions, there is no other cash crop that can be substituted for potatoes at the present time.

Total potato production in the fifteen counties of the Upper Peninsula reached a peak of 1,561,000 hundredweight in 1949 then fell to 1,054,000 hundredweight in 1954, according to the Census of Agriculture. The 1956 crop was estimated at 1,200,000 hundredweight. The major portion of the potatoes grown in this production area enters fresh market channels with the bulk of such movement going to destinations outside of the production area. Approximately 75 percent of the shipments are marketed outside of the production area, including approximately 10 percent going to the Lower Peninsula of Michigan. Potatoes marketed outside of the State of Michigan are shipped mainly to destinations in Wisconsin, Illinois, Missouri, Kentucky, Tennessee, Ohio, Indiana, Minnesota and Iowa. Some shipments are also made to Canada. The chief competition to such potatoes is from potatoes produced in the Red River Valley of North Dakota and Minnesota, Wisconsin, lower Michigan, and Idaho. Also, there has been some competition in recent years from Maine potatoes.

Local markets within the production area which account for approximately 25 percent of the potatoes marketed, and markets in the remaining portion of the State of Michigan, which account for approximately 10 percent of the potatoes marketed, provide opportunities for handlers to effect sales the same as markets outside of the State. Opportunities for advantageous sales are eagerly sought by handlers and such opportunities are accepted regardless of whether the potatoes are sold at shipping point or destination, or in consuming markets within the State of Michigan or in Milwaukee, Chicago, Louisville, Indianapolis, or any other market. The percentage of the crop sold in interstate commerce varies each year depending on the quantity and quality of the crop in the production area and in competing areas.

Growers and handlers do not always know whether a shipment will be retailed within the State or outside the State. For example, production area potatoes are sold to chain store buyers who distribute the potatoes to their various stores within the production area, to stores within the State outside of the production area, and to stores outside of the State. Also, production area potatoes are sold by producers and handlers to truckers who pick up the potatoes at the farms or at the warehouses and transport the potatoes for resale at points which may be in the production area, in the State of Michigan outside of the production area, or in other States.

Prices of potatoes in the terminal markets, such as Chicago, Milwaukee, and Detroit, have a definite effect on prices of Upper Peninsula potatoes marketed in the production area or marketed in the State of Michigan outside the production area, or in interstate commerce. Prices of Upper Peninsula potatoes marketed in the production area and in other parts of the State of Michigan have some effect on the prices of such potatoes marketed in nearby areas of other States, as prices of potatoes in each market are quickly relayed to other markets and such prices tend to be closely related and interdependent.

Prices of production area potatoes are interdependent as between shipping point and receiving markets. Factors which influence market prices at shipping point soon are reflected in prices at terminal markets, and, in turn, factors influencing prices in receiving markets are similarly reflected in market prices at shipping point. For example, it was testified that a prolonged cold spell which stops loading of potatoes in the Upper Peninsula of Michigan would affect prices of production area potatoes in the South Water Market in Chicago, because a large quantity of Upper Peninsula potatoes moves to the Chicago South Water Market and shorter supplies of such potatoes would naturally raise the prices of the remaining supplies of such potatoes in that market.

On the basis of the foregoing, it is hereby found and determined that all sales and all transportation of potatoes grown in the production area are in the current of interstate or foreign commerce, or directly burden, obstruct, or affect such commerce. It is concluded, therefore, that the right to exercise Federal jurisdiction with respect to the proposed order for Upper Peninsula of Michigan potatoes, hereinafter set forth, is established.

(2) The need for the proposed regulatory program for Upper Peninsula of Michigan potatoes is supported by substantial evidence in the record of hearing on which specific findings are made as follows:

Much of the land in the Upper Peninsula of Michigan is not suitable for farming. However, there are many acres of loam and sandy loam soils that are ideally adapted to the growing of potatoes. The climate of the area is definitely on the cool side, with July temperatures averaging 62 to 66 degrees, which is well within the ideal temperature range for potato production. The number of days without killing frosts ranges from 80 to 140. Rainfall from April through September averages from 16 to 20 inches, but is not always well distributed. Climate influenced the type of agriculture which developed in this area, i. e., dairy and potato farming. Dairy cows turn the forage crops and small grains into a higher value product, and potatoes are the one cash crop that presently is well adapted to the climate and soils of the area.

Many changes have taken place in the potato industry in the Upper Peninsula of Michigan during recent years as in other potato producing areas. In 1939, 10,772 farms reported potato acreage of 17,772 acres and production of 918,000 hundredweight. In 1954 there were 3,656 farms reporting potato acreage of 6,995 acres and production of 1,054,000 hundredweight according to the Census of Agriculture. Average yields per acre went up rapidly from 51 hundredweight per acre in 1939 to 150 hundredweight per acre in 1954, and an estimated 180 hundredweight per acre in 1956. Fewer farmers are growing potatoes now than in previous years on fewer acres but are doing a better job.

At the present time there are approximately 360 potato farmers in the Upper Peninsula who are considered to be commercial potato growers. These commercial growers produce about 90 percent of the total potato crop. About 95 percent of these commercial potato growers are general farmers, producing hay and grain to feed their dairy herds and potatoes as a cash crop. Their potato acreage ranges mostly from 5 to 25 acres. About 5 percent of these growers are cash crop farmers growing potatoes, oats, and clover for seed or as a cover crop. Their potato acreage ranges from 50 to 200 acres. The usual farm tenure pattern in this area is that of owner-operator. This is occasionally varied by the renting of additional crop land to make an economical production unit. Such rental is usually on a cash basis and for a term of several years so that fertility can be adequately maintained.

Capital investment in land, buildings, machinery, and equipment on an Upper Peninsula dairy-potato farm usually ranges from $25,000 to $40,000, depending on the size of the operation. The cash crop farmer's investment may be in the neighborhood of $75,000, and a few who market their own crops may have invested as high as $100,000. These estimates indicate that modern potato equipment and production methods are expensive and that the production of potatoes is big business.

With fair prices for potatoes there is an opportunity for a potato grower to make a reasonable financial return on

his labor and investment. However, a succession of low-price years can force farmers out of potato production. This has happened, and it affects the economy of the entire area since, because of climatic conditions, growers have not found another suitable cash crop that can be substituted for potatoes.

Prices to growers for Upper Peninsula potatoes have been, for the most part, at low percentages of parity for the past several years. From 1949 through 1956, the average farm price received for potatoes in Michigan has exceeded the Michigan parity equivalent price in only two years, 1951 and 1952. One year, 1954, was fairly close with 88 percent of parity. However, for the other five years such prices averaged only 48 to 69 percent of the Michigan parity equivalent. Prices received by Upper Peninsula potato producers are usually below the State average price because of the greater distance and higher freight costs to potato markets. As a result of a succession of low price years most potato growers in the Upper Peninsula of Michigan have been operating at a loss and many growers have been forced out of the potato business.

The per capita consumption of potatoes in the United States is approximately 100 pounds per year, regardless of whether potatoes are selling at a low price or at a high price within rather liberal price limits. In other words, the demand for potatoes is relatively inelastic. If too many potatoes are grown and there is an oversupply available the price goes down. Changes in supply are accompanied by larger changes in price in the opposite direction. This was demonstrated by last year's market. At the beginning of the 1956 fall season, Upper Peninsula growers received about $1.40 per hundredweight. As the season progressed the price dropped steadily until it reached a low of approximately $1.00 per hundredweight by spring. The estimates of stocks on hand reports indicated that late winter and early spring supplies of potatoes were in excess of usual market requirements for food and seed, which excess resulted in low prices to producers.

Prices of production area potatoes are affected by the quality and sizes of such potatoes which are marketed, also by the size of the crop grown in the production area and the size and quality of the crop grown in competing areas.

It was testified that some growers and handlers in the Upper Peninsula of Michigan engage in marketing practices which tend to depress the prices producers receive for their potatoes. Some of these practices are the shipment of small sizes and lower grades of potatoes when price levels do not justify, i. e., the shipment of potatoes which the housewife does not readily accept when potatoes from competing areas with better appearance, more uniform and preferred sizes, are available for her alternate choice.

It was testified that Michigan State law prohibits the sale of potatoes which do not meet the requirements of any U. S. Grade for potatoes. However, this law does not apply to growers who sell potatoes produced by themselves directly to consumers, also; Federal-State inspection is not compulsory. It was testified that some growers sell inferior or substandard quality potatoes to dealers in the dealers' own bags at low prices. The dealers use these potatoes for advertising price specials on "good eating quality potatoes." The effect of such sales is to depress the price of better quality potatoes and, at the same time, to displace good quality potatoes.

There is generally a substantial price disadvantage for U. S. No. 2 potatoes which ranges from $0.50 to $1.00 per hundredweight less for U. S. No. 2's than for U. S. No. 1 quality. Since the effect of such sales is to depress the price of U. S. No. 1 quality potatoes, it may be desirable, at times when large supplies are available, to restrict the movement of U. S. No. 2 potatoes to certain outlets. At other times, due to more favorable supply and price factors, U. S. No. 2 quality potatoes may not need to be restricted in movement.

The shipment of small sizes to the table stock market, such as size B potatoes, which are 1½ to 2 inches in diameter, and size A with a minimum of 1⅞ inches, results in a poorly received pack when competitive areas are limiting their packs to 2 inches and 2¼ inches minimum. Industry witnesses testified that potato producing areas equipped with marketing orders possess an advantage over other areas operating without such orders. Idaho and Maine were cited as examples of what can be accomplished with marketing regulations. Several years of diligent adherence to a marketing order have placed Idaho Russets in an enviable price position. Also, during the past season Upper Peninsula potatoes encountered strong competition from Maine potatoes which were packed to a minimum of 2¼ inches and were sold in markets which would normally be supplied by Michigan potatoes.

It was estimated that, on the average, 10 to 15 percent of the crop in the production area falls within the lower grades and undesirable sizes, including the extremely large size potatoes, which are normally discounted in terms of prices to producers. The shipment of such potatoes to the table stock market results in a poorly received pack, is damaging to the reputation of the production area, and returns low prices to producers. By having authority in the proposed order to regulate the shipments of potatoes by grades, sizes and quality, it would be possible to remove from fresh market channels the lower grades and undesirable sizes, and to permit the marketing of only the better grades and preferred sizes, as supply conditions warrant, thereby establishing a reputation in the trade for consistently good packs of potatoes from the production area.

The withholding from the table stock market of such grades and sizes which generally cause price discounts also reduces the quantity marketed, and, as a result of the better packs and reduced supplies marketed, returns to growers should be improved.

It was further testified that the late crop of potatoes in the United States is principally a storage crop. Its price structure is determined mainly by the size of the crop available for marketing and its composition. Upper Peninsula potato prices are affected by the size and composition of the crop and Upper Peninsula potatoes contribute to its size and composition.

The need for a marketing agreement and order program, such as the proposed order, to eliminate certain price depressing practices with respect to the marketing of potatoes grown in the production area is clearly established in the record. The establishment of more orderly marketing conditions such as may be brought about by marketing agreement and order regulations will tend to establish parity prices to producers for potatoes grown in the production area. Also, the exercise of the authority in the proposed order with respect to the establishment and maintenance in effect of minimum standards of quality, in terms of grades and sizes, together with grading and inspection requirements, when prices are above the parity level, would tend to effectuate such orderly marketing of production area potatoes as will be in the public interest.

(3) It is necessary to define the agricultural commodity to be regulated under the proposed order. The agricultural commodity, botanically known as "Solanum tuberosum", is commonly known to growers and handlers in the production area, as "potatoes" or "Irish potatoes." The term "potatoes" as used in the proposed order identifies the agricultural commodity involved, and distinguishes it from other agricultural commodities, such as sweet potatoes. Potatoes are the principal agricultural crop grown by farmers in the production area. Some of the common varieties of potatoes grown in this production area are Sebago, Cherokee, Ontario, Sequoia, Green Mountain, Russet Rural, Pontiac, Kennebec, Katahdin and Russet Burbank. The definition of the term "potatoes" should include all varieties of Irish potatoes grown in the production area. This definition establishes the commodity with respect to which the handling activities related thereto are subject to authority of the proposed order.

"Production area" is defined to mean the area in which potatoes must be grown before the handling of such potatoes is subject to regulation authorized by the proposed order. The production area includes all the territory within the boundaries of Alger, Baraga, Chippewa, Delta, Dickinson, Keweenaw, Gogebic, Houghton, Iron, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft Counties in Michigan, which geographic area is commonly referred to as the Upper Peninsula of Michigan. The boundaries of the Upper Peninsula of Michigan are distinct and well known by producers and handlers within the Upper Peninsula as well as by potato handlers outside the area. Natural geographic boundaries favor the establishment of the proposed production area which is generally recognized by the potato industry as a distinct potato producing area. The Upper Peninsula is bound on the north by Lake Superior; on the east by St. Marys' River, and connecting waterways; on the south-

east by Lake Huron and Lake Michigan; and the southwest by the State of Wisconsin. The production area as set forth in the notice of hearing included Florence and Marinette Counties of the State of Wisconsin, however, the record of hearing shows that there was no evidence to support the inclusion of these two Wisconsin counties in the proposed production area. Therefore, the production area is defined to include only the 15 counties in the Upper Peninsula of Michigan. These boundaries do not cut through any major potato producing section.

The same varieties of potatoes are grown throughout the Upper Peninsula production area and the grading and quality standards for commercial sales, as well as the markets, are substantially the same. The general flow of potato shipments is from north to south with the overland outlets limited to a few roads and railroads. To exclude any portion of any county from the production area would tend to defeat the purpose of the proposed order in that poor quality potatoes from a section outside the regulated area could then be transported and marketed free from regulation and thereby depress the prices of regulated potatoes with which they compete. All territory included within the boundaries of the Upper Peninsula of Michigan constitutes the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act, and this production area should be defined as hereinafter set forth.

(4) The term "handler" should be defined to identify the persons who handle potatoes in the manner described and set forth in the definition of "handle", because such persons are to be subject to the proposed order and the regulations issued thereunder. "Handler" should be synonymous with "shipper" and a handler should include any individual, partnership, corporation, association, or any other business unit which handles potatoes. Such persons are responsible for the grade, size, quality, and maturity of the potatoes which are transported to market or sold; and such persons should, therefore, be considered as handlers. More than one handler may be involved in the handling of a given lot of potatoes and each such handler should be responsible for complying with the terms of the proposed order.

Common or contract carriers transporting potatoes they do not own should not be considered as handlers for the reason that they do not have a proprietary interest in the potatoes or any control over the grade, size, or quality of the potatoes. They merely transport the potatoes for a fee, as a payment for freight, to destinations selected by others.

The definition of the term "handler" should apply to any person, including a producer, when such person performs any handling activities, so as to assure that all handling of potatoes will be in accordance with the proposed order and regulations issued thereunder. With respect to handlers who conduct their businesses other than as individuals, such as firms that have sales managers or packing house managers, any handling activities engaged in by employees or officers of such handlers should be construed as handling caused by the principal company, as "handler." Hence, the term "handler" would cover the owner of a firm, even though such person does not personally sell or transport the potatoes. Such term should also include, in addition to the owner and officers, any other individuals of a firm handling potatoes who, in a supervisory capacity, are directly responsible for, and consequently cause, the sale or transportation of the commodity. Therefore, the term "handler" which is synonymous with shipper, should mean any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes or causes potatoes to be handled.

The term "handle" should be synonymous with "ship" under the proposed order and should be defined to determine the particular phases of potato marketing which place the potatoes in commerce within the production area or between the production area and any point outside thereof.

The growing and harvesting of potatoes in the production area are producer functions and should be construed as operations of the producer. Hence, the definition of "handle" should not include such activities of a producer in his capacity as a producer.

Handling of potatoes under the proposed order would begin after the harvest of the potatoes and after they have been lifted and are on top of the ground, and includes each of the successive selling or transporting activities with respect to such potatoes. It was testified that it is unlawful to sell ungraded potatoes to any retail outlet in Michigan or to ship ungraded potatoes out of the State. In this connection it would appear that the grading of the potatoes, which is a necessary action prior to selling or transporting, is a prerequisite to the handling function. The same would apply to the packaging of the potatoes, which is also necessary prior to sale. It is desirable and appropriate that the definition of "handle" should include each selling, as well as transporting, activity so that each person who performs, or causes to be performed, any such activity with respect to potatoes would be responsible for seeing to it that the potatoes are handled in accordance with such regulations as may be in effect under the proposed order.

The record shows that most of the potatoes grown in the production area are graded, packaged, and sold or transported by the producers thereof. The activities of selling or transporting such potatoes would, under the definition of the term "handle", constitute handling activities and, in such instances would make the producer a handler under the proposed order and subject to any regulations issued pursuant thereto.

It was testified that the transporting of ungraded potatoes to a storage within the production area for storing, or to a packing house in the production area for grading and packing, should not be considered as "handling" because the potatoes have not, as yet, been prepared for market. After they are graded and packed, however, such potatoes should be handled in conformity to the proposed order, and each handler of such potatoes should be responsible for complying with the regulations issued thereunder. The definition of "handle" should, therefore, reflect such exception.

Compliance with the proposed order and regulations thereunder can readily be determined by the person who is grading or preparing the potatoes for market. The primary responsibility for the grade, size, quality, and other requirements of the potatoes in any given lot should rest with the person responsible for transporting or selling such potatoes, i. e., placing them in the channels of commerce. In most cases, such person will be the one who graded, or at least was responsible for grading, such potatoes for market. Of course, all subsequent handlers of such potatoes should also have the responsibility for all of the requirements at the time such persons handle the potatoes. Otherwise the benefits of compliance by the initial handler could be nullified and thereby prevent the effectuation of the declared policy of the act.

It is a common practice in the production area for a person to act as a broker, or agent, for a grower to arrange for the sale and shipment of the grower's potatoes. In this case, the grower grades and packages the potatoes and the broker, or agent, makes the sale and ships the potatoes. Both the grower and his broker, or agent, would be performing handling activities. In some cases, the grower grades, packages, and sells the potatoes outright to a wholesaler who in turn may or may not repackage the potatoes, or further prepare them for market, but who resells the potatoes. Here, too, both the grower and the wholesaler would each be performing a handling activity.

In the light of the applicable provisions of the act, the definition of "handle" should not be applicable to the activities of a retailer in his capacity as a retailer.

With the exception of the activities which are specifically exempted, the term "handle" or "ship" should be defined in the proposed order to include all selling and transporting activities within the production area or between the production area and any point outside thereof, as well as the causing of such activities.

(5) Certain terms and provisions of the proposed order should be defined and explained for purposes of designating specifically their applicability and limitations whenever they are used.

(a) 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.

The definition of "person" follows the definition of that term as set forth in the act, and is intended to cover all possible legal entities. The use of such terms is essential to the basic framework of the proposed order; and these terms should be defined accordingly.

"Producer" should be defined to mean any person who is engaged in the production of potatoes within the production area and who is producing such potatoes for market. The term should be limited to those who have an ownership interest in the potatoes. It should not include laborers or others who perform work for a fee or for hire in producing the potatoes. A definition of the term "producer" is necessary for appropriate determinations as to eligibility to vote for, and to serve as, a producer member or alternate member of the Upper Peninsula Potato Committee, the administrative committee as hereinafter defined. Also, the term producer would provide a basis for determining eligibility for exemptions under the proposed order.

The term "varieties" should be included in the proposed order so that the administrative committee may consider the differences in the characteristics of potatoes of different varieties in connection with its recommendations for regulation. Although the great bulk of the potatoes now being produced in the production area fall within the general group known as round white varieties, such as the Sebago, Cherokee, Ontario, Sequoia, and Green Mountain, long white varieties such as Russet Burbank, and red, or red skinned, varieties such as Pontiac and LaSoda, are also produced. Differences by varieties should be recognized by the committee in its deliberations; and the proposed order permits different regulations for different varieties as may be determined to be necessary when the circumstances so warrant. The definition of "varieties", as set forth in the proposed order, is appropriate for determining different varieties of potatoes grown in the production area.

The terms "seed potatoes" or "seed", and "table stock potatoes" or "table stock" are terms commonly used in the production area. "Seed" is a term commonly used to distinguish seed potatoes from "table stock" potatoes. Growers recognize that there are different demands for such classes of potatoes. Therefore, the terms "seed potatoes" or "seed", and "table stock potatoes" or "table stock" are defined in the proposed order so that different regulations may be authorized under appropriate circumstances for each. "Seed potatoes" or "seed" should be defined to include only those potatoes grown in the production area which are officially certified, tagged, or otherwise appropriately identified under the supervision of the official seed certifying agency of the State of Michigan, as is currently the practice in the production area, or other seed certification agencies which the Secretary may recognize. In order to assure that there will always be a recognized seed certification agency available to certify seed, the Secretary should be given authority to designate an appropriate agency to perform this service in the event the State agency is discontinued. "Table stock potatoes" are commonly referred to in the production area as all potatoes, other than seed potatoes, used for food, and including potatoes used for manufacturing and other purposes. Table stock potatoes should, therefore, be defined as all potatoes other than "seed potatoes." Hence, the total of seed potatoes plus table stock potatoes will equal all potatoes to be covered by the proposed order.

"Grading" and "preparing for market" are synonymous in the proposed order and mean the sorting of potatoes by hand or mechanical means, or both, into grade, quality, or size classifications. Upper Peninsula potatoes are currently sorted into some such classifications, e. g., U. S. No. 1; U. S. No. 1 Size A; U. S. No. 2; and "pickouts." Grading is usually a mechanical operation whereby potatoes are carried by a mechanical conveyor over a series of moving screens and belts where sizes are separated, and good quality, as represented by preferred grades and sizes, is sorted from the poor, so that the potatoes which are to go to preferred price outlets are separated from those going to lower price outlets. This grading, or preparation for market, is an operation which applies to all potatoes grown in the production area even though the extent to which the potatoes are sorted may vary considerably according to the types of outlets. A definition of "grading" or "preparing for market" based on the foregoing should, therefore, be as set forth in the proposed order.

Definitions of "grade" and "size" are incorporated in the proposed order to enable all persons affected thereby to determine the requirements thereof and to interpret specifically and intelligently regulations issued in such terms. Grade and size, the essential terms in which regulations are issued, should be defined as comprising the meanings assigned to these terms (i) in the official standards for potatoes issued by the United States Department of Agriculture (7 CFR §§ 51.1540 to 51.1559 and §§ 51.1575 to 51.1587), and in modifications or amendments of such standards, and (ii) in such variations based thereon as may be set forth in regulations under the proposed order. Regulations under the proposed order can then use such terms ("grade" and "size") with the constant meaning assigned them in such standards or in such modified or amended standards; or in the variations thereof (e. g. by prescribing that a minimum percentage of the potatoes shall meet certain grade requirements). Inspectors of the Federal or Federal-State Inspection Service are qualified to certify the grade and size of potatoes grown in the proposed production area, in terms of any of the aforesaid standards, modifications, or amendments, or variations based thereon.

The United States Standards, and the United States Consumer Standards, for potatoes provide that in order to meet certain grade requirements potatoes shall be mature. According to the same standards, "mature" means that the outer skin (epidermis) does not loosen or "feather" readily during ordinary handling and that practically no skin has been removed from the potatoes. In addition to such definition of "mature" in terms of the condition of the outer skin, the United States Standards for Potatoes set forth various skinning classifications. Maturity is a factor of quality and, as such, should be construed to have the same meaning as set forth in the aforesaid standards, including the skinning classifications. The proposed order authorizes the issuance of maturity regulations; and, according to the testimony given on this subject, the degree of maturity of potatoes should be determined on the basis of the skinning classifications, or degree of skinning, set forth in such standards.

The term "pack" is commonly used throughout the Upper Peninsula potato industry and refers to one or more of the combinations of factors relating to the grade, variety, quality, size, and maturity of the potatoes in particular containers. For example, U. S. No. 1, size A, potatoes in 100 pound bags are referred to as a specific pack. Differences in packs are also recognized by the size of the package. For example, potatoes in ten pound bags are referred to as a 10-pound pack. It is essential that such differentiation should be authorized in the proposed order so that the appropriate regulations tailored to the particular pack involved, and the market demands therefor, may be made effective and thereby tend to achieve the declared policy of the act. The definition of the term "pack" should, therefore, be as set forth in the proposed order.

A definition of "container" should be included in the proposed order as a basis for differentiating among the numerous shipping units in which potatoes move to market and for the permissible application of different regulations to such different shipping units. The Upper Peninsula potato industry, as represented by growers and shippers at the hearing, indicated that undesirable practices (as hereinafter discussed) in the marketing of potatoes relating to net weights and numerous container types and sizes tend to create disorderly marketing conditions. Incorporation in the proposed order of authority relating to containers as set forth in the act, will provide a basis for alleviation through appropriate regulations of any problems which may develop in connection with containers. The principal containers used at present in marketing potatoes are burlap bags, paper bags, mesh bags, paper and mesh bags, polyethylene bags, boxes, pallets, and bulk loads. Accordingly, the term "container" should be defined as hereinafter set forth.

The definition of "committee" is incorporated in the proposed order to identify the administrative agency responsible for assisting in the administration of the program. Committee should mean the Upper Peninsula Potato Committee as authorized by the act and which is necessary and incidental to the operation of the proposed order.

"District" should be defined in the proposed 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 from the standpoint of the present situation and should provide a practical basis for the purposes intended.

"Fiscal period" should be defined to mean the period beginning and ending on the dates recommended by the committee and approved by the Secretary. This definition provides authority for the committee and the Secretary to set the beginning of a fiscal period relatively close to the opening of a marketing season so that a minimum of expense may be incurred by the committee prior to receipt of revenue. There is a definite break in shipments between one potato marketing season and another in the production area and no difficulty should be encountered in establishing the beginning of one marketing year and the close of another. Such flexibility should facilitate operations under the proposed order.

The definition of "export" is incorporated in the proposed order because export demand may, and frequently does, differ from domestic demand for particular varieties, grades and sizes of potatoes; and this definition is intended to establish a basis whereby different regulations may be authorized for export shipments compared with domestic shipments. Export markets may have requirements which differ from those of domestic markets and special regulations may be justified. "Export" should be defined to include all shipments of potatoes outside the continental United States.

No evidence was offered to support the provisions of § 963.20 "Washed potatoes" and § 963.21 "Label" which were included in the notice of hearing; hence, these sections are dropped.

(b) The proposed order should provide for the selection by the Secretary of an administrative committee, called the Upper Peninsula Potato Committee, which shall have the responsibility for local administration of the proposed order. The act provides that marketing agreement and order programs may be administered locally by agencies which are selected by the Secretary. The record shows that such a local administrative agency should be established which will be representative of the Upper Peninsula potato industry and responsible in the administration of the program. The committee should consist of nine members, with a like number of alternates, to provide adequate industry representation on the committee, and be authorized to recommend marketing regulations and to take care of other administrative responsibilities. The committee membership, to be made up of two producer members and one handler member from each of the three proposed districts, should give potato producers and handlers equitable representation on the committee. The record shows that this plan of representation has received careful study and consideration by the industry and such division of responsibility between producers and handlers is considered to be appropriate and equitable.

Provision is made for an alternate for each member of the committee. Circumstances may arise when it is impossible for a member or members to attend particular meetings of the committee; and positions may become vacant because of resignations or other reasons. In such situations it is desirable for the respective alternates to serve in lieu of the absent members so that there will be no interruptions of committee operations and to assure producers and handlers in all districts of the production area representation in the conduct of all committee business. Also, alternates could relieve members by performing other assigned tasks necessary for administration of the program. Such alternates should have the same qualifications as the members in order that the interest of all producers and handlers will be adequately considered at all times in the administration of the proposed order.

Each member and alternate of the Upper Peninsula Potato Committee selected to represent producers in a particular district should be a producer of potatoes, or an officer or employee of a corporate producer or other type of business unit engaged in producing potatoes, in such district and should be a resident thereof. Individuals with such qualifications will, most likely, be acquainted with the particular problems of producing and marketing potatoes in such district and for that reason can be expected to reflect the views of producers in such districts with respect to committee actions. A committee member or alternate representing handlers in a particular district should be a handler, or an officer or an employee of a corporate handler or other type of business unit, engaged in handling potatoes in such district and a resident thereof. Handlers who have the above qualifications would be intimately acquainted with the problems of handling potatoes grown in such district and each may reasonably be expected to present accurately the problems of marketing potatoes grown in such district. Such qualifications should help to assure that the interests of the handler group from which each is selected will be adequately represented in committee deliberations.

The selection of committee members and alternates on the basis of district, as set forth in the proposed order, provides a practicable and equitable manner of representation in that the geographical basis used for the selection of the committee membership is also related to the acreage and production of potatoes within the production area.

Each individual 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. Such acceptance should be filed within ten days after notification of appointment so that the composition of the committee will not be unduly delayed. This requirement is necessary so that the Secretary may be in a position to select some other eligible person to serve as a member or alternate in the event the initially selected member or alternate fails to indicate his willingness and intention to serve on the committee.

The term of office for committee members and alternates should be provided in the proposed order to establish an orderly procedure for changing the membership. The term of office of producer members and alternates should be for three years, and that of handler members and alternates for one year, beginning on July 1 and ending June 30. It is desirable that producer members and alternates should serve more than one year so that they will have adequate time to familiarize themselves with the operation of the program and thus be in a position to render the most effective service assisting the Secretary to carry out the declared policy of the act and, in subsequent seasons, the committee will have the benefit of their previous experience. Since only one handler member will represent a particular district, and since handlers are generally experienced in marketing problems for potatoes, it is appropriate that handlers in each district should be given an opportunity to designate a new member for the committee each year.

The terms of office of one-third of the initial producer members and alternates should be for one year, another third for two years, and the remaining third for three years, so that the terms of office of one-third of the producer membership on the committee will terminate at the end of each year. In this way a turnover of two producer members and alternates each year would be provided under the three-year term of office and such a plan is considered desirable by the industry as shown by the evidence. This will facilitate the establishment of staggered terms of office as provided in the proposed order. Committee members and alternates should serve during the term of office for which selected and until their successors are selected and have qualified to insure continuity of committee operations. Evidence shows it is appropriate and desirable that no member, whether producer or handler, shall serve for more than three consecutive terms. A producer member or handler member may be selected again if, after serving three consecutive terms, he does not serve in such capacity for an intervening year.

A quorum of the Upper Peninsula Potato Committee should consist of six members and six concurring votes should be necessary for passing any motion or approving any action of the committee. Such quorum and voting requirements constituting a minimum of two-thirds of the membership are 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 it would be unreasonable to call for an assembled meeting, or when rapid action is necessary because of an emergency. Votes cast at other than assembled meetings 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, so as to preclude the obtaining of telephone or other types of votes from mem-

bers or alternates who did not participate in the assembled meeting's deliberations.

The committee should be given those specific powers listed in the proposed order, and 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. They are common to marketing agreements and orders operating under the act and are necessary for the proper functioning of an agency of the character set forth in the proposed order.

The duties set forth in the proposed order for the committee are similar to those generally specified for administrative agencies under other marketing agreements and marketing orders of this nature. These duties should enable the committee to undertake and perform such activities as may be necessary for it to carry out its prescribed responsibilities. Such committee duties are necessary for the discharge of this administrative agency's responsibilities. It should be recognized, however, that specified duties are not necessarily all inclusive, in that there may be other duties which are incidental to, and not inconsistent with, the terms and conditions of the proposed order which the committee may need to perform in connection with its operations thereunder.

Committee members and alternates should be reimbursed for reasonable expenses necessarily incurred when they are engaged in committee business. These expenses should be paid since it would be unfair to request the members and alternates to pay for such expenses incurred in the interest of all potato producers and handlers in the production area. On the basis of the testimony of witnesses at the hearing, the proposed order should also provide that, after the first fiscal year of operation, members and alternates of the Upper Peninsula Potato Committee may receive compensation for the time spent in attending committee meetings. The amount of this compensation, not to exceed $10.00 per day, should be determined by the committee and approved by the Secretary. In order for an alternate adequately to represent his district at any committee meeting in place of an absent member, it may be desirable that he should have attended previous meetings, along with the member, so as to have a full understanding of all background discussions leading up to action that may be taken at the meeting. Also, an alternate may, in future years, be selected as a member on the committee; and to this extent, attendance at meetings by alternate members would be helpful. Although only committee members, and alternates acting as members, have authority to vote on actions taken by the committee, it is often important for the committee to obtain as wide a representation as practical of producer and handler attitudes toward a proposed regulation or other matters. The proposed order should provide that the committee, at its discretion when conditions warrant, may request the attendance of alternate members at any or all meetings, notwithstanding the expected or actual presence of the respective members. The same compensation and reimbursement that is available to members should also be made available to alternate members when they are so requested to attend such meetings as alternates.

Districts are established in the proposed order to provide a geographical basis for the selection of committee membership. For this purpose, the production area has been divided into three districts including all of the 15 counties in Upper Peninsula of Michigan. The districts as set forth in the proposed order constitute what are generally known and recognized by the industry as major potato growing sections within the production area, and such districts represent the best basis which could be devised at this time for providing a fair, adequate and equitable representation on the committee.

A provision for rdistricting and reapportionment of committee membership is necessary to enable the committee and the Secretary to consider from time to time whether the basis for representation has changed or could be improved and how such improvement should be made. Future shifts or other changes in the development of acreage within the production area cannot be foreseen at the present time. Therefore, it is desirable to provide flexibility of operation, so that if it should be in the best interests of the administration of the proposed order to change the boundaries of some districts, or to reapportion the committee membership, the committee may so recommend, and the Secretary take, such action. However, there should be no change in the total number of committee members or in the total number of districts so as to assure that growers and handlers in any district will not be deprived of representation.

It is recognized that the Secretary has the legal authority and responsibility for the selection of the members and alternates of the committee, and that the industry has the responsibility for recommending appropriate nominees to the Secretary so that he may make his selection from such nominees or from other eligible persons. The nomination procedure provided in the propored order will assure that the names of appropriate prospective members and alternates recommended by producers and handlers in the production area will be available to the Secretary.

Since the membership of the committee will not have been selected by the time the proposed order becomes effective, the Secretary should have the authority to call initial nomination meetings. The responsibility for calling subsequent nomination meetings should rest with the committee as one of its administrative duties. The committee may work with other existing organizations, such as grower and shipper associations, in conducting such nomination meetings.

After the proposed order becomes operative and the committee membership is selected, nomination meetings for the purpose of nominating members of the committee and their alternates should be held or caused to be held by the committee prior to May 1 of each year. Inasmuch as the term of office for committee members and alternates begins July 1 and ends on June 30, these nomination meetings should be held in sufficient time to assure that nominations for such members and alternates will be before the Secretary well in advance of the time for him to select members and alternates prior to the beginning of each new term of office. Not less than one nominee should be designated for each position as member, and each position as alternate member, which is to be filled the following July 1.

The proposed order provides that only producers shall participate in designating nominees for producer members and alternates, and only handlers shall participate in designating nominees for handler members and their alternates. This is necessary to insure that the interests of each group are properly safeguarded and that the nominees truly reflect the choices of each group. If a person is both a producer and a handler he may vote either as a producer or as a handler by selecting the group with which he wishes to participate. Such person may not vote both as a producer and a handler because to do so would enable him to participate in nominations to a greater degree than persons who are only producers or only handlers.

Each producer and handler should be limited to one vote on behalf of himself, his agents, subsidiaries, affiliates (including partners), and representatives, in designating nominees for committee members and alternates regardless of the number of districts in which he produces or handles potatoes. Voting on any other basis would not provide equitable participation or representation. If a producer or handler could cast more than one vote by reason of operating in more than one district, such producer or handler would have an advantage in selecting nominees over producers or handlers operating in only one district. Also, if more than one vote were permitted, large producers or handlers could dominate the election by means of their partners, agents, subsidiaries, affiliates and representatives, and nominate the producers and handlers who may not be favored by a majority of producers or of handlers. Each eligible producer or handler's privilege of casting only one vote should, however, be construed to mean that one vote may be cast for each applicable position to be filled.

In order that there will be an administrative agency in existence at all times to administer the proposed order, the Secretary should be allowed to select committee members and alternates without regard to nominations if, for any reason, nominations are not submitted to him in conformance with the procedure prescribed therein. Such selection, however, should be on the basis of the representation provided in the proposed order to insure that all producers and handlers in the production area are fairly and adequately represented on the committee.

It is also desirable and necessary that the Secretary should be authorized to fill committee vacancies that occur during

a term of office without regard to nominations, if the names of nominees to fill any such vacancies are not submitted to the Secretary within 30 days after such vacancies occur. This is necessary in order to insure that all portions of the production area are adequately represented at all times in the conduct of committee business.

(c) The committee should be required to prepare a budget of expenses at the beginning of each fiscal period, and as often as may be necessary thereafter, showing estimates of expenditures and income necessary for the administration of the proposed order. Each such budget should be presented to the Secretary with an analysis of its components and an 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 designed to bring in during each fiscal period sufficient income to cover estimated expenses to be incurred by the committee. This will furnish the Secretary with adequate data and information concerning the committee's proposed activities and enable him to determine whether the proposed expenses, and related rate of assessment, are reasonable and likely to be incurred.

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 reasonable expenses by administrative agencies, such as the proposed Upper Peninsula Potato Committee, and the statute also requires that each order issued pursuant to the act shall contain provisions requiring handlers to pay their pro rata share of the necessary expenses.

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 potatoes handled by him as the first handler thereof during a specified fiscal period and the total quantity of potatoes so handled by all handlers during the same fiscal period; and such proration of expenses will be equitable among handlers. In most cases, the handler who first ships the potatoes also applies for inspection, and in such instances the inspected shipments could serve as a basis for computing assessments due. Such handler is the one who starts the commodity on its way to market. Therefore, such person, i. e., the first handler, should be the person who is to pay the assessments. For potatoes that are not so inspected, the handler responsible for the assessment should continue to be the handler who first handles the potatoes and should be so designated by the committee. The requirement that the first handler pay assessments will preclude multiple assessments on potatoes that are handled more than once, and handlers will be able to arrange their operations accordingly. The rate of assessment should be established by the Secretary on the basis of the committee's recommendation, or other available information, so as to assure the imposition of such assessments as are consistent with the act.

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 to recommend the fixing of an increased rate of assessment to balance the revenues and necessary committee expense for such period. Upon the basis of such recommendation, or other available information, the Secretary should be authorized to approve an amended budget, and, if he finds that the then current rate of assessment is insufficient to cover committee expenses for the administration of the proposed order, he should be authorized to increase the rate of assessment. Such increased rate should apply to all potatoes handled under the proposed order during such fiscal period, including those previously handled, by first handlers during the specified fiscal period so as to avoid inequities among handlers.

In order to provide funds to carry out the functions of the committee at the beginning of a fiscal period, especially during the first season of operation, prior to the time assessment income becomes available, it would be desirable that handlers be permitted to make advance payments of assessments to the committee. Accordingly, a provision is included in the proposed order to permit such advance payments by handlers.

Any funds remaining at the end of a fiscal period in excess of expenses for that period should be credited as refunds to contributing handlers on a proportionate basis or may be carried over as a reserve for contingency or liquidation. Each handler entitled thereto should have such refund credited to his account for the following year's operation unless he demands payment thereof, in which event he should be entitled to be paid his refund as soon as practicable.

It is generally accepted as good business practice to provide during a fiscal period for unforeseen contingencies, such as adverse weather conditions, which might result in a substantially reduced crop. The net effect of a reduced crop would be to greatly reduce shipments and assessment revenue, or it could cause the discontinuance of regulation and collection of assessments with a possible consequence of insufficient funds for the maintenance and functioning of the committee. In order to preserve at least a nucleus of an administrative organization and thus assure the performance of a minimum of functions during such periods, especially during a fiscal period when reduced or no revenue is collected by way of current assessments, the committee should have authority, with the approval of the Secretary, to set up a reserve account and to use such reserve during any such period when needed. Such reserve should also be used to defray the cost of liquidation in the event of termination of the proposed order.

Evidence presented at the hearing was to the effect that nearly all of the production of potatoes in the production area is marketed year after year by the same handlers and that it would be equitable to all handlers, and far less burdensome to them, to contribute to the establishment of such an operating reserve during years of normal production rather than to be required to pay a high rate of assessment occasioned by a deficit during a year when the crop is materially reduced.

Funds in the reserve account might properly serve another purpose. At the beginning of each fiscal period there will be a need for operating funds at a time when there will usually be little revenue from assessments. It is economical and practical and the committee should be so authorized, to use the funds in the reserve account until such time as assessments provide adequate revenue to meet current expenses.

It is contemplated that any such reserve will be built up over a period of years. In order that such reserve funds should not be accumulated beyond a reasonable amount, it was proposed that a limit of approximately one fiscal year's expense be provided. A lesser amount, determined from experience, may prove sufficient.

In the event of termination of the order, any funds remaining after liquidation, including any balance in the reserve account, should be refunded, to the extent practicable, to the handlers from whom such funds were collected.

Funds received by the committee pursuant to the levying of assessments should be used solely for the purposes of the proposed order. The committee should be required, as a matter of good business practice, to maintain books and records clearly reflecting the true, up-to-date operation of its affairs so that its administration could be subject to inspection at any time by the Secretary.

The committee should provide periodic reports on its fiscal operations. It is expected that an audit report will be furnished the Secretary at the end of each fiscal period covering the committee's fiscal operations for that period. Additional audit reports will be furnished covering any period at the request of the Secretary or at the discretion of the committee in order to maintain appropriate supervision and control of the committee's affairs. Also, financial statements reflecting the current fiscal position of the committee should be furnished the Secretary periodically, as requested. Copies of such reports should be made available at the office of the committee for inspection by interested producers and handlers.

(d) A provision for the establishment of marketing research and development projects designed to assist, improve, or promote marketing, distribution, and consumption of potatoes is authorized by the act. Such authorization should be included in the proposed order.

Through the medium of research investigations, the committee could be able to assemble and evaluate data on growing, harvesting, shipping, marketing, and other factors with respect to potatoes which would be of value in determining what regulations should be established in accordance with the act and the proposed order for the benefit of the potato industry in the production area. As the com-

mittee becomes more aware of the value and need for marketing research and development, other projects will undoubtedly be initiated, the need for which may not have been foreseen during the course of the hearing. The committee should be empowered to engage in such projects (except advertising and trade promotion projects), to spend assessment funds for them, and to consult and cooperate with appropriate agencies with regard to their establishment. The committee may be limited by the lack of facilities and trained technicians in carrying out any such projects; and it should be authorized to enter into contracts for their development with qualified agencies, such as State universities, and other public or private agencies.

Prior to engaging in any such activities, the committee should, of course, submit to the Secretary for his approval the plans for each project. Such plans should set forth the details, including the cost and the objectives to be accomplished, so as to insure, among other things, that the projects are within the purview of the act and the proposed order. The cost of any such projects should be included in the budget for approval and such cost should be defrayed by the use of assessment funds as authorized by the act.

(e) The declared policy of the act is to establish and maintain such orderly marketing conditions for potatoes, among other commodities, as will tend to establish parity prices therefor, and to establish and maintain such minimum standards of quality and maturity and such grading and inspection requirements as will be in the public interest. The regulation of potato shipments by grade, size, quality or any combination thereof, as authorized in the proposed order, provides a means of carrying out such policy.

The procedures and methods which are outlined in the proposed order for the development of marketing policies provide a practical basis for the committee to obtain adequate information relating to potato marketing problems. As a prerequisite to making recommendations with respect to limitations of shipments in accordance with the proposed order, the committee should be required to consider and develop a marketing policy for the handling of potatoes.

A marketing policy should set forth the over-all plan of the committee for the orderly marketing of potatoes grown in the production area during the ensuing season, including, to the extent practical, the kinds of regulations that may be desirable. Such marketing policy should be made available to the Secretary and to producers and handlers prior to the beginning of each marketing season. It would thus enable growers and handlers to plan their operations in the light of the committee's marketing policy and the kinds of regulations that may become effective under the proposed order. It would also provide the Secretary with helpful information which should facilitate his consideration and appraisal of the recommendations of the committee for marketing regulations.

The factors set forth in the proposed order which the committee should take into consideration in developing its marketing policy are the factors usually taken into account by growers and handlers in their day-to-day, as well as seasonal, evaluations of the market outlook with respect to potatoes.

In developing its marketing policy the committee should investigate and give consideration to the then current, as well as anticipated, market prices of potatoes, including prices by variety, grade, size, quality and maturity for different packs and for different types of containers, and to the volume of potatoes expected to be sold; also, to estimates of the supply of potatoes in the production area and in other producing areas by grade, size, quality and maturity; and estimated shipments from competing areas. The committee should, in addition, consider other factors which may have an influence on the market price of potatoes, such as the trend and level of consumer income.

If, for example, the committee were to anticipate a surplus of potatoes, together with depressed prices, it might adopt a policy calling for such limitations of grade, size, and quality so as to market only the best grades and sizes which would return to producers the maximum benefits. On the other hand, if potatoes were expected to sell at high prices, returning more than parity prices to producers, a policy might be adopted calling for such minimum regulations as will be in the public interest. Also, a policy adopted during times when consumer disposable income is at low levels might differ from a policy adopted during more prosperous times.

The initial marketing policy report forwarded at the beginning of each season by the committee should be prepared and submitted to the Secretary prior to, or simultaneously with, its initial recommendations for regulations. The reports on marketing policy recommended by the committee should also be made available to producers and handlers in the production area as a means of keeping them informed.

It is essential that the committee should be able to change its marketing policy as conditions and facts may warrant. This flexibility should tend to assure that the marketing policy will be up-to-date during the marketing season. If some unforseen condition should develop during the season, which for example affects the supply of potatoes, and the committee finds it desirable and necessary to change its marketing policy, a revised or new marketing policy report should be prepared by the committee and made available to the Secretary and to producers and handlers at the earliest possible date. The committee should give the same publicity to each revised or new policy report as is given to the initial report for a marketing season.

The Upper Peninsula Potato Committee should, as the local administrative agency under the proposed order, be authorized to recommend such grade, size, quality and maturity regulations, as well as any other regulations and amendments thereto authorized by the proposed order, as will tend to effectuate the declared policy of the act. It is necessary to the successful operation of the proposed order that the committee should have such responsibility. The Secretary should look to the committee as the agency reflecting the thinking of the industry, for its views and recommendations for promoting more orderly marketing conditions and increased growers' returns for production area potatoes. The committee should, therefore, have authority to recommend such regulations as are authorized by the proposed order whenever such regulations will, in the judgment of the committee, tend to promote more orderly marketing conditions and effectuate the declared policy of the act.

When conditions change so that the then current regulations do not appear to the committee to be carrying out the declared policy of the act, the committee should have the authority to recommend the suspension or termination of such regulations, as the situation warrants.

The proposed order authorizes the Secretary, on the basis of committee recommendations or other available information, to issue various grade, size, quality, and other appropriate regulations which are necessary for the improvement of growers' returns and for the development of more orderly marketing conditions for production area potatoes. Such regulations may be issued for any or all portions of the production area, for any or all varieties of table stock or of seed potatoes, or both, during any period.

It was testified that if low grades and undesirable sizes are permitted to be marketed, such potatoes will tend to depress the prices which producers receive, not only for their poor grades and small sizes, but also for their better grades and sizes as well. Witnesses stated that in some instances the very large potatoes are as undesirable and price depressing as the small ones. Also, that U. S. No. 2 grade potatoes return to growers from 50 cents to $1.00 less per 100 pounds than U. S. No. 1 grade potatoes and that each sack of U. S. No. 2 potatoes marketed displaces an equal quantity of U. S. No. 1 quality potatoes. Any culls marketed would, of course, return even less than U. S. No. 2 potatoes and the effect of such sales would be more price depressing.

As heretofore indicated, the quantity, quality and sizes of potatoes grown in the production area and sold or transported to markets during any period have a direct effect upon the total quantity and the composition of such supplies in the market which in turn have a direct effect upon the prices received for potatoes in the market and the prices returned to producers in the production area. Limitation of the handling of poorer grades, off-quality, and less desirable sizes and maturity of potatoes grown in the production area is a method of adjusting the total quantity of potatoes and the composition thereof which may move to market during any period, and would tend to increase prices of the more desirable grades, sizes and maturity with a corresponding increase in the returns to producers.

It was testified that flexibility of operation is necessary in order to meet the varying conditions that might arise and for this reason there should be author-

ity for regulating the handling of particular grades, sizes, qualities, and maturities of potatoes differently for different varieties; differently for table stock and for seed; and differently for different portions of the production area, for different markets, for different packs, for different sizes and types of containers, or for any combination of the foregoing, during any period.

Supply and demand conditions as well as prices returned to growers may vary with different varieties of potatoes. For example, the supply of the Russet Burbank variety was relatively short two years ago and there was no difficulty in moving such variety at a good price, while the round white varieties were in plentiful supply and sold at relatively low prices. This situation could require a different type of regulation for each variety in order to enable producers to obtain the maximum returns. Potatoes of a variety in short supply may be sold profitably with less restrictive regulations while potatoes of a variety in abundant supply would require more restrictive grade and size regulations to bring a fair return to producers. Authority should thus be flexible in order to permit different grade and size regulations for different varieties.

As previously indicated, seed potatoes are specifically defined so that individual or separate treatment may be accorded them under the proposed order. Only those potatoes which have been officially certified and tagged, marked, or otherwise appropriately identified under the supervision of the official seed potato certifying agency of the State, or as recognized by the Secretary, should qualify as seed potatoes. The quality requirements for seed potatoes differ from those for table stock potatoes in that freedom from disease is the most important quality factor for seed potatoes and quite often, unlike table stock potatoes, the smaller sizes bring a premium in the seed market. Seed prices are dependent to a great extent on table stock prices and they usually move in the same direction. Also, at times, seed potatoes are sold for table stock. If seed potatoes going to the table stock market are regulated and no authority exists for different regulations for seed potatoes for planting purposes it is possible that seed potatoes for planting could have to meet requirements that are not suitable for seed potatoes that are to be planted. Although the current production of seed potatoes in the production area is not large, if the need for regulation of seed potatoes for planting purposes should arise in the future, the committee should have the authority to recommend, and the Secretary to issue, suitable regulations which would necessarily differ from those recommended for table stock potatoes.

It was testified that the planting and harvesting periods may vary by several weeks from the earliest to the latest producing sections in the area, thus causing some variation in the maturity, size or quality of the potatoes at a particular time. Also, because of drought, disease, floods, hail, or other unforeseen conditions, potatoes from a certain portion of the production area may vary in quality or size from potatoes grown in other parts of the production area. For these reasons it may be desirable at times to regulate differently for different parts of the production area, and consequently, authority to do so should be provided in the proposed order.

The proposed order should also provide authority for different regulations for the handling or shipment of potatoes to different markets. Witnesses testified that such authority should be included to provide flexibility of operation in order to meet the varying conditions that might arise with respect to such markets. For example, it was testified that approximately 75 percent or more of the potatoes grown in the production area are shipped to markets outside the production area, that such shipments are usually made in car lot or truck lot quantities, and it is with respect to these shipments that grade, size and quality requirements are primarily needed. However, as previously indicated, markets within the production area are also important and shipments to such markets should also be subject to regulation. The committee may at times, especially during harvest time, find that it is impracticable to regulate shipments to markets within the production area to the same extent as shipments to markets outside the production area. Also, market requirements may differ as to grade, size, quality, maturity, and other factors and, therefore, different regulations should be permitted for different markets. It was testified that, for example, shipments to Canada may require different grades or sizes than domestic shipments in order to supply the particular needs of that export market and at the same time to comply with Canadian import requirements. Accordingly, it is desirable and appropriate that authority should be included in the proposed order for different regulations for different markets.

The proposed order should also contain authority to prescribe different regulation for different packs. The use of such authority could assist the potato industry in the production area in its merchandising efforts to provide the most acceptable packs to enhance its reputation in the trade and thereby increase the demand for production area potatoes. It is a usual practice in this area to prepare specific packs of potatoes for market. One such common pack is referred to as U. S. No. 1, Size A, 50-pound pack. The potatoes in this pack are generally graded to minimum grade and size specifications with no maximum size limitation. Because of consumer trends and demands for small size packs or containers of potatoes of fairly uniform sizes, it may be desirable to limit the potatoes to more uniform sizes when packed in small packs of 5, 10, or 15 pounds than when packed in 50 and 100 pound packs. The authority so provided to regulate shipments of potatoes differently for different packs should enable the committee to recommend, and the Secretary to issue, regulations based on preferred demand for particular packs, including the grades, sizes, quality and maturity of the contents thereof, in the interest of maximizing returns to growers when necessary.

Small shipments of potatoes, such as are made by some farmers to local grocery stores, and convenience sales to friends and tourists, constitute a very small percentage of the total sales. However, such small sales could present real operating problems if inspection should be required on each. In some parts of the production area, where such small sales are made, inspectors may not be readily available and enforcement may be very difficult and costly. It is, therefore, desirable to provide authority for exempting such small or nuisance shipments from grade, size, or quality requirements, or from mandatory inspection, or assessments, or any combination thereof, which could otherwise become unduly burdensome on handlers and present administrative difficulties in the operation of the program. The committee should be authorized, therefore, to recommend, and the Secretary to specify, minimum quantities which should be exempt from inspection, assessments, or grade and size regulations, or any combination thereof under the proposed order. Such authority would provide flexibility in administration and should be used in a practical manner to meet local needs and conditions. Also, minimum quantity shipments so exempted from regulations should not be of sufficient volume so as to be a detriment to the program.

The proposed order should contain authority to fix the size, capacity, weight, dimensions, or pack of the container, or containers, so as to allow the committee to eliminate any deceptive or unethical practices which may develop in the packaging or handling of potatoes in the future. If, for example, a bag is developed to contain nine pounds of potatoes but which looks like a ten pound bag and is sold in competition to ten pound bags at a lower price, such lower priced package would tend to pull down the price of the ten pound package and could thus adversely affect grower returns. The exercise of the authority to regulate containers would enable the committee to prohibit the use of any undesirable or deceptive containers. This authority, however, should not be used to close the door on experimenting with new or superior containers which may be developed.

(f) Some potatoes are of such low quality that they do not give consumer satisfaction at any time because of waste and the large amount of time consumed in preparing them. Consumers do not receive proper value for their expenditures for such low quality potatoes; and even when prices are above parity, it is not in the public interest, either of the producers, handlers or consumers to permit shipments of such poor quality. Shipments of excessively skinned potatoes also tend to disrupt general marketing conditions for the commodity and the discounted prices received for such potatoes adversely affect growers' prices. The proposed order should, therefore, authorize the establishment of such minimum standards of quality and ma-

turity as will effectuate such orderly marketing of production area potatoes 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.

The proposed order authorizes the Secretary, on the basis of Committee recommendations or other available information, to issue various regulations thereunder which are necessary, among others, for the improvement of growers' returns and for the development of more orderly marketing conditions for production area potatoes. The Secretary should not be precluded from using such information as he may have, and which may or may not be available to the committee for consideration, in issuing such regulations, including amendments or modifications thereof, as may be necessary to effectuate the declared policy of the act. Also, when he determines that any regulation does not tend to effectuate such policy, he should have the authority to suspend or terminate such regulation.

The requirement that the Secretary shall notify the committee of any regulations or any amendments, suspensions, or terminations of regulations is appropriate and necessary to enable the committee to be informed of such actions. The committee, in turn, has an obligation to give reasonable notice to handlers, by such means as it deems adequate, of such regulatory orders, amendments, suspensions, or terminations, so that the persons to be affected by such regulations or changes therein will be adequately informed and will have an opportunity to adjust their operations by the effective dates of such regulations or changes.

(g) The Secretary, upon the basis of recommendations and information submitted by the committee, or upon the basis of other available information, should be authorized to issue special regulations, or to modify, suspend, or terminate, grade, size, quality, maturity, or other applicable regulations with respect to the handling of production area potatoes, to facilitate shipments of such potatoes for purposes other than disposition in normal domestic fresh markets.

Potatoes moving to, or sold in, certain outlets, such as those specified in § 963.54 of the proposed order, are usually handled in a different manner, or such outlets usually accept different grades, sizes, qualities, maturities, packs, or containers than those required for fresh shipment to domestic retail outlets. The proposed order should provide authority to give appropriate consideration to the handling of potatoes for such outlets so that full opportunity may be taken, under provisions of this program, to increase total returns to producers.

Export requirements for potatoes differ materially on occasion from domestic market requirements with respect to grades, sizes and containers. Export markets are considered as additional outlets and potatoes exported do not usually compete with domestic shipments. Unless the regulations could be modified to meet the requirements of export markets, loss of business may occur, thereby tending to prevent the accomplishment of the declared policy of the act. Therefore, authority should be included in the proposed order to effect the appropriate modification, suspension, or termination of regulations for export shipments.

Shipments of potatoes for relief or to charitable institutions should also be given special consideration. Such shipments are intended for special outlets and are usually by way of donation to people in need. They are not considered to be in competition with shipments to normal trade channels.

Authority should also be provided in the proposed order to give special consideration to potatoes which are shipped for manufacture or conversion into specified products or by-products so that these outlets may obtain the types of potatoes they require. Potato chip manufacturing is becoming more important as an outlet for potatoes. This product requires potatoes which have been stored at higher temperatures than normal. Such storage sometimes causes excessive sprouting and softening of the potatoes to such an extent that they may not meet the grade regulations which may be in effect. Also, potato chip manufacturers may require potatoes of a different size than required by the regulations. Potato chips, as well as other potato products presently in production, or new products which may be developed in the future, offer additional outlets for production area potatoes and should be utilized for the benefit of producers. The committee would be in a favorable position to assess the competition, if any, between such products and table stock potatoes for the fresh market. Therefore, the necessary authority should be provided to facilitate the movement of potatoes to such outlets as conditions warrant. Since potatoes shipped for canning or freezing are exempted under the act, it was testified that the committee, with the approval of the Secretary, should have authority to require that adequate safeguards be taken to assure that such shipments will not be used for other than the purpose intended.

It is a practice in some parts of the production area to feed potatoes to livestock and this use provides a salvage outlet for culls and off-grades and off-sizes. This outlet is not competitive with the fresh market and the movement of such potatoes to livestock feeders within the production area should be permitted without restrictions but under appropriate safeguards. It would not be advisable, however, to permit shipments of potatoes for livestock feed to leave the production area since it would be difficult for the committee to check on their use. Similarly, since the shipment of potatoes, including seed potatoes, for planting within the production area does not compete with commercial shipments for fresh market use, such handling should be permitted but under proper safeguards. Also, the shipment of seed potatoes beyond the production area should be permitted under proper safeguards to prevent the diversion of such shipments from seed potato channels.

The committee should be authorized to recommend special treatment, through regulations, or modification, suspension, or termination of regulations, applicable to shipments for other purposes or products which may be specified by the committee with the approval of the Secretary. The purpose for such treatment should be to increase outlets for potatoes and also growers' returns.

The authority for issuing special regulations, or modifying, suspending, or terminating regulations with respect to shipments for special purposes, 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 fresh market channels contrary to the provisions of such regulations.

Such safeguards should include such limitations, or appropriate qualifications on shipments, as might be necessary and incidental to the proper and efficient administration of the proposed order. Such safeguards could include, among others, mandatory inspection requirements so that the committee may have an accurate record of the grade, size, quality and maturity of potatoes shipped to special outlets, applications to make such special shipments, reports by handlers on the number of such shipments and the quantity of potatoes shipped, also assurances by the purchasers that the potatoes would be used for the purpose designated.

In order to maintain appropriate identification of potatoes shipped to special outlets, the safeguards may provide for the issuance of Certificates of Privilege to handlers of such potatoes and, in addition, require that such handlers obtain such certificates on all shipments to such outlets. Certificates of Privilege issued by the committee could serve as an indication of the authority for the handlers 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 might be handled in an orderly and efficient manner which can be made known to all handlers.

The committee should be authorized to exercise the authority necessary and incidental to the proper administration of the proposed order, which should include the authority to rescind or deny such certificates. Such action, however, should be based on evidence satisfactory to it that a handler to whom a Certificate of Privilege had been issued, handled potatoes covered thereby contrary to the provisions of such certificate. Applications for Certificates of Privilege should be handled promptly. Notice from the committee with respect to rescinding or denying a Certificate of Privilege should be given promptly to the applicant. Likewise, any appeal from committee action with respect to an application or the denial of a Certificate of Privilege should

be handled promptly. If the committee should rescind or deny a Certificate of Privilege, such action should be in terms of a specified period of time. Applicants affected by the denial of such a certificate, or applicants affected by the rescinding of such a certificate, should have the right of appeal to the committee for a reconsideration. They should, of course, also have the right to request the Secretary to review such action and such right is hereby recognized and confirmed.

Handlers should transfer Certificates of Privilege with the potatoes covered by such certificates so that all subsequent handlers of such potatoes may know that such potatoes have met the provisions of the program. When Certificates of Privilege accompany potatoes, handlers can then quickly determine whether the potatoes meet the requirements of the proposed program.

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 proposed order.

(h) Inspection of potatoes 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 and quality of such potatoes. The Federal-State Inspection Service has operated in the Upper Peninsula of Michigan for many years. Although there has been no compulsory inspection on potato shipments in the State of Michigan, approximately 85 percent of all potato shipments shipped out of Upper Peninsula of Michigan have been inspected for grade and size by the Federal-State Inspection Service at the request of the shippers.

Potato producers and handlers in the production area are well acquainted with the inspection service offered by the Federal and Federal-State Inspection Services on shipments of potatoes. Such inspection service is usually available throughout the entire production area upon reasonable notice.

Provisions should be made for mandatory inspection by the Federal or Federal-State Inspection Service of all shipments of potatoes grown in the production area so as to insure compliance under the program. The requirement that no handler shall ship potatoes unless such shipments are inspected by the authorized inspection service is reasonable and necessary for proper administration of the program. Such inspection requirements should apply to all potatoes shipped under regulations issued under the proposed order except when relieved from inspection pursuant to § 963.53 or § 963.54 thereof. Inspection of shipments subject to regulation would furnish the shipper thereof as well as subsequent handlers, the buyer, the committee, the Secretary, and other interested parties with an appropriate means of deterimning whether such shipments of potatoes comply with the applicable requirements of grade, size, quality, maturity and other regulations which may then be in effect under the proposed order. Thus, there would always be an authoritative means of establishing the grade, size, quality and maturity of each shipment of potatoes so that the administration of the proposed order will be efficient and effective.

The responsibility for obtaining inspection should fall on each person who handles potatoes so that each shipment of such potatoes will be identified and certified with respect to whether it complies with the grade, size, quality, maturity, or other requirements of the applicable regulations. Each handler must bear responsibility for determining that each of his shipments is so 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 responsibility for determining whether shipments are inspected and are in conformity with the requirements of the proposed order and regulations issued pursuant thereto. Handlers, too, would know whether their potato shipments are in compliance.

Whenever potatoes that have been inspected and certified are dumped from the containers in which they were inspected and certified, such potatoes lose their identity insofar as the inspection certificate is concerned. If any of such potatoes should thereafter be repacked, regraded, or resorted, such repacked, regraded, or resorted potatoes would have a new identity, and, in order to comply with the regulations under the proposed order, such repacked, regraded, or resorted potatoes should be reinspected, the same as required for any other uninspected potatoes. The proposed order should provide that any repacked, regraded, or resorted potatoes shall not be handled unless they are inspected and certified, except when exempted by the Secretary. Such inspection and certification of repacked, regraded, or resorted potatoes is necessary so that the shipper thereof, as well as subsequent handlers, the committee, and other interested parties, may know that such shipments comply with the regulations in effect and applicable thereto.

The committee should be authorized to recommend rules and regulations which, with the approval of the Secretary, will modify inspection requirements on repacked, regraded, or resorted potatoes. The regrading, resorting, or repacking of potatoes is not a common practice in the production area because the bulk of the packing operations is done on the farm. However, it was testified that a few wholesalers in the production area purchase inspected potatoes in 50 pound or 100 pound bags which they wash, regrade, and repackage into consumer size packages for sale to limited outlets. These small packages are well identified with the wholesaler's label and are usually repacked in small quantities so as to supply the local retail stores with a superior fresh pack daily. Reinspection on each of such repacked small lots of potatoes may impose an undue hardship on such dealers and on the inspection service. It may be desirable and practical to exempt such repacked potatoes, under proper safeguards, from the requirements of reinspection under rules and regulations recommended by the committee and approved by the Secretary by permitting minimum quantities to be reworked and handled without the additional inspection or by use of other acceptable safeguards. Therefore, the proposed order should authorize the committee to recommend such rules and regulations which would modify, suspend, or terminate inspection requirements on repacked, regraded, or resorted lots of potatoes.

The committee should be authorized to recommend and the Secretary to require that lots of potatoes inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to each container thereof by the handlers thereof, under the direction or supervision of the Federal, or Federal-State, Inspection Service or the committee. Such identification requirement could result in more efficient and effective administration of the program with respect to warehouse lot inspections because compliance problems would be minimized. When potatoes that have been identified and certified as a single lot are identified by such seals, stamps, or tags prior to any handling, it may not be necessary in certain instances to require separate inspection on loads or parts of loads of such potatoes. The committee should be able, as experience in operation under this program is acquired, to indicate the instances when the identification requirement would facilitate handling of such potatoes in quantities smaller than those in which originally inspected. The proposed order therefore should contain such authority.

In view of the perishable nature of potatoes and their susceptibility to fairly rapid deterioration under certain conditions, the committee, with the approval of the Secretary, should be authorized to fix the length of time inspection certificates may be valid insofar as the proposed order is concerned. This will assure, to the extent practical, that an inspection certificate properly reflects the grade, size, and quality of a particular lot of inspected potatoes at the time it is handled.

Truckers and other carriers, as well as the committee, can be supplied by the inspection service with copies of inspection certificates or evidence thereof to accompany each lot of potatoes. The committee should be authorized to recommend, and the Secretary to issue regulations, requiring handlers transporting potatoes subject to regulations under the proposed order, or causing their transportation, to accompany such potatoes

with a copy of such inspection certificate or evidence thereof which may be required to be surrendered to such authority or agency as may be designated by the Secretary upon the committee's recommendation. The presence of a valid inspection certificate or evidence thereof will simplify the determination of the inspection of such potatoes and thereby tend to reduce the expense of program enforcement and facilitate checking compliance.

Copies of inspection certificates issued pursuant to the requiremnets of the proposed order should be supplied to the committee by the inspection service promptly so that the committee may properly discharge its administrative responsibilities under the program.

(i) Certain hazards, which may at times be localized, such as floods, drought, hail, or tornadoes, may result in potatoes which have hollow heart, growth cracks, secondary growth, or in jumbo or small potatoes, and other conditions which are beyond the control of the growers; and other conditions, such as blight, frost damage, and dry rot over which persons who store potatoes have no control, may not be evident until after potatoes have been put in storage. Farmers are close to these problems and are aware of the conditions that are beyond the control of handlers and growers; and hence the committee, composed of producers and handlers, can properly advise with respect to such facts and conditions and the extent to which relief, if any, should be afforded such persons, in the light of the affected areas involved.

These hazards are beyond the control and reasonable expectation of the growers of such potatoes and the handlers who may buy and store them. Because of these circumstances, and to provide equity among producers and handlers insofar as any regulations under the proposed order may be concerned, the committee should be given authority to issue exemption certificates, in accordance with rules and procedures approved by the Secretary, to permit qualified applicants to handle their equitable proportion of all shipments from their respective affected regions, as described in such rules and procedures. The committee by reason of its knowledge of the conditions and problems applicable to the production and storing of potatoes in the various producing regions of the production area should be well qualified to judge each applicant's case in a fair and equitable manner, in the light of the information which the applicant may furnish to substantiate his request for exemption, and to fix the quantity of exempted potatoes which each such applicant may ship. It is reasonable to require all such applicants for exemption to furnish the committee with satisfactory evidence to support their applications.

The provisions contained in the proposed order 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 reasonable and necessary to the orderly and equitable operation of the program. They should, therefore, be incorporated in the proposed order.

The authority of the Secretary to modify, change, alter, or rescind any rules or procedures established with respect to the granting of exemptions, and exemptions granted pursuant thereto should be retained by the Secretary. 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 the approval of the Secretary, to require that handlers submit to the committee such reports and information which may be necessary to perform such agency's functions under the proposed order. It is difficult to anticipate every type of report or information which the committee might need in administering the program, but it should have the authority, subject to the approval of the Secretary, to request, when needed, reports and other information of the type set forth in the proposed order. Reports requested should be only those considered necessary for the operation of the committee in carrying out the terms and conditions of the proposed order. Reports furnished to the committee should be submitted in such manner and at such times as may be designated by the committee. Reporting procedures should accord with the needs and requirements of the committee in administrating the proposed order, and changing conditions may warrant changes in the forms and methods of reporting to the committee. The Secretary should retain the right to approve, modify, change, or rescind any committee requests for information.

Any reports and records submitted for committee use by individual handlers should remain under protective classification and be disclosed to none other than persons authorized by the Secretary. Any reported information released to the industry should be on a composite basis and no such release of information should disclose either the identity of handlers or their operations. This will assure that the information contained in the reports which may identify such handler, or adversely affect the competitive position of a reporting handler in relation to other handlers, will not be disclosed.

Since it is possible that a question could arise with respect to the verification of the information contained in the reports submitted under the program, handlers should be required to maintain complete records on their receipts, handling, and dispositions of potatoes for not less than two succeeding years. Evidence shows that handlers usually keep such records for their own business operations for periods of at least two years and no hardship would be imposed by requirements of this type under the proposed order.

(k) Except as provided in the proposed order, no handler should be permitted to handle potatoes, the handling of which is prohibited pursuant to the proposed order; and no handler should be permitted to handle potatoes except in conformity with the proposed 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 or more handlers, although possibly of small impact individually on the industry measured by the proportion of potatoes handled by the respective handler, could be demoralizing to other handlers and would tend to impair operation of the program.

(l) The provisions of §§ 963.80 through 963.92 as published in the FEDERAL REGISTER of July 17, 1957 (22 F. R. 5634) are common to marketing agreements and orders now operating. Each of these sections sets forth certain rights, obligations, privileges, or procedures which are necessary and appropriate for the effective operation of the proposed order. These provisions are incidental to and not inconsistent with, sections 8c (6) and (7) of the act, and are necessary to effectuate the other provisions of the proposed order and to effectuate the declared policy of the act. The substance of such provisions should, therefore, be included in the proposed order.

Evidence presented at the hearing indicates that in the event of termination of the program such termination should be announced on or before April 30 of the calendar year so as to afford all persons subject to the proposed order reasonable time to prepare for operations for the ensuing crop year. Accordingly, the proposed order should so provide.

General findings. Upon the basis of evidence introduced at the hearing and record thereof it is found that:

(1) The marketing agreement and order hereinafter set forth, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act with respect to potatoes produced in the production area, by establishing and maintaining such orderly marketing conditions therefor as will tend to establish as prices to 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, (ii) by authorizing no action which has for its purpose the maintenance of prices to producers of such potatoes 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 potatoes as will be in the public interest;

(2) The said marketing agreement and order authorize regulation of the handling of Irish potatoes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a proposed marketing agreement and order upon which a 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 several marketing agreements and orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) The said marketing agreement and order prescribe, 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 potatoes grown in the production area; and

(5) All handling of potatoes grown in the production area as defined in 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 August 19, 1957 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

§ 963.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 963.2 *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).

§ 963.3 *Person.* "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 963.4 *Production area.* "Production area" means all territory within the Counties of Alger, Baraga, Chippewa, Delta, Dickinson, Keweenaw, Gogebic, Houghton, Iron, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft, all in the Upper Peninsula in Michigan.

§ 963.5 *Potatoes.* "Potatoes" means all varieties of Irish potatoes grown within the production area.

§ 963.6 *Varieties.* "Varieties" means and includes all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 963.7 *Seed potatoes.* "Seed potatoes" or "seed" means all potatoes officially certified and tagged, marked, or otherwise appropriately identified under the supervision of the official seed potato certifying agency of the State of Michigan or other seed certification agencies which the Secretary may recognize.

§ 963.8 *Table stock potatoes.* "Table stock potatoes" or "table stock" means and includes all potatoes not included within the definition of "seed potatoes."

§ 963.9 *Handle.* "Handle" is synonymous with "ship" and means to sell or transport potatoes, or cause potatoes to be sold or transported, within the production area or between the production area and any point outside thereof. This definition of "handle" shall not be applicable to the transportation within the production area of ungraded potatoes for grading or storing therein.

§ 963.10 *Handler.* "Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes.

§ 963.11 *Producer.* "Producer" means any person engaged in a proprietary capacity in the production of potatoes for market.

§ 963.12 *Grading.* "Grading" is synonymous with "preparing for market" and means the sorting or separating of potatoes into grades and sizes for market purposes.

§ 963.13 *Grade and size.* "Grade" means any of the officially established grades of potatoes, and "size" means any of the officially established sizes of potatoes, as defined and set forth in:

(a) The United States Standards for Potatoes issued by the United States Department of Agriculture (§§ 51.1540 to 51.1559 of this title), or amendments thereto, or modifications thereof, or variation based thereon; or

(b) United States Consumer Standards for Potatoes as issued by the United States Department of Agriculture (§§ 51.1575 to 51.1587 of this title), or amendments thereto, or modifications thereof, or variations based thereon.

§ 963.14 *Pack.* "Pack" means a quantity of potatoes in any type of container and which falls within specific weight limits or within specific grade limits, or both, recommended by the committee and approved by the Secretary.

§ 963.15 *Container.* "Container" means a sack, bag, crate, box, basket, barrel, or bulk load or any other receptacle used in the packaging, transportation or sale of potatoes.

§ 963.16 *Committee.* "Committee" means the Upper Peninsula Potato Committee established pursuant to § 963.25.

§ 963.17 *District.* "District" means each of the geographic divisions of the production area initially established or as re-established pursuant to § 963.32.

§ 963.18 *Fiscal period.* "Fiscal period" means the period beginning and ending on the dates approved by the Secretary pursuant to recommendations by the committee.

§ 963.19 *Export.* "Export" means shipment of potatoes beyond the boundaries of continental United States.

COMMITTEE

§ 963.25 *Establishment and membership.* (a) The Upper Peninsula Potato Committee consisting of nine members, of whom six shall be producers and three shall be handlers, is hereby established.

(b) Each person selected as a committee member or alternate shall be a producer or a handler, as the case may be, or an officer or employee thereof, in the district for which selected and each such person shall be a resident of such district.

(c) For each member of the committee there shall be an alternate who shall have the same qualifications as the member. The alternate member 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 for the unexpired term of said member is selected and has qualified.

§ 963.26 *Selection.* (a) The Secretary shall select from eligible persons in each district two producer members and their alternates, also one handler member and his alternate.

(b) Any person selected by the Secretary as a committee member or as an alternate shall file a written acceptance with the Secretary within ten days after being notified of such selection.

§ 963.27 *Term of office.* The term of office of committee members and alternates shall begin on July 1 and end on June 30.

(a) The term of office of producer members and alternates shall be for three years. The term of office of the initial producer members and alternates of the committee shall be so determined by the Secretary that one-third shall be for a term ending June 30, 1959, one-third for a term ending on the following June 30, and one-third for a term ending on the next following June 30.

(b) The term of office of handler members and alternates shall be for one year. The term of office of the initial handler members and alternates of the committee shall be for the term ending on June 30, 1959.

(c) No producer member and no handler member shall serve for more than three consecutive terms.

(d) 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.

§ 963.28 *Procedure.* (a) Six members of the committee shall be necessary to constitute a quorum and six 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 meeting shall be confirmed promptly in writing. When any assembled meeting is held, all votes shall be cast in person.

§ 963.29 *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 violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 963.30 *Duties.* The committee shall have the following duties:

(a) Meet and organize as soon as practical after the beginning of each term of office, select from among its membership a chairman and such other officers as may be necessary, and subcommittees, and adopt such rules and procedures for the conduct of its business as it may deem advisable.

(b) Act as intermediary between the Secretary and any producer or handler.

(c) Appoint such employees, agents, and representatives as it may deem necessary and determine the salaries and define the duties of each.

(d) 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.

(e) Furnish the Secretary promptly with copies of the minutes of each committee meeting, an annual report of the committee's operations for the then ending fiscal period, and such other reports or information as may be requested by the Secretary.

(f) Consult, cooperate, and exchange information with other marketing agreement or order committees and other agencies or individuals in connection with proper committee activities and objectives.

(g) Take any proper action necessary to carry out the provisions of this subpart.

§ 963.31 *Members' expenses and compensation.* Committee members and alternate members may be reimbursed for reasonable expenses necessarily incurred in the performance of their duties and in the exercise of their powers under this subpart; and in addition, after the first year of operation, such persons may receive compensation at a rate to be determined by the committee and approved by the Secretary, not to exceed $10.00 per day or portion thereof, spent in attending to committee business.

§ 963.32 *Districts.* (a) For the purpose of selecting committee members and alternates the following districts of the production area, each comprised of counties in the Upper Peninsula of Michigan, are hereby initially established:

District No. 1: Alger, Delta, Schoolcraft, Luce, Mackinac and Chippewa Counties;
District No. 2: Marquette, Iron, Dickinson and Menominee Counties;
District No. 3: Houghton, Baraga, Keweenaw, Ontonagon and Gogebic Counties.

(b) The Secretary, upon recommendation of the committee, may reestablish districts within the production area and may reapportion committee membership among the various districts: *Provided,* That there shall be no change in the total number of committee members or in the total number of districts. In recommending any such changes in districts or representation, the committee shall give consideration to (1) the relative importance of new producing sections; (2) changes in the relative position of existing districts with respect to production; (3) the geographic location of producing sections as they would affect the efficiency of administering this part; and (4) other relevant factors.

§ 963.33 *Nominations.* The Secretary may select the members of the Upper Peninsula Potato Committee and their respective alternates from nominations which may be made in the following manner, or from other eligible persons:

(a) The committee shall hold or cause to be held prior to May 1 of each year, after the effective date of this subpart, a meeting or meetings of producers and handlers, respectively, in each of the districts designated in § 963.32 in which the term of office of committee members, and their respective alternates, will commence the following July 1;

(b) In arranging for such meetings the committee may, if it deems desirable, utilize the services and facilities of existing organizations and agencies;

(c) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member to serve on the committee during the term beginning on the following July 1;

(d) Nominations for committee members and alternate members shall be supplied to the Secretary, in such manner and form as he may prescribe, not later than May 31 of each year;

(e) Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates;

(f) Each person who is both a handler and a producer may vote either as a handler or as a producer and may elect the group in which he votes; and

(g) Regardless of the number of districts in which a person handles or produces potatoes, 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. In the event a person is engaged in handling or producing potatoes in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees. 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.

(h) If nominations are not made within the time and in the manner specified by the Secretary pursuant to this section, the Secretary may, without regard to nominations, select the committee members and alternates on the basis of the representation provided for in this part.

§ 963.34 *Vacancies.* To fill any vacancy occasioned by the failure of any person selected as a committee member or as an alternate to qualify or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the Secretary from nominations made in the manner specified in § 963.33, or from previously unselected nominees on the current nominee list from the district involved or from other eligible persons. If the names of nominees to fill any vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in this part.

EXPENSES AND ASSESSMENTS

§ 963.40 *Budget.* At the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare a budget of expenses for the administration of this part. The committee may recommend to the Secretary a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget promptly to the Secretary with an accompanying report showing the basis for its calculations.

§ 963.41 *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. All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part. The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. In order to provide funds to carry out the functions of the committee, handlers may make advance payment of assessments.

§ 963.42 *Assessments.* (a) Handlers shall share expenses on the basis of each fiscal period. Each handler who first handles potatoes 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. Each handler's share of such expense shall be proportionate to the ratio between the total quantity of potatoes handled by him as the first handler thereof during a fiscal period and the total quantity of potatoes handled by all handlers as first handlers thereof during such fiscal period.

(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 or other available information. Such rates may be applied equitably to each pack or unit.

(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 potatoes which were handled by the first handlers thereof during such fiscal period.

§ 963.43 *Refunds and reserves.* At the end of each fiscal period funds arising from the excess of assessments collected over expenses shall be accounted for as follows:

(a) Each handler entitled to a proportionate refund of such excess assessments shall be credited with such refund against his operations of the following fiscal period unless he demands payment thereof, in which event such proportionate refund shall be paid to him as soon as practicable; or

(b) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that 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. Such reserve may be established at an amount not to exceed approximately one fiscal period's operating expenses; and such reserve may be used to cover the expenses incurred for the maintenance and functioning of the committee, at the beginning of a fiscal period, during any fiscal period when there is a crop failure, or to cover the necessary expenses of liquidation in the event of termination of this part.

(c) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

§ 963.44 *Fiscal reports.* The books of the committee shall be audited by a competent accountant at least once each fiscal period and at such other times as the committee may deem necessary or as the Secretary may request. A copy of each audit 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.

RESEARCH AND DEVELOPMENT

§ 963.47 *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 potatoes. The expenses of such projects shall be paid from funds collected pursuant to § 963.42.

REGULATION

§ 963.50 *Marketing policy*—(a) *Preparation.* Prior to each marketing season the committee shall consider and prepare a proposed policy for the marketing of potatoes. In developing its marketing policy the committee shall investigate relevant supply and demand conditions for potatoes. In such investigations the committee shall give appropriate consideration to the following:

(1) Market prices for potatoes, including prices by grade, size, quality, and maturity in different packs, or any other shipping units;

(2) Supply of potatoes by grade, size, quality, and maturity in the production area and in other potato producing areas;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for potatoes;

(5) Orderly marketing of potatoes as will be in the public interest; and

(6) Other relevant factors.

(b) *Reports.* (1) The committee shall submit a report to the Secretary setting forth the aforesaid marketing policy and it shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare a revised or new marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or new marketing policy.

§ 963.51 *Recommendations for regulations.* The committee shall recommend to the Secretary grade, size, quality, and maturity, and other appropriate regulations, or amendments thereto, or modifications thereof, whenever it finds that such regulations as provided in § 963.52 will tend to effectuate the declared policy of the act. The committee also may recommend modification, suspension, or termination of any regulation, or amendments thereto, in order to facilitate the handling of potatoes, for the purposes authorized in § 963.54. The committee may also recommend amendment, termination, or suspension of any regulation issued under this part.

§ 963.52 *Issuance of regulations.* (a) The Secretary shall limit the shipment of potatoes whenever he finds from the recommendations 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 limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, qualities or maturity of any or all varieties of table stock or of seed potatoes, or both, during any period;

(2) Regulate the handling of particular grades, sizes, qualities, or maturities of potatoes differently, for different varieties, for table stock, for seed, for different portions of the production area, for different markets, for different packs, for different sizes and types of containers, or for any combination of the foregoing, during any period;

(3) Fix, through regulations issued pursuant to this part, the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of potatoes, or both;

(4) Establish in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) The Secretary may amend or modify any regulations issued under this subpart whenever he finds that such amendment or modification would tend to effectuate the declared policy of the act. The Secretary may also suspend or terminate any regulation whenever he finds that such regulation obstructs or no longer tends to effectuate the declared policy of the act.

(c) The Secretary shall notify the committee of the issuance of any such regulation, amendment, modification, suspension, or termination and the committee shall give reasonable notice thereof to handlers.

§ 963.53 *Minimum quantities.* The committee, with the approval of the Secretary, may establish minimum quantities below which handling will be free from requirements in effect pursuant to §§ 963.42, 963.52, 963.54, or 963.60, or any combination thereof.

§ 963.54 *Handling for specified purposes.* (a) Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary may issue special regulations, or modify, suspend, or terminate requirements in effect pursuant to §§ 963.42, 963.52, 963.60, or any combination thereof, in order to facilitate the handling of potatoes for the following purposes whenever he finds that to do so will tend to effectuate the declared policy of the act:

(1) Shipments of potatoes for export;

(2) Shipments of potatoes for relief or to charitable institutions;

(3) Shipments of potatoes for manufacture into specified products or by-products;

(4) Shipments of potatoes for livestock feed within the production area;

(5) Shipments of potatoes for planting within the production area; and

(6) Shipments of potatoes for other specified purposes.

(b) Whenever the handling of seed potatoes is not subject to the same regulations as is the handling of table stock potatoes, in effect pursuant to §§ 963.42, 963.52, and 963.60, the committee, with the approval of the Secretary, may prescribe adequate safeguards, pursuant to § 963.55, to prevent diversion of such shipments from seed potato channels.

§ 963.55 *Safeguards.* (a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent potatoes shipped pursuant to § 963.54 from entering channels of trade for other than the specific purpose authorized therefor.

(b) The committee, with the approval of the Secretary, may also prescribe rules and regulations 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 first file applications with the committee to ship such potatoes;

(2) Handlers shall obtain inspection provided by § 963.60, or pay the pro rata share of expenses provided by § 963.42, or both, in connection with such potatoes; and

(3) Handlers shall obtain Certificates of Privilege from the committee prior to effecting the particular shipments.

(c) The committee may rescind or deny Certificates of Privilege to any handler if proof is obtained that potatoes shipped by him for the purposes stated in the Certificate of Privilege were handled contrary to the provisions of this part.

(d) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(e) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of potatoes covered by such applications, the number of such applications denied and certificates granted, the quantity of potatoes handled under duly issued certificates, and such other information as may be requested.

INSPECTION

§ 963.60 *Inspection and certification.* (a) During any period in which the handling of potatoes is regulated pursuant to this subpart, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal or Federal-State Inspection Service, and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to this section or § 963.53 or § 963.54 or both.

(b) Regrading, resorting, or repacking any lot of potatoes shall invalidate any prior inspection certificates insofar as the requirements of this section are concerned. No handler shall handle potatoes after they have been regraded, resorted, repacked, or in any way further prepared for market, unless such potatoes are inspected by an authorized representative of the Federal or Federal-State Inspection Service: *Provided*, That such inspection requirements on regraded, resorted, or repacked potatoes may be modified, suspended, or terminated under rules and regulations recommended by the committee and approved by the Secretary.

(c) Upon recommendation of the committee, and approval of the Secretary, potatoes so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of the Federal or Federal-State inspector or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) 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.

(e) When potatoes 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.

(f) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of potatoes by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or such evidence thereof as may be issued by the inspection service, which shall be surrendered to such authority as may be designated.

EXEMPTIONS

§ 963.65 *Rules and procedures.* The committee may adopt, with approval of the Secretary, the rules and procedures for handling exemptions. Such rules and procedures shall provide for processing applications for exemptions, for issuing certificates of exemption, for committee determinations with respect to areas and averages (as required by § 963.66), and for such other procedures as may be necessary to carry out the provisions in this section and § 963.66.

§ 963.66 *Granting exemptions.* (a) The committee shall make determinations in connection with, and issue, certificates of exemption to any producer who applies for such exemption and furnishes adequate evidence to the committee:

(1) That by reason of a regulation issued pursuant to § 963.52 he will be prevented from shipping or having shipped as large a proportion of his production as the average proportion of production shipped by all producers in said applicant's immediate production area during the current season; and

(2) That the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the producer to ship or have shipped the potatoes described thereon and evidence of such certificate shall be made available to subsequent handlers of such potatoes.

(b) The committee shall make determinations in connection with, and issue, certificates of exemption to any handler who applies for such exemption and furnishes adequate evidence to the committee:

(1) That by reason of a regulation issued pursuant to § 963.52 he will be prevented from handling as large a proportion of his storage holdings of ungraded potatoes, acquired during or immediately following the digging season, as the average proportion of ungraded storage holdings handled by all handlers in said applicant's immediate shipping area during the season; and

(2) That the grade, size, or quality of the applicant's potatoes have been adversely affected by acts beyond the applicant's control and by acts beyond reasonable expectation. Each certificate shall permit the handler to handle the potatoes described thereon and evidence of such certificate shall be made available to subsequent handlers of such potatoes.

§ 963.67 *Investigation.* The committee shall be permitted at any time to make a thorough investigation of any applicant's claim pertaining to exemptions.

§ 963.68 *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. The appeal must be taken promptly after such determination by the committee. 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 determination concerning the application, which determination shall be final. 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.

REPORTS

§ 963.70 *Reports.* Upon the 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, reports and other information as may be necessary for the committee to perform its duties under this part. In this connection:

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The quantities of potatoes received and disposed of by types of outlets during specific periods;

(2) Sales records including dates, car or truck numbers, and inspection certificate numbers;

(3) Record of shipments handled under exemption certificates including identification numbers of such certificates;

(4) Record of all potatoes handled pursuant to §§ 963.53 and 963.54 including Certificate of Privilege and inspection certificate numbers, if any.

(b) All such reports shall be held under appropriate protective classification in custody by the committee, or duly authorized individuals or agencies thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers, or identify such handler, 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 potatoes received and disposed of by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

COMPLIANCE

§ 963.75 *Compliance.* No handler shall handle potatoes except in conformance with the provisions of this subpart

and the rules and regulations issued thereunder.

MISCELLANEOUS PROVISIONS

§ 963.80 *Amendments.* Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

§ 963.81 *Right of the Secretary.* 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 under the act or otherwise. The members of the committee (including successors and alternates), and any agent or employee of the committee, shall be subject to removal by the Secretary at any time. Each and every act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same. Upon such disapproval, the disapproved action 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.

§ 963.82 *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.

§ 963.83 *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 operation 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 of potatoes for market: *Provided,* That such majority has, during such representative period, produced for market more than fifty percent of the volume of such potatoes produced for market; but such termination shall be effective only if announced on or before April 30 of the then current fiscal period.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 963.84 *Proceedings after termination, or when suspended.* (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 settling the affairs of the committee by liquidating all 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. The said trustees shall continue in such capacity until discharged by the Secretary and shall proceed pursuant to directions of the Secretary's liquidation order.

(b) During any period of suspension of this subpart, or during any period or periods when regulations thereunder are not in effect, the committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as trustee or trustees for holding records, funds, or any other committee property. If the Secretary determines such action to be appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

(c) Any person to whom funds, property, claims, or records 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.

§ 963.85 *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.

§ 963.86 *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.

§ 963.87 *Personal liability.* (a) 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.

(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 or alternate of the committee he shall account for all receipts, disbursements, funds, and property (including but not being limited to books and other records) pertaining to such committee's activities for which he is responsible and deliver all such property and funds in his hands to such successor, agency, or person as may be designated by the Secretary, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the designated successor, agency, or person the right to all such property and funds and all claims vested in such member or alternate.

§ 963.88 *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.

§ 963.89 *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.

§ 963.90 *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]

§ 963.91 *Additional parties.* After the effective date hereof, any handler who has 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]

§ 963.92 *Order with marketing agreement.* Each signatory handler favors and approves the issuance of an order by the Secretary regulating the handling of potatoes 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]

Dated: December 20, 1957.

[SEAL] F. R. BURKE,
Acting Deputy Administrator,
Marketing Services.

[F. R. Doc. 57-10684; Filed, Dec. 26, 1957; 8:49 a. m.]

CIVIL AERONAUTICS BOARD

[14 CFR Part 46]

SCHEDULED AIR CARRIER HELICOPTER CERTIFICATION AND OPERATION RULES

NOTICE OF ORAL ARGUMENT

By notice dated January 19, 1956, (Civil Air Regulations Draft Release No. 56-2) published in the FEDERAL REGISTER on January 28, 1956, (21 F. R. 631), the Board gave notice that it had under consideration the adoption of a new Part 46

[1] Applicable only to the proposed marketing agreement.

of the Civil Air Regulations designed to provide rules for the certification and operation of scheduled air carrier helicopters. Reference should be made to the said notice for a full explanation of the purpose and background of the proposed rule. Copies of Draft Release 56–2 may be obtained from the Director, Bureau of Safety, Civil Aeronautics Board, Washington 25, D. C.

Pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended, notice is hereby given that oral argument is assigned to be held before the Civil Aeronautics Board on January 14, 1958, at 10:00 a. m., in Room 5042, Department of Commerce Building, Washington, D. C., at which time interested persons may be heard with respect to the proposed flight time limitations of new Part 46.

In Civil Air Regulations Draft Release No. 56–2, flight time is defined as "the time from the moment the rotors start turning for the purpose of flight until the rotors stop turning at the end of the flight." Some of the comments received concurred in the use of this definition. However, others objected and recommended that the definition of flight time should correspond with that contained in Part 40 of the Civil Air Regulations. The definition of flight time in Part 40 is stated as "the time from the moment the airplane moves under its own power for the purpose of flight until it comes to rest at the next point of landing (block-to-block time)." In view of the foregoing, the Board desires to hear oral argument with respect to the definition of flight time to be used in Part 46. Those desiring to be heard are requested to inform Mr. Oscar Bakke, Director, Bureau of Safety, Civil Aeronautics Board, Washington 25, D. C., at least 5 days in advance of the oral argument.

Such oral presentation may be in explanation of, in addition to, or in lieu of written comment submitted pursuant to the previous notice (Draft Release 56–2).

(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.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 57–10750; Filed, Dec. 26, 1957; 8:57 a. m.]

[14 CFR Part 241]

[Economic Regulations Draft Release 88]

FILING OF REPORTS BY CERTIFICATED AIR CARRIERS

NOTICE OF PROPOSED RULE MAKING

DECEMBER 5, 1957.

Notice is hereby given that the Civil Aeronautics Board has under consideration an amendment to Part 241 of the Economic Regulations (14 CFR Part 241) which rescinds the provision that preliminary year-end schedules of CAB Form 41 will be withheld from public disclosures.

The principal features of the proposed amendment are explained in the explanatory statement, and the proposed amendment is set forth in the proposed rule.

This amendment is proposed under authority of sections 205 (a) and 407 of the Civil Aeronautics Act of 1938, as amended (52 Stat. 984, 1000; 49 U. S. C. 425, 487).

Interested persons may participate in the proposed rule making through submission of written data, views, or arguments pertaining thereto, in triplicate, addressed to the Secretary, Civil Aeronautics Board, Washington 25, D. C. All relevant matter in communications received on or before January 27, 1958, will be considered by the Board before taking further action on the proposed rule. Copies of such communications will be available on or after January 30, 1958, for examination by interested persons in the Docket Section of the Board, Room 5412, Commerce Building, Washington, D. C.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

Explanatory statement. The Board, in accordance with section 1104 of the Civil Aeronautics Act, has authorized the withholding from public disclosure of preliminary year-end Form 41 reports upon an affirmative showing that disclosure would adversely affect the interests of the carrier and would not be in the public interest. In recognition of the frequency with which authorization of confidential treatment generally had been granted in the past, the present regulations were designed to provide for automatic confidential treatment of such preliminary reports unless otherwise directed by the Board.

Notwithstanding the fact that confidential treatment has been accorded these preliminary reports, portions of such reports in some instances have been used publicly by the carriers. In these cases, as well as in cases where a carrier would not necessarily have requested confidential treatment of its reports, the Board's staff is precluded from making public disclosure of these reports. Under the circumstances, the Board believes it appropriate to rescind the present provisions in the revised Uniform System of Accounts with respect to confidential treatment of preliminary year-end reports, and to amend section 399.25 of the Board's Policy Statement No. 1 by providing that when a request for such treatment is granted, it will be the general policy of the Board to restrict the preliminary report until such time as (1) the final report is filed, (2) the final report is due, or (3) information covered by the preliminary report is publicly released by the carrier concerned, whichever first occurs.

Accordingly, it is proposed to amend Part 241 of the Economic Regulations (14 CFR Part 241) by deleting the second sentence under § 241.22 (b) which reads as follows: "Preliminary year-end schedules are filed for the convenience of the Civil Aeronautics Board pending receipt of the final regular year-end Form 41 report and shall be withheld from public disclosure, unless directed otherwise by the Civil Aeronautics Board, until the herein prescribed due date of the final report or the final report is filed whichever first occurs."

[F. R. Doc. 57–10749; Filed, Dec. 26, 1957; 8:57 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

The Bureau of Land Management has filed an application, Serial No. F. 014962, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the mining laws, but excepting the provisions of the mineral leasing laws, and the Materials Act. The applicant desires the land for public recreational purposes.

For a period of 60 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, Box 480, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

DONNELLY DOME AREA

U. S. Survey 2283;
Containing 10 acres.

EDWARD J. HOFFMANN,
Acting Operations Supervisor,
Anchorage.

[F. R. Doc. 57–10689; Filed, Dec. 26, 1957; 8:50 a. m.]

ALASKA

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

Bureau of Land Management has filed an application, Serial No. F. 014424, for the withdrawal of the lands described below, from all forms of appropriation

including mining but excepting mineral leasing and the disposal of materials under the Materials Act. The applicant desires the land for an administrative site.

For a period of 60 days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, Box 480, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

NORTHWAY ADMINISTRATIVE SITE

A parcel of land situated on the southerly side of the Alaska Highway and easterly side of the Northway Road in the immediate vicinity of their junction at approximate Latitude 63°00'54" N., Longitude 141°47'00" W., more particularly described as follows:

Starting at Corner No. 1 which is Corner No. 4 of U. S. Survey No. 2781 and the Point of Beginning of this description, thence N. 54°57' W. 1.5 chains to Corner 2, centerline of Northway Road; thence N. 35°03' E. 15.57 chains along said centerline to Corner 3, centerline of the Alaska Highway; thence S. 54°57' E. 10 chains along said centerline to Corner 4; thence S. 35°03' W. 15.57 chains to Corner 5; thence N. 54°57' W. 3.4 chains to Corner 6, which is Corner No. 3 of U. S. Survey No. 2781; thence N. 54°57' W. 5.1 chains along boundary 3–4 of said Survey to Corner 1 of this description and the point of beginning.

Containing approximately 15.57 acres.

EDWARD J. HOFFMANN,
Acting Operations Supervisor,
Anchorage.

[F. R. Doc. 57–10690; Filed, Dec. 26, 1957; 8:50 a. m.]

UTAH (V–6)

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

DECEMBER 18, 1957.

Pursuant to the authority delegated to me by Order No. 541, section 2.5 of the Director, Bureau of Land Management, approved April 21, 1954 (19 F. R. 2473–2476), it is ordered as follows:

1. The following described lands are hereby opened to application and disposition under the public land laws, including the mineral leasing laws and the general mining laws:

SALT LAKE MERIDIAN, UTAH

T. 38 S., R. 23 E.,
Secs. 13, 14, 15, 17, 18;
Secs. 20 to 25, inclusive;
Secs. 27 to 29, inclusive.
T. 38 S., R. 24 E.,
Secs. 13, 14, 15;
Secs. 17 to 27, inclusive;
Sec. 29: W½;
Sec. 30.
T. 38 S., R. 25 E.,
Secs. 33, 34, 35.
T. 39 S., R. 22 E.,
Sec. 13: that part of E½ lying west of Recapture Creek;
Secs. 21, 22, 23;
Sec. 24: that part lying west of Recapture Creek;
Sec. 25: that part of E½ lying west of Recapture Creek.
T. 39 S., R. 23 E.,
Secs. 18 and 19: those portions lying west of Recapture Creek.
T. 39 S., R. 25 E.,
Sec. 4.

2. The above-described lands were withdrawn in aid of legislation by order of the Secretary of the Interior, dated February 8, 1957, which withdrew the lands from all types of disposal or location, but which was revoked by order of the Secretary, dated June 29, 1957.

3. The following described lands are hereby opened to application under the mineral leasing laws, but not to disposal under the public land laws or to location under the general mining laws:

SALT LAKE MERIDIAN, UTAH

T. 38 S., R. 23 E.,
Secs. 26, 33, 34, 35.
T. 38 S., R. 24 E.,
Sec. 28;
Sec. 29: E½;
Secs. 31, 33, 34, and 35.
T. 39 S., R. 22 E.,
Sec. 13: E½ that portion lying east of Recapture Creek;
Sec. 24: that portion lying east of Recapture Creek;
Sec. 25: E½, that portion lying east of Recapture Creek.
T. 39 S., R. 23 E.,
Secs. 1, 3, 4, 5;
Secs. 8 to 15, inclusive;
Sec. 17;
Secs. 18 and 19, those portions lying east of Recapture Creek;
Secs. 20 to 31, inclusive;
Secs. 33, 34, 35.
T. 39 S., R. 24 E.,
Sec. 1;
Secs. 3 to 15, inclusive;
Secs. 17 to 24, inclusive;
Secs. 26 and 27, those portions lying north and west of the Navajo Indian Reservation;
Secs. 28, 29, 30, 31, 33;
Sec. 34, that portion lying north and west of the Navajo Indian Reservation.
T. 39 S., R. 25 E.,
Secs. 5, 6, 7, 8, 18.

4. The lands described in item 3, above, were withdrawn from all types of disposal or location by the order of February 8, 1957, but that order was revoked and the lands were re-withdrawn by order of the Secretary of the Interior, dated June 29, 1957, which order did not withdraw the lands from application under the mineral leasing laws.

5. All of the above lands are located in the McCracken Mesa area to the southeast of Blanding, Utah, and are, in general, rough and mountainous in character. The area is dissected by numerous steep and rocky canyons. The climate is arid and none of the land is suitable for the production of crops by dry farm methods. There are no known sources of irrigation water from surface streams or reservoirs.

6. No applications for the lands described in item 1 may be allowed under the homestead, desert-land, small tract, or any other nonmineral public-land law unless the lands have already been classified as valuable or suitable for such type of application, or shall hereafter be so classified. Any application filed will be considered on its merits. The land will not be subject to occupancy or disposition until it has been classified.

7. Subject to any valid existing rights and the requirements of applicable laws, the above lands are opened to filing of applications in accordance with the following:

(a) Applications and selections under the nonmineral public land laws as to the lands in item 1, and applications and offers under the mineral leasing laws as to the lands in items 1 and 3 may be presented to the manager mentioned below beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the homestead, desert-land, and small tract laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747, 43 U. S. C. 279–284, as amended), presented prior to 10:00 a. m. on January 23, 1958, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m. on April 24, 1958, will be governed by the time of filing.

(3) All valid applications and selections under the nomineral public land laws, other than those coming under paragraphs (1) and (2) above, presented prior to 10:00 a. m. on April 24, 1958, will be considered as simultaneously filed at that hour. Priorities of such applications filed thereafter will be governed by the time of filing.

(4) All applications and offers under the mineral leasing laws for lands in item 1 presented prior to 10:00 a. m. on April 24, 1958, will be considered as simultaneously filed at that hour. Priorities of such applications and offers presented thereafter will be governed by the time of filing.

(5) Applications and offers under the mineral leasing laws for the lands in item 3 presented prior to 10:00 a. m. on January 8, 1958, will be considered as simultaneously filed at that hour, and those filed thereafter will be given priority in accordance with the time of filing.

(b) The lands described in item 1 will be open to location under the general mining laws beginning at 10:00 a. m. on April 24, 1958.

8. Persons claiming veterans preference must enclose with their applications

proper evidence to support such claims of preference, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference or equitable claims must enclose properly corroborated statements in support of their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands must be addressed to the Manager, Land Office, Bureau of Land Management, 312 Federal Building, P. O. Box 777, Salt Lake City 10, Utah.

VAL B. RICHMAN,
State Supervisor.

[F. R. Doc. 57-10691; Filed, Dec. 26, 1957; 8:50 a. m.]

[Serial No. Idaho 08819]

IDAHO

SMALL TRACT CLASSIFICATION ORDER NO. 7; AMENDMENT

DECEMBER 18, 1957.

Pursuant to authority delegated to me by Bureau Order No. 541, dated April 21, 1954 (19 F. R. 2473), I hereby reclassify, subject to valid existing rights, part of the land described in Idaho Small Tract Classification Order No. 7, dated May 18, 1950 (F. R. Document 50-4444) as follows:

BOISE MERIDIAN, IDAHO

PARCEL #1

T. 1 N., R. 43 E.,
Sec. 1, E½W½SE¼SW¼NE¼, E½SE¼SW¼NE¼, W½W½SW¼SE¼NE¼.

PARCEL #2

T. 1 N., R. 43 E.,
Sec. 1, NE¼.

PARCEL #3

T. 1 N., R. 44 E.,
Sec. 17, SW¼SE¼, E½SE¼.

Parcel #1 is classified for disposition under the Recreation and Public Purposes Act for use as a community park and the existing Small Tract classification on Parcel #1 is revoked.

The unleased lots in that portion of Parcel #2 described in Small Tract Classification Order #7, which have remained in an unleased status since May 18, 1950, will be included in a public auction set to dispose of lots in terminated leases. The time, date, and conditions of the sale will be set and publicized by the Manager of the Idaho Land Office.

The Small Tract classification is revoked with respect to Parcel #3 and the land is returned to the public domain. Because of scattered outstanding leases, Parcel #3 will not be subject to selection, application or location until an appropriate order of opening is issued.

J. R. PENNY,
State Supervisor.

[F. R. Doc. 57-10692; Filed, Dec. 26, 1957; 8:51 a. m.]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Treasury Dept. Order 177-16]

FISCAL ASSISTANT SECRETARY OF THE TREASURY

DELEGATION OF AUTHORITY WITH RESPECT TO CERTAIN DUTIES AND FUNCTIONS

By vritue of the authority vested in me by section 3646 of the Revised Statutes, as amended, 31 U. S. C. 528, and by Reorganization Plan No. 26 of 1950, it is hereby ordered as follows:

1. There is hereby delegated to the Fiscal Assistant Secretary of the Treasury, with the right to redelegate, authority to perform any function of the Secretary of the Treasury under section 3646 of the Revised Statutes, as amended, relating to the issuance of substitutes for lost, stolen, destroyed, mutilated or defaced checks of the United States.

2. Personnel, equipment and records heretofore or hereafter utilized in the performance of the functions herein delegated may be transferred by the Fiscal Assistant Secretary of the Treasury to any bureau or office of the Fiscal Service to which such functions are redelegated by him.

3. Funds heretofore or hereafter appropriated to any bureau or office of the Fiscal Service for the performance of the functions herein delegated may be transferred, with the approval of the Secretary of the Treasury, to the appropriation of any other bureau or office of the Fiscal Service to which such functions are redelegated.

4. This order shall be effective January 1, 1958, and shall supersede all prior delegations and orders inconsistent herewith.

Dated: December 18, 1957.

[SEAL] LAURENCE B. ROBBINS,
Acting Secretary of the Treasury.

[F. R. Doc. 57-10720; Filed, Dec. 26, 1957; 8:55 a. m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

MISSISSIPPI

DESIGNATION OF AREA FOR PRODUCTION EMERGENCY LOANS

For the purpose of making production emergency loans pursuant to section 2 (a) of Public Law 38, 81st Congress (12 U. S. C. 1148a-2 (a)), as amended, it has been determined that in the following counties in the State of Mississippi a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

MISSISSIPPI

Jefferson Davis.	Rankin.
Kemper.	Smith.
Lowndes.	Tishomingo.
Marshall.	Union.
Neshoba.	Walthall.
Noxubee.	Winston.
Oktibbeha.	

Pursuant to the authority set forth above, production emergency loans will not be made in the above-named counties after December 31, 1958, except to applicants who previously received such assistance and who can qualify under established policies and procedures.

Done at Washington, D. C., this 23d day of December 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57-10686; Filed, Dec. 26, 1957; 8:50 a. m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-23]

NUCLEAR DEVELOPMENT CORPORATION OF AMERICA

NOTICE OF PROPOSED ISSUANCE OF FACILITY LICENSE

Please take notice that the Atomic Energy Commission proposes to issue a facility license to Nuclear Development Corporation of America substantially in the form set forth below unless within fifteen (15) days after filing of this notice with the Federal Register Division a request for a formal hearing is filed with the Commission in accordance with the Commission's rules of practice (10 CFR Part 2). The proposed license would authorize Nuclear Development Corporation of America to possess the critical experiment facility at the site near Pawling, New York described in its application for license. Construction of the facility was authorized by Construction Permit No. CPCX-3, issued on June 11, 1956. The facility has been inspected by representatives of the Commission and found to have been constructed in accordance with the terms and conditions of the construction permit. For further details see the application for license at the Commission's Public Document Room, 1717 H Street, NW., Washington, D. C.

Dated at Washington, D. C., this 19th day of December 1957.

For the Atomic Energy Commission.

H. L. PRICE,
Director,
Division of Civilian Application.

PROPOSED LICENSE

1. On March 5, 1956, Nuclear Development Corporation of America filed an application for a Class 104 license to construct, possess and operate a critical experiment facility (hereinafter "the facility") at a site near Pawling, New York. Amendments to its application were filed on April 13, May 10, 1956, and November 26, 1957. The original application and amendments thereto are hereinafter referred to as "the application". On June 11, 1956, the Atomic Energy Commission (hereinafter "the Commission") issued Construction Permit No. CPCX-3 authorizing construction of the facility described in the application. Representatives of the Commission have inspected the facility and found it to have been constructed in compliance with the terms and conditions of the construction permit.

2. The Commission finds that:

a. The facility authorized for construction by Construction Permit No. CPCX-3, dated

June 11, 1956, and issued to Nuclear Development Corporation of America, has been constructed in conformity with the application and in conformity with the Atomic Energy Act of 1954, as amended, and the rules and regulations of the Commission; and

b. Issuance of a license to possess the facility will not be inimical to the common defense and security or to the health and safety of the public.

3. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses Nuclear Development Corporation of America pursuant to Section 104 (c) of the Atomic Energy Act of 1954, as amended, and Title 10, CFR, Chapter I, Part 50, "Licensing of Production and Utilization Facilities", to possess the facility as a utilization facility.

4. This license shall be deemed to contain and be subject to the conditions specified in Section 50.54 of Part 50; is subject to all applicable provisions of the Atomic Energy Act of 1954, as amended, and rules, regulations and orders of the Commission now or hereafter in effect.

5. No critical experiment may be conducted in the facility until a description of the experiment and a hazards evaluation report shall have been submitted to the Commission and the Commission shall have specifically authorized the experimental activity.

6. This license is effective as of the date of issuance and shall expire at midnight, June 11, 1966.

For the Atomic Energy Commission.

———— ————,
Director,
Division of Civilian Application.

Date of issuance:

[F. R. Doc. 57-10680; Filed, Dec. 26, 1957; 8:48 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

CALIFORNIA ASSOCIATION OF PORT AUTHORITIES

NOTICE OF AGREEMENT FILED FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, (39 Stat. 733, 46 U. S. C. 814):

Agreement No. 7345-6, between the members of the California Association of Port Authorities, modifies the approved basic agreement of that Association (No. 7345, as amended) (1) by substituting the name "Federal Maritime Board" for that of "United States Maritime Commission" in specified articles, (2) to increase, from 5 to 10, the number of days notice a party is required to give to the President and Executive Secretary of the Association of changes in rates, charges, classifications, rules, regulations, and practices, and (3) to provide that, unless otherwise determined by the members, the principal office of the Association shall be at the office of the Executive Secretary in San Francisco instead of at the port in which the office of the President is located. Agreement No. 7345, as amended, provides for the establishment and maintenance of just and reasonable, and so far as practicable, uniform terminal rates, charges, classifications, rules, regulations, and practices at the members terminals in the State of California.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

By order of the Federal Maritime Board.

Dated: December 20, 1957.

GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 57-10712; Filed, Dec. 26, 1957; 8:54 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 9073]

CONTINENTAL AIR LINES, INC.

NOTICE OF HEARING

In the matter of the application of Continental Air Lines, Inc., for an amendment of its certificate to remove a restriction so as to permit the carrier to provide one-plane service between Colorado Springs, Colorado, on the one hand, and Chicago, Illinois, and Los Angeles, California, on the other.

Notice is hereby given that a hearing in the above-entitled proceeding is assigned to be held on January 6, 1958, at 10:00 a. m., e. s. t., in Room E-210, Temporary Building No. 5, 16th Street and Constitution Avenue NW., Washington, D. C., before Curtis C. Henderson, Hearing Examiner.

Dated at Washington, D. C., December 20, 1957.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57-10687; Filed, Dec. 26, 1957; 8:50 a. m.]

CIVIL SERVICE COMMISSION

CERTAIN INTERNAL REVENUE AGENT AND COLLECTION OFFICER POSITIONS IN EL CENTRO, CALIF.

NOTICE OF INCREASE IN MINIMUM RATES OF PAY

Under the provisions of Section 803 of the Classification Act of 1949, as amended (68 Stat. 1106; 5 U. S. C. 1133), pursuant to 5 CFR 25.103, 25.105, the Commission has increased the minimum rates of pay for all classes of positions in the following series and grades:

Internal Revenue Agent Series GS-512-0:

GS-7, $5,335 p. a.—Seventh step.
GS-9, $6,250 p. a.—Seventh step.
GS-11, $7,465 p. a.—Sixth step.
GS-12, $8,000 p. a.—Third step.

Internal Revenue Collection Officer Series GS-1169-0:

GS-7, $5,335 p. a.—Seventh step.
GS-9, $6,250 p. a.—Seventh step.

These increases will be effective on the first day of the first pay period which begins after December 18, 1957, and will be applicable to all such positions in El Centro, California.

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

[F. R. Doc. 57-10710; Filed, Dec. 26, 1957; 8:54 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-9447]

SOUTHERN PRODUCTION CO., INC.

ORDER SUBSTITUTING RESPONDENT

This rate proceeding was initiated on October 10, 1955, when the Commission deferred the use of and suspended Supplement No. 4 to Southern Production Company, Inc.'s (Southern Production) FPC Gas Rate Schedule No. 3. The aforesaid supplement contained increased rates and charges for the sale of natural gas by Southern Production to Southern Natural Gas Company (Southern Natural), subject to the jurisdiction of the Commission, pursuant to an agreement dated January 8, 1952, between Southern Production and Humble Oil & Refining Company (Humble). The aforesaid agreement provides that Southern Production is to deliver gas from the Pledger Field, Brazoria County, Texas, to Humble in exchange for gas delivered to Southern Natural by Humble from its production in the Duck Lake and Lake Sands fields in Louisiana.

Presently, this rate proceeding (involving the operations of Southern Production in the Pledger Field) is pending before a presiding examiner of the Commission.

Southern Production and Sinclair Oil & Gas Company (Sinclair), on March 1, 1957, filed a joint motion for leave to substitute Sinclair in place of Southern Production as respondent. Movants state that on November 1, 1956, subsequent to the commencement of hearings in this proceeding, Sinclair acquired the gas properties of Southern Production in the Pledger Field, subject to the January 8, 1952, agreement between Southern Production and Humble, and, in consequence, Sinclair assumed and undertook from November 1, 1956, the obligations of Southern Production to make the sale of natural gas to Southern Natural involved in this proceeding. Under date of December 17, 1956, Sinclair tendered its agreement and undertaking to comply with the provisions of the order issued in this proceeding on June 14, 1956, making the proposed increased rates effective subject to refund. This undertaking was accepted for filing on March 1, 1957.

Movants also state that, pursuant to §§ 154.65 and 250.4 of the Commission's Regulations under the Natural Gas Act (18 CFR 154.65 and 250.4), Sinclair, on November 30, 1956, filed its certificate of adoption of Southern Production's FPC Gas Rate Schedule No. 3, including Supplement No. 4 thereto. It also appears that by order issued April 15, 1957, in Docket No. G-11229, 17 FPC 532, Sin-

clair obtained authorization to continue to make this sale to Southern Natural.

The Commission finds: It is appropriate to carry out the provisions of the Natural Gas Act that Sinclair Oil & Gas Company be substituted as respondent in this proceeding for the reasons set forth in the joint motion filed herein on March 1, 1957, and that this proceeding be redesignated as hereinafter ordered.

The Commission orders: Sinclair Oil & Gas Company be and it is hereby substituted for Southern Production Company, Inc., as respondent and this proceeding be redesignated as "In the Matter of Sinclair Oil & Gas Company (successor in interest to Southern Production Company, Inc.), Docket No. G-9447."

Issued: December 20, 1957.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-10696; Filed, Dec. 26, 1957; 8:51 a. m.]

[Docket No. G-13130]

UNITED GAS PIPE LINE CO.

NOTICE OF APPLICATION AND DATE OF HEARING

Take notice that United Gas Pipe Line Company (Applicant), a Delaware corporation, with its principal place of business at Shreveport, Louisiana, filed on August 23, 1957, an application for a certificate of public convenience and necessity, authorizing the construction and operation of farm taps and rural service facilities for the sale of natural gas to Escambia Natural Gas Service Company (Escambia) in Escambia County, Florida, for resale, and for the sale of natural gas to the towns of Atmore, Brewton and Flomaton in Baldwin and Escambia Counties, Alabama, for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the aforesaid taps and rural service facilities along the right-of-way traversed by its 40.1 mile long, 8-inch diameter lateral transmission line being constructed to supply gas to the Container Corporation of America plant near Brewton, Alabama. The Escambia Natural Gas Service Company has indicated a willingness to render service to Florida customers with gas supplied through Applicant's pipeline. Applicant states that it "will timely file new service agreement with the towns of Atmore, Brewton and Flomaton to provide for the additional service." It appears that the contemplated service to Escambia and the aforesaid towns is to be rendered pursuant to obligations of United under right-of-way agreements. Financing of the taps will be made from current working funds.

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 January 21, 1958 at 9:30 a. m., e. 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 appliction: *Provided, however,* that the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

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 January 14, 1958. 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 intermediate decision procedure in cases where a request therefor is made.

Issued: December 20, 1957.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-10697; Filed, Dec. 26, 1957; 8:51 a. m.]

[Docket No. G-13951]

TEXAS ILLINOIS NATURAL GAS PIPELINE CO.

ORDER PROVIDING FOR HEARING AND SUSPENDING PROPOSED TARIFF SHEETS

Texas Illinois Natural Gas Pipeline Company (Texas Illinois), on November 21, 1957, tendered for filing Fifth Revised Sheets Nos. 5 and 9, Fourth Revised Sheets Nos. 6 and 10, and Third Revised Sheets Nos. 11 and 12-A to its FPC Gas Tariff, Original Volume No. 1, proposing to make effective as of December 21, 1957, increased rates and charges for the sale of natural gas for resale. Such revised tariff sheets would effect an increase in rates and charges of about $2,723,000 annually, or 5.6 percent, based on sales for the year ended August 31, 1957, as adjusted.

The proposed increased rates and charges are based on (1) a claimed general increase in operating expenses, including wages and purchased gas costs, and (2) a claimed rate of return of 6½ percent.

More specifically, the claimed major adjustments include, among others, (a) an adjustment of purchased gas costs by a net of $1,310,171, including $1,243,224 assertedly based upon increased contract rates of producer-suppliers and estimated changes in natural gas supply sources and prices, which may or may not occur; (b) return of $9,738,152 predicated upon a claimed annual rate of return of 6½ percent upon a claimed year-end rate base of $149,817,730, which rate of return may not be fair and reasonable; (c) claimed income tax expense allowance of $6,285,419, of which Federal income taxes are estimated to be $6,174,282, associated with the claimed rate of return of 6½ percent; and (d) use of year-end net rate base instead of an average net rate base, an adjustment which may not be proper.

The effect of all the adjustments is a claimed cost of service for the test year of $51,472,824, of which amount Texas Illinois proposes to recoup $51,464,153 through the following increased rates and charges for jurisdictional sales:

	Present	Proposed	Increase
Rate schedule CD-1 and CD-2 (general service):			
Demand charge	$2.06	$2.39	$0.33
Commodity charge	*Cents* 19.57	*Cents* 0.20	*Cents* 0.43
Rate schedule I-1 (interruptible service): Commodity charge	20.17	0.20	0.17
Rate schedule X-1 (cushion gas): Commodity charge	26.35	27.86	1.51

In increasing the presently effective rates for general service, Texas Illinois has increased the commodity charge to 20¢ per Mcf, and proposes to recoup the remaining costs by increasing the demand charge. Texas Illinois appears to be of the view that 20¢ is as high as the commodity charge should be without, as put by Texas Illinois, jeopardizing the estimated sales. It appears that the predetermined limitation on the level of the commodity charge, in effect, transfers to the demand side of the rate $1,112,000 of costs which would be attributed to the commodity component if the company were to adhere to cost classification and allocation methods approved by the Commission and the courts and heretofore followed by Texas Illinois.

The increased rates and charges proposed by Texas Illinois in Fifth Revised Sheets Nos. 5 and 9, Fourth Revised Sheets Nos. 6 and 10, and Third Revised Sheet No. 12-A; and the decreased rate and charge proposed in Third Revised Sheet No. 11 to its FPC Gas Tariff, Original Volume No. 1, have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing, pursuant to the authority contained in the Natural Gas Act—particularly Sections 4 and 15 thereof—concerning the lawfulness of the rates, charges, classifications, and services provided in Texas Illinois' FPC Gas Tariff, Original Volume No. 1, as proposed to be amended by Fifth Revised Sheets Nos. 5 and 9, Fourth Revised Sheets Nos. 6 and 10, and Third Revised Sheets Nos. 11 and 12-A, and that said proposed revised tariff sheets be suspended as hereinafter ordered and the use thereof be deferred pending hearing and decision thereon, except as they may become effective as provided by the Natural Gas Act.

The Commission orders:

(A) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing be held at a time and place to be fixed by notice from the Secretary of the Commission concerning the lawfulness of the rates, charges, classifications, and services contained in Texas Illinois' FPC Gas Tariff, Original Volume No. 1, as proposed to be amended by Fifth Revised Sheets Nos. 5 and 9, Fourth Revised Sheets Nos. 6 and 10, and Third Revised Sheets Nos. 11 and 12–A tendered for filing on November 21, 1957.

(B) Pending such hearing and decision thereon, Fifth Revised Sheets Nos. 5 and 9, Fourth Revised Sheets Nos. 6 and 10, and Third Revised Sheets Nos. 11 and 12–A to Texas Illinois' FPC Gas Tariff, Original Volume No. 1, be and the same are hereby suspended and the use thereof deferred until May 22, 1958, and until such further time as they may be made effective in the manner prescribed by the Natural Gas Act.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: December 20, 1957.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57–10698; Filed, Dec. 26, 1957; 8:51 a. m.]

[Docket No. G–13977]

STANDARD OIL CO. OF TEXAS

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

Standard Oil Company of Texas (Respondent), on November 25, 1957, tendered for filing proposed changes in certain of its rate schedules presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notice of changes, undated.
Purchaser: El Paso Natural Gas Company.
Rate schedule designation: (1) Supplement No. 1 to Respondent's FPC Gas Rate Schedule No. 25. (2) Supplement No. 1 to Respondent's FPC Gas Rate Schedule No. 23.
Effective date: January 1, 1958 (the stated effective date is the date proposed by Respondent).

In support of the proposed rate increases, Respondent refers to the contract provisions and also contends that in each instance the entire price schedule for the entire life of the contract is the rate and charge thereunder.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that said supplements to Respondent's rate schedules, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in said supplements to Respondent's rate schedules.

(B) Pending such hearing and decision thereon, said supplements be and they hereby are suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as they are made effective in the manner prescribed by the National Gas Act.

(C) Neither the supplements hereby suspended nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: December 20, 1957.

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57–10699; Filed, Dec. 26, 1957; 8:51 a. m.]

[Docket No. G–13978]

TIDEWATER OIL CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

Tidewater Oil Company (Respondent), on November 25 and 27, 1957, tendered for filing proposed changes in certain of its rate schedules presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: (1) Notice of change, dated November 22, 1957. (2) Notice of change, dated November 25, 1957.
Purchaser: El Paso Natural Gas Company.
Rate schedule designation: (1) Supplement No. 9 to Respondent's FPC Gas Rate Schedule No. 39. (2) Supplement No. 8 to Respondent's FPC Gas Rate Schedule No. 38.
Effective date: January 1, 1958. (The stated effective date is the date proposed by Respondent.)

Respondent merely cites the pertinent pricing provisions of the contracts in support of the proposed periodic rate increases.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that said supplements to Respondent's rate schedules, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in said supplements to Respondent's rate schedules.

(B) Pending such hearing and decision thereon, said supplements be and they hereby are suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: December 20, 1957.

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57–10700; Filed, Dec. 26, 1957; 8:52 a. m.]

[Docket No. G–13979]

CITIES SERVICE OIL CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

Cities Service Oil Company (Respondent), on November 25, 1957, tendered for filing proposed changes in certain of its rate schedules presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed

changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of change, dated November 22, 1957.

Purchaser: El Paso Natural Gas Company.

Rate schedule designation: (1) Supplement No. 1 to Respondent's FPC Gas Rate Schedule No. 26. (2) Supplement No. 2 to Respondent's FPC Gas Rate Schedule No. 27.

Effective date: January 1, 1958. (The stated effective date is the date proposed by Respondent.)

In support of the proposed periodic rate increases, Respondent contends that the "escalation" method of establishing a price for the gas is a part of the initial rate schedule, and that it is unfair to deny the increase when deliveries were made at the lower rate during the earlier term of the contract.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that said supplements to Respondent's rate schedules, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in said supplements to Respondent's rate schedules.

(B) Pending such hearing and decision thereon, said supplements be and they hereby are suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: December 20, 1957.

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-10701; Filed, Dec. 26, 1957; 8:52 a. m.]

[Docket No. G-13991]

TEXAS PACIFIC COAL AND OIL CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

Texas Pacific Coal and Oil Company (Respondent), on December 2, 1957, tendered for filing proposed changes in certain of its rate schedules presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of change, dated November 27, 1957.

Purchaser: El Paso Natural Gas Company.

Rate schedule designation: (1) Supplement No. 7 to Respondent's FPC Gas Rate Schedule No. 4. (2) Supplement No. 1 to Respondent's FPC Gas Rate Schedule No. 8. (3) Supplement No. 7 to Respondent's FPC Gas Rate Schedule No. 1.

Effective date: January 2, 1958 (the stated effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed periodic rate increases, Respondent merely cites the contract provisions and the fact that the purchaser has tendered for filing increases in its rates to reflect the increases herein proposed.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that said supplements to Respondent's rate schedules, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in said supplements to Respondent's rate schedules.

(B) Pending such hearing and decision thereon, said supplements be and they hereby are suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: December 20, 1957.

By the Commission (Commissioners Digby and Kline dissenting.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-10703; Filed, Dec. 26, 1957; 8:52 a. m.]

[Docket No. G-13989]

MAGNOLIA PETROLEUM CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

Magnolia Petroleum Company (Respondent), on November 27, 1957, tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, undated.

Purchaser: El Paso Natural Gas Company.

Rate schedule designation: Supplement No. 2 to Respondent's FPC Gas Rate Schedule No. 133.

Effective date: January 1, 1958 (the stated effective date is the date proposed by Respondent).

In support of the proposed periodic rate increase, Respondent cites the contract provisions and states that cost of exploration and production has increased. Respondent also states that the contract was negotiated at arm's-length.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought

to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: December 20, 1957.

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F. R. Doc. 57-10702; Filed, Dec. 26, 1957; 8:52 a. m.]

HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

DIRECTOR FOR NORTHWEST OPERATIONS, REGION VI

REDELEGATION OF AUTHORITY

1. The Director for Northwest Operations, Region VI, at Seattle, Washington, is hereby authorized within his jurisdiction (the Counties of Adams, Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lemhi, Lewis, Nez Perce, Shoshone, Valley, and Washington, in the State of Idaho; and the States of Montana, Oregon, and Washington) to exercise the authority delegated by the Housing and Home Finance Administrator to each Regional Administrator under the programs administered under the Community Facilities Administration, including the following:

Programs and Current Delegations to Regional Administrator

(a) Advances for public works planning authorized under section 702 of the Housing Act of 1954, as amended (40 U. S. C. 462) (22 F. R. 3304, 5-10-57);

(b) Housing for educational institutions authorized under Title IV of the Housing Act of 1950, as amended (12 U. S. C. 1749-1749c); [1]

(c) Public facility loans authorized under section 202 of Public Law 345, 84th Cong. (42 U. S. C. 1491) (20 F. R. 9981, 12-24-55).

2. The officers appointed to the positions listed below in the Office of the Director for Northwest Operations, Region VI, are hereby designated to act in the place and stead of the Director for Northwest Operations, Region VI, with the title of "Acting Director for Northwest Operations, Region VI," and with all the powers, rights, and duties redelegated or assigned to the Director, in the event the Director is unable to act by reason of his absence, illness, or other cause, provided that no officer designated below shall serve in such acting capacity unless all other officers whose titles precede his in this designation are unable to act by reason of absence, illness, or other cause:

(a) Area Engineer;

(b) Area Finance Officer.

(Reorg. Plan No. 3 of 1947, 61 Stat. 954; 62 Stat. 1283 (1948), as amended, 12 U. S. C. 1952 ed. 1701c; Delegation of authority to Regional Administrator, Region VI (San Francisco), effective August 12, 1957 (22 F. R. 5783, 7/19/1957))

Effective as of the 12th day of August 1957.

[SEAL] PAUL EMMERT, *Acting Regional Administrator, Region VI.*

[F. R. Doc. 57-10751; Filed, Dec. 26, 1957; 8:57 a. m.]

[1] Published at 22 F. R. 6586, 8-15-57.

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3651]

WEST TEXAS UTILITIES CO.

NOTICE OF FILING OF DECLARATION REGARDING THE ISSUANCE AND SALE PURSUANT TO RULE U-50 OF $8,500,000 OF NEW BONDS

DECEMBER 20, 1957.

Notice is hereby given that West Texas Utilities Company ("West Texas"), a public utility subsidiary of Central and South West Corporation ("Central"), a registered holding company, has filed a declaration with this Commission pursuant to the provisions of the Public Utility Holding Company Act of 1935 ("act") and the rules and regulations promulgated thereunder. West Texas has designated sections 6 (a) and 7 of the act and Rule U-50 as applicable to the proposed transactions.

All interested persons are referred to the declaration on file in the office of the Commission for a statement of the transactions therein proposed, which are summarized as follows:

West Texas proposes to issue and sell, pursuant to the competitive bidding requirements of Rule U-50, $8,500,000 principal amount of First Mortgage Bonds ("New Bonds"), Series E, to be dated as of January 1, 1958, and to mature January 1, 1988. The Series E bonds will be issued under an indenture dated August 1, 1943 between West Texas and Harris Trust and Savings Bank and Harold Eckhart, as trustees, as amended by indentures supplemental thereto and to be further amended by a proposed supplemental indenture to be dated January 1, 1958 between West Texas and Harris Trust and Savings Bank and W. H. Milsted (successor to Harold Eckhart), as trustees. The interest rate on the new bonds (which shall be a multiple of ⅛ of 1 percent) and the price, exclusive of accrued interest, to be paid West Texas for the new bonds, which price shall be not less than 100 percent nor more than 102.75 percent of the principal amount thereof, will be determined by the competitive bidding.

The declaration states that the net proceeds (exclusive of accrued interest) to be received by West Texas from the issuance and sale of the new bonds will be used by the company to pay for a part of the additions, extensions, and improvements made and to be made to its electric utility properties, including the payment of short-term bank debt of West Texas incurred for that purpose. Such bank debt aggregated $1,500,000 at October 31, 1957. It is further stated that West Texas' construction expenditures for the years 1958 and 1959 will aggregate approximately $23,000,000.

The declaration states that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

It is estimated that West Texas' fees and expenses in connection with the above transactions will not exceed in the aggregate $42,000 including $1,500 for accountants' fees and $6,500 for counsel fees. Fees and expenses of counsel for the underwriters, which are estimated to be $4,750, will be paid by the successful bidders.

Notice is further given that any interested person may not later than January 10, 1958 at 5:30 p. m., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law, raised by said filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, the declaration, as filed or as it may hereafter be amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may grant exemption from its rule as provided in Rules U-20 (a) and U-100, or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-10704; Filed, Dec. 26, 1957; 8:52 a. m.]

[File No. 24SF-2348]

AMERICAN RESERVE OIL & MINING CORP.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

DECEMBER 20, 1957.

I. American Reserve Oil & Mining Corporation, a Nevada corporation, filed with the Commission on October 8, 1956, a notification on Form 1-A and an offering circular, and subsequently filed amendments thereto, relating to a proposed offering of 300,000 shares of its common stock at $1.00 per share, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder.

II. The Commission has reasonable grounds to believe that:

A. The offering circular, as amended, contains false and misleading statements as to material facts and omits to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, concerning, among other things:

1. The failure to disclose the significance of the completion of an 11,484 ft.

dry hole immediately offsetting the lease owned by the issuer on which it proposes to drill a well.

2. The description of said dry hole as having been "abandoned uncompleted" when in fact it was abandoned as a non-productive dry hole.

3. The failure of the Sperber report to disclose the existence of the said dry hole offsetting the issuer's lease and the effect of said dry hole upon prospects for obtaining production on the issuer's proposed well.

4. The failure of the cross-section accompanying the Sperber report to reflect available information with respect to said dry hole.

5. The failure to disclose when and under what circumstances the prior lessee surrendered its lease on section 12 and whether and under what circumstances that company surrendered any of the other leases formerly held by it in this area.

6. The extent of the issuer's leasehold interest as described on pages 3 and 6 of the offering circular.

B. The offering would be made in violation of section 17 of the act.

III. *It is ordered*, Pursuant to Rule 261 (a) of the General Rules and Regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given, that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing within 30 days herefrom; that, within twenty days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place of said hearing will be promptly given by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the 30th day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-10705; Filed, Dec. 26, 1957; 8:53 a. m.]

[File No. 1-3469]

NEVADA MONARCH CONSOLIDATED MINES CORP.

ORDER AND NOTICE OF HEARING UNDER SECTION 19 (a) (2) OF THE SECURITIES EXCHANGE ACT OF 1934

DECEMBER 20, 1957.

I. Nevada Monarch Consolidated Mines Corp. ("registrant"), a Nevada corporation, registered its common stock, $1.00 par value, on the Salt Lake Stock Exchange on July 25, 1948 pursuant to an application filed under section 12 of the Securities Exchange Act of 1934 (the "act") and the certification of the said Exchange filed under section 12 (d) of the act and the rules and regulations of the Commission promulgated thereunder.

II. The Commission has reasonable grounds to believe that:

A. Registrant has failed to comply with the provisions of section 13 of the act and Rule 17 CFR 240.13a.1 promulgated thereunder in that the registrant has failed to file with the said exchange and the Commission annual reports on Form 10-K within the time limited for filing such reports for registrant's fiscal years, ending December 31, following:

(a) 1951.
(b) 1952.
(c) 1953.
(d) 1954.
(e) 1955.

B. That the balance sheet filed by registrant on September 18, 1957 as part of an annual report on Form 10-K for its fiscal year ending December 31, 1956 is false and misleading in the following respects:

(a) Amount stated as "Additional Development Expenditures";

(b) Amount stated to have been advanced by lessee for development expense;

(c) Amount stated as "proceeds of government loan" used for development.

III. *It is ordered*, That a public hearing pursuant to section 19 (a) (2) of the Securities Exchange Act of 1934 be held at 10:00 a. m., m. s. t., January 27, 1958, at the Salt Lake Branch Office of the Commission, 201 Boston Building, Salt Lake City, Utah, to determine whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months or to withdraw the registration of the common capital stock of registrant on the Salt Lake Stock Exchange for failure to comply with section 13 of the act and the rules and regulations promulgated thereunder as set forth in paragraph II above.

It is further ordered, That Robert N. Hislop is hereby designated and assigned as Hearing Officer in this proceeding and is authorized to exercise the powers and perform the duties specified in the Rules of Practice of the Commission and any other duties which he may be authorized to perform in accordance with law.

Notice of such hearing is hereby given to the registrant, the Salt Lake Stock Exchange, and to any other person or persons whose participation in such proceeding may be necessary or appropriate in the public interest or for the protection of investors. Any such further persons desiring to be heard in such proceeding should file with the Hearing Officer or the Secretary of the Commission on or before January 22, 1957, his application therefor as provided by the Rules of Practice of the Commission, setting forth therein any of the above matters or issues of fact or law upon which he desires to be heard and any additional issues he deems raised by the aforesaid order.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-10706; Filed, Dec. 26, 1957; 8:53 a. m.]

[File No. 70-3652]

APPALACHIAN ELECTRIC POWER CO.

NOTICE OF FILING OF APPLICATION REGARDING ISSUANCE AND SALE OF NOTES TO BANKS

DECEMBER 19, 1957.

Notice is hereby given that Appalachian Electric Power Company, a public utility subsidiary of American Gas and Electric Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("act") and has designated section 6 and Rule U-50 (a) (2) thereunder as applicable to the proposed transactions.

All interested persons are referred to the application on file in the office of the Commission for a statement of the transactions therein proposed, which are summarized as follows:

Appalachian has established a line of credit under which it proposes to issue and sell from time to time, prior to December 31, 1958, not in excess of $32,000,000 face amount of promissory notes to the following banking institutions:

Irving Trust Company, New York, N. Y.	$4,800,000
Mellon National Bank & Trust Company, Pittsburgh, Pa.	4,800,000
First National City Bank of New York, New York, N. Y.	4,800,000
Manufacturers Trust Company, New York, N. Y.	4,160,000
Guaranty Trust Company of New York, New York, N. Y.	3,200,000
Continental Illinois National Bank and Trust Company of Chicago, Chicago, Ill.	3,200,000
Bankers Trust Company, New York, N. Y.	2,240,000
The Hanover Bank, New York, N. Y.	2,240,000
Chemical Corn Exchange Bank, New York, N. Y.	1,600,000
The Northern Trust Company, Chicago, Ill.	960,000
Total	32,000,000

Of the $32,000,000 face amount of notes proposed to be issued and sold Appalachian has, as of November 30, 1957, issued and sold $15,000,000 to seven of these banks. This amount and additional issues of $3,000,000 are stated to be exempt from section 6 (a) of the act by reason of the first sentence of section 6 (b) thereof.

Appalachian now requests approval of the issuance and sale of notes in an amount not to exceed $14,000,000 above the $18,000,000 said to be permitted by the first sentence of section 6 (b), such notes to be dated as of the date of the borrowings and to mature not more than 270 days after the date of issuance. The notes are to bear interest from the dates thereof at the then current prime rate,

which prime rate is presently 4½ percent per annum, and may be prepaid from time to time, in whole or in part, without premium. The application states that Appalachian's outstanding notes payable to banks at the time of its next permanent financing will be paid from the proceeds of such financing and it is understood and agreed that, upon the consummation of such permanent financing, and in any event not later than December 31, 1958, the authorization relating to the issuance and renewal of notes payable to banks granted by Commission order pursuant to this application shall cease.

The proceeds from the notes will be used by Appalachian to pay a part of the cost of its construction program which, it is presently estimated, will amount to approximately $50,000,000 in 1958.

The application states that the proposed transactions will be expressly authorized by the Virginia State Corporation Commission and that a copy of the order of that Commission will be filed by amendment. It is represented that no other State commission or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

The expenses to be incurred by Appalachian are estimated at not in excess of $200. No fees, commissions or other expenses are to be paid except that routine services incidental to the proposed transactions will be performed by American Gas & Electric Service Corporation, the cost of which is estimated not to exceed $1,000.

Notice is further given that any interested person may, not later than January 2, 1958 at 5:30 p. m., request in writing that a hearing be held in respect of the above matter, stating the nature of his interest, the reasons for the request, and the issues of fact or law, which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date said application may be granted as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may grant an exemption from its rules as provided in Rules U-20 (a) and U-100 thereof, or take such other action as it deems appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-10707; Filed, Dec. 26, 1957; 8:53 a. m.]

[File No. 70-3653]

ALABAMA POWER CO.

NOTICE OF PROPOSED ISSUANCE AND SALE OF $23,000,000 PRINCIPAL AMOUNT OF BONDS AT COMPETITIVE BIDDING, AND ISSUANCE OF $2,075,000 PRINCIPAL AMOUNT OF BONDS FOR SINKING FUND PURPOSES

DECEMBER 19, 1957.

Notice is hereby given that Alabama Power Company ("Alabama"), a public-utility subsidiary of The Southern Company ("Southern"), a registered holding company, has filed with this Commission an application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935 ("act") and Rule U-50 promulgated thereunder regarding the following proposed transactions:

Alabama proposes to issue and sell, subject to the competitive bidding requirements of Rule U-50, $23,000,000 principal amount of First Mortgage Bonds, — percent Series due 1988. The interest rate (which shall be a multiple of ⅛ of 1 percent, and the price to be paid to Alabama, exclusive of accrued interest, which price shall be not less than 99 percent nor more than 102¾ percent of the principal amount, will be determined by the competitive bidding. The new bonds will be issued under Alabama's Indenture dated as of January 1, 1942 between Alabama and Chemical Corn Exchange Bank, as Trustee ("Chemical") as heretofore supplemented and as to be further supplemented by a Supplemental Indenture dated as of January 1, 1958.

Alabama proposes to use the net proceeds from the sale of the bonds for the construction or acquisition of permanent improvements, extensions and additions to its property. The Company estimates that its total construction expenditures for 1958 will aggregate approximately $63,903,000 and in order to finance such program, Alabama will use its cash on hand in excess of operating requirements, interest, and dividends, including in such cash the proceeds from the sale of the proposed bonds and $8,000,000 expected to be received in 1958 from the sale to Southern of additional shares of common stock of Alabama.

Alabama also proposes to issue $2,075,000 principal amount of First Mortgage Bonds, 4⅝ Percent Series due 1987, under its Indenture dated as of January 1, 1942 with Chemical. The bonds will be authenticated and delivered by Chemical to Alabama on the basis of unfunded property additions and, in turn, surrendered to Chemical for cancellation to satisfy the sinking and improvement fund requirements of the Indenture. It is represented that the bonds will never constitute an obligation for the payment of money by Alabama and they will not therefore be included in Alabama's books as a liability.

The fees and expenses to be paid in connection with the proposed issuance and sale of bonds at competitive bidding will be supplied by amendment. The fees and expenses incurred in connection with the issuance of bonds for sinking fund purposes are estimated at $2,250, including $1,000 for company counsel.

The proposed transactions are subject to the jurisdiction of the Public Service Commission of Alabama, and a copy of that Commission's order to be entered in respect thereof is to be supplied by amendment.

Notice is further given that any interested person may, not later than January 3, 1958, at 5:30 p. m., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law, if any, raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, said application, as filed or as it may be hereafter amended, may be granted as provided by Rule U-23 of the Rules and Regulations promulgated under the act, or the Commission may grant such exemption from its rules as provided in Rules U-20 (a) and U-100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-10708; Filed, Dec. 26, 1957; 8:53 a. m.]

[File No. 1-2115]

BELLANCA CORP.

ORDER SUMMARILY SUSPENDING TRADING PURSUANT TO SECTION 19 (a) (4) OF THE SECURITIES EXCHANGE ACT OF 1934

In the matter of trading on the American Stock Exchange in the $1.00 par value Capital Stock of Bellanca Corporation, File No. 1-2115.

I. The $1.00 par value Capital Stock of Ballanca Corporation is listed and registered on the American Stock Exchange, a national securities exchange; and

II. The Commission on April 24, 1957, issued its order and notice of hearing under Section 19 (a) (2) of the Securities Exchange Act of 1934 (hereinafter called "the act") to determine at a hearing beginning July 10, 1957, whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months, or to withdraw, the registration of the capital stock of Bellanca Corporation (hereinafter called "registrant") on the American Stock Exchange for failure to comply with section 13 of the act and the rules and regulations adopted thereunder, and for failure to comply with the disclosure requirements of Regulation X-14 adopted pursuant to section 14 (a) of the act.

On December 10, 1957 the Commission issued its order summarily suspending trading of said securities on the exchange pursuant to section 19 (a) (4) of the act for the reasons set forth in said order to prevent fraudulent, deceptive or manipulative acts or practices for a period of ten days ending December 20, 1957.

III. The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on the American Stock Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion that such suspension is necessary in order to prevent fraudulent, deceptive, or manipulative acts or practices, with the

result that it will be unlawful under section 15 (c) (2) of the Securities Exchange Act of 1934 and the Commission's Rule X-15C2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, such security otherwise than on a national securities exchange,

It is ordered, Pursuant to section 19 (a) (4) of the Securities Exchange Act of 1934, that trading in said securities on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive, or manipulative acts or practices for a period of ten (10) days, December 21 to 30, 1957, inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 57-10709; Filed, Dec. 26, 1957; 8:53 a. m.]

INTERSTATE COMMERCE COMMISSION

[Notice 5]

APPLICATIONS FOR CONVERSION BY MOTOR CONTRACT CARRIERS

DECEMBER 20, 1957.

The following proceedings are governed by the Interstate Commerce Commission's special rules of practice, published in the FEDERAL REGISTER on November 13, 1957, Volume 22, FEDERAL REGISTER, page 9015, concerning notice of proceedings upon application of a holder of motor contract carrier authority, under section 212 (c) of the Interstate Commerce Act, for the revocation of motor contract carrier authority issued on or before August 22, 1957, and the issuance in lieu thereof of a certificate of public convenience and necessity (49 CFR 1.242). A proceeding to determine the status of the carriers' operations has been instituted under section 212 (c).

Protests may be filed with the Commission within 30 days after the date notice of the proceedings is published in the FEDERAL REGISTER. If oral hearing is desired the protest must so indicate.

The authority set out in the pertinent permits upon which a determination is sought, has, in most instances, been summarized.

MOTOR CARRIERS OF PROPERTY

No. MC 1148 (Sub No. 5) filed November 14, 1957, CRESCENT TRUCKING, INC., 120 Bridge Street, Mayville, Wis. Applicant's attorney: Edward Solie, 715 First National Bank Building, Madison 3, Wis. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 1148, dated May 27, 1957.

Lime, over irregular routes, from Mayville, Wis., to points in Illinois north of U. S. Highway 6.

Sheet metal products, over irregular routes, from Mayville, Wis., to points in Illinois, Indiana, Ohio, Michigan, Iowa, and Minnesota.

Steel, over irregular routes, from points in Illinois, Indiana, Ohio, Michigan, Iowa, and Minnesota to Mayville, Wis.

Dies and tools, over irregular routes, between Mayville, Wis., on the one hand, and, on the other, points in Illinois, Indiana, Ohio, Michigan, Iowa, and Minnesota.

No. MC 1441 (Sub No. 15) filed November 5, 1957, MERRILL MOTOR LINE, INC., 2520 Northeast 35th Street, Fort Worth, Texas. Applicant's attorney: Ralph W. Pulley, Jr., First National Bank Building, Dallas 2, Texas. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 1441, dated May 16, 1957.

Meats, meat products and meat by-products, dairy products, and *articles distributed by meat-packing houses*, as defined by the Commission, over irregular routes, between Oklahoma City, Okla., on the one hand, and, on the other, points in that part of Texas east and south of a line begining at the boundary of the United States and Mexico and extending along the Texas-New Mexico State line to junction U. S. Highway 285, thence along U. S. Highway 285 to Pecos, Tex., thence along U. S. Highway 80 to Sweetwater, Tex., thence in a northeasterly direction through Stamford, Tex., to Seymour, Tex., thence along U. S. Highway 283 to Vernon, Tex., and thence due north from Vernon, Tex. to the Texas-Oklahoma State line, including Sweetwater, Tex., and points on that portion of the designated line between Sweetwater and the Texas-Oklahoma State line, except that no service is authorized to or from Houston, Tex.: between Oklahoma City, Okla., on the one hand, and, on the other, points in the Panhandle territory of Texas: between Oklahoma City, Okla., on the one hand, and, on the other, points in the Panhandle territory of Texas: between Fort Worth, Tex., on the one hand, and, on the other, points in that part of Oklahoma south of a line beginning at the Texas-Oklahoma State line on U. S. Highway 60 and extending along U. S. Highway 60 to Enid, Okla., thence along U. S. Highway 64 to the Oklahoma-Arkansas State line, including points on the indicated portions of the highways specified and the points named.

Meats, meat products and meat by-products, dairy products, and *articles distributed by meat packing houses*, as defined by the Commission, from Dallas and Fort Worth, Tex., to Corsicana, Waxahachie, Mount Vernon, Longview, Tyler, Kilgore, Gladewater, Henderson, Marshall, Wichita Falls, Arlington, Grand Prairie, Euless, and Hurst, Tex.

Meats, meat products and meat by-products, dairy products, and *articles distributed by meat packing houses*, as defined by the Commission, in vehicles equipped with mechanical refrigeration, from Dallas and Fort Worth, Tex., to points in Texas, except Corsicana, Waxahachie, Mount Vernon, Longview, Tyler, Kilgore, Gladewater, Henderson, Marshall, Wichita Falls, Arlington, Grand Prairie, Euless, and Hurst, Tex.: Restriction: The service described immediately above is restricted to the distribution of pool-car and pool-truck shipments.

No. MC 2461 (Sub No. 10) filed November 5, 1957, KENT TRANSFER, INCORPORATED, U. S. 40, P. O. Box 71, Elkton, Md. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 2461, dated June 10, 1941.

Malt beverages, over irregular routes, from Philadelphia, Reading, Easton, Lancaster, Lebanon, Northampton, Allentown, Harrisburg, Norristown, and Pottsville, Pa., and New York, N. Y., to points in Maryland and the District of Columbia, and *empty malt beverage containers* on return.

No. MC 2461 (Sub No. 5), dated October 24, 1951.

Malt beverages, over irregular routes, from Newark, N. J., to Hagerstown and La Plata, Md., and *empty malt beverage containers*, on return.

No. MC 2461 (Sub No. 6), dated May 23, 1952.

Malt beverages, over irregular routes, from Newark, N. J., to Cockeysville, Upper Marlboro, Elkridge, Leonardtown, and Frederick, Md., and *empty malt beverage containers*, on return.

No. MC 2941 (Sub No. 13), filed October 30, 1957, C & E TRUCKING CORPORATION, 1311 South Olive Street, South Bend 19, Ind. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 2941, dated September 8, 1942.

Paper cartons or boxes (other than corrugated) knocked down flat, in bundles, over regular routes, from South Bend, Ind., to Chicago, Clearing, and River Forest, Ill.: *Rejected shipments of the above-specified commodities*, on return.

Such merchandise as is dealt in by meat-packing companies, from Chicago, Ill., to Elkhart, Ind.: Service is authorized to and from all intermediate points in Indiana east of Whiting, Ind., and the off-route point of La Porte, Ind.

No. MC 2941 (Sub No. 2), dated March 29, 1944.

Fresh fruits and vegetables, over a regular route, from Chicago, Ill., to South Bend, Ind.: serving no intermediate points.

No. MC 2941 (Sub No. 10), dated August 25, 1947.

Dairy products as defined, *yeast* and *frozen foods*, over irregular routes, between Chicago, Ill., on the one hand, and, on the other Elkhart and South Bend, Ind., and with persons (as defined in sections 203 (a) of the Interstate Commerce Act) who operate meat-packing houses, for the transportation of the commodities indicated and in the manner specified below:

The commodities classified in the appendix to the above-described report as (a) meats, meat products, and meat by-products, (b) dairy products, and (c) articles distributed by meat-packing

houses, subject to a "keystone" restriction.: from South Bend and points within five miles thereof to Chicago. *Rejected shipments* of the above-specified commodities, over irregular routes, from Chicago to South Bend and points within five miles thereof.

No. MC 2941 (Sub No. 11), dated August 31, 1950.

Packing-house products, fresh meat, groceries, and *fixtures* used by retail butcher shops, over irregular routes, between Chicago, Ill., on the one hand, and, on the other, points in Illinois, Indiana, and Michigan.

No. MC 2941 (Sub No. 8), dated September 27, 1946.

The commodities classified (a) as meat, meat products and meat by-products, (b) dairy products and (c) articles distributed by meat-packing houses, subject to a Keystone restriction, from Mishawaka, Ind., and the site of the plant of Gentner Packing Company located approximately 5 miles south of South Bend, Ind., and 1 mile west of U. S. Highway 31, to Chicago, Ill.

No. MC 3690 (Sub No. 12) filed October 21, 1957, LESLIE J. STRAWN, INC., 4448 17th Street Extended SW., Canton, Ohio. Applicant's attorney: Richard H. Brandon, Hartman Building, Columbus 15, Ohio. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 3690, dated October 9, 1944.

Petroleum products, in bulk, in tank-trucks, and in containers, over irregular routes, from Franklin, Oil City, and Titusville, Pa., and points within 15 miles of Franklin, Oil City, and Titusville, to Canton, Cleveland, Columbus, Elyria, Martins Ferry, Tiffin, Toledo, Fremont, Stillwater, and Steubenville, Ohio, and Wheeling, W. Va.; and *empty petroleum product containers,* on return.

Benzol, in bulk, in tank-trucks, over irregular routes, from Foggansbee, W. Va., to Steubenville and Martins Ferry, Ohio.

Motor oil, in drums, over irregular routes, from Franklin, Pa., to Massillon, Ashtabula, Warren, Mansfield, Newark, Galion, and Springfield, Ohio, and Cumberland, Md.

Oil, in drums, over irregular routes, from Franklin, Pa., to Canton, Cleveland, Columbus, Elyria, Martins Ferry, Tiffin, and Toledo, Ohio.

Petroleum products, in bulk, over irregular routes, between points in that part of Pennsylvania north and west of a line beginning at the Ohio-Pennsylvania State line and extending along U. S. Highway 22 to Blairsville, Pa., thence due north to the Pennsylvania-New York State line, other than Franklin, Oil City and Titusville, respectively, on the one hand, and, on the other, points in Ohio.

No. MC 3690 (Sub No. 8), dated January 17, 1947.

Petroleum and petroleum products, in bulk, in tank trucks, over irregular routes, between Heath, Ohio, on the one hand, and, on the other, points in Brooke, Hancock, Marshall, and Ohio Counties, W. Va.

No. MC 3690 (Sub No. 10), dated April 4, 1949.

Petroleum and petroleum products, in bulk, in tank vehicles, over irregular routes, from Akron, Canton, and Cleveland, Ohio, to points in Brooke, Hancock, Marshall, and Ohio Counties, W. Va., except Follansbee, W. Va., and points in Brooke and Hancock Counties within 5 miles of Follansbee.

No. MC 5696 (Sub No. 17) filed November 6, 1957, UNITED TRANSPORT LINES, INC., 71 Elm Street, Westfield, Mass. Applicant's representative: William L. Mobley, 1694 Main Street, Springfield 3, Mass. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 5696, dated May 23, 1955.

Fuel oil, except Bunker "C" fuel oil, in bulk, in tank vehicles, over a specified regular route between New Haven, Conn., and Springfield, Mass., serving no intermediate points.

Coal, over irregular routes, from New Haven, and Bridgeport, Conn., to points in Connecticut.

Fuel oil, except Bunker "C" fuel oil, in bulk, in tank vehicles, from New Haven, Conn., to West Stockbridge, Monroe Bridge, and Bondsville, Mass., and points in Massachusetts on and within 10 miles of U. S. Highway 5, except Springfield, Mass.

Bunker "C" fuel oil, in bulk, in tank vehicles, from New Haven, Conn., to Wingdale, N. Y., and to points in Massachusetts on and west of U. S. Highway 5, and those in Massachusetts east of U. S. Highway 5 within 10 miles of U. S. Highway 5, and Bondsville, Mass.

Damaged, defective, rejected or returned shipments of the above-described commodity, on return.

Hot rolled sheet steel, in coils, from New Haven, Conn., to Wallingford, Conn.

No. MC 9770 (Sub No. 9) filed December 3, 1957, M & M HAULING & DISTRIBUTING CO., a Corporation, 885 East 51st Street, Brooklyn, N. Y. Applicant's representative: Bert Collins, 140 Cedar Street, New York 6, N. Y. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 9770, dated January 8, 1944.

General commodities, except those of unusual value, dangerous explosives, commodities requiring special equipment, and those injurious or contaminating to other lading, over irregular routes, between points in the New York, N. Y., Commercial Zone, on the one hand, and, on the other, points in New York, New Jersey, and Connecticut within 50 miles of origin point.

No. MC 9770 (Sub No. 2), dated May 3, 1940.

Compressed gases, in cylinders, from Jersey City, N. J., to Plattekill, Modena, Gardiner, Hurleyville, Beacon, and Fishkill, N. Y., and points within ten miles of each named destination point; and *empty gas cylinders,* on return.

No. MC 9770 (Sub No. 8), dated January 23, 1947.

Compressed oxygen and nitrogen in shipper-owned multiple tank manifold trailers, and empty equipment for such commodities, over irregular routes, between Jersey City, Kenvil, and Harrison, N. J., and New York, N. Y., on the one hand, and, on the other, Bethlehem, Pa.

No. MC 13002 (Sub No. 1) filed October 21, 1957, FREMONT SMITH, doing business as FREMONT SMITH TRUCK LINE, 2110 Isabella Street, Sioux City, Iowa. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 13002, dated August 5, 1943.

Eggs, poultry, scrap paper, junk, hides, and *grease,* over irregular routes, between Sioux City, Iowa, and Chicago, Ill., serving no intermediate points.

Oil and grease, in containers, and *twine,* from Chicago over the above specified route to Sioux City.

Fruits and *vegetables,* between Denver, Colo., and Chicago, Ill.: between Denver, Colo., and Sioux City, Iowa: Service is authorized to and from the intermediate points of Omaha, Nebr., and Council Bluffs and Davenport, Iowa.

Packing house products and *supplies,* used in the conduct of such business, subject to a "Keystone" restriction, between Sioux City, Iowa, and Chicago, Ill.: between Omaha, Nebr., and Chicago, Ill.: Service is authorized to and from the intermediate points of Council Bluffs, Davenport, Waterloo, and Dubuque, Iowa, and Rockford and Morrison, Ill.: between Denver, Colo., and Chicago, Ill.: between Denver, Colo., and Sioux City, Iowa: Service is authorized to and from the intermediate points of Omaha, Nebr., and Council Bluffs and Davenport, Iowa.

No. MC 16354 (Sub No. 3) filed October 24, 1957, FLEETLINE, INC., 1984 Oakdale Avenue., Route 10, South St. Paul, Minn. Applicant's attorney: Joseph M. Scanlan, 111 West Washington Street, Chicago 2, Ill. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 16354 (Sub No. 1) dated February 1, 1952.

The commodities, classified as (a) meats, meat products and meat by-products, (b) dairy products, and (c) articles distributed by meat packing houses, as defined by the Commission, and materials, supplies, and equipment used in the manufacture and distribution of these commodities, over irregular routes, subject to a "Keystone" restriction, from points in the Minneapolis-St. Paul, Minn., commercial zone to Milwaukee, Wis., and points in the Chicago, Ill., commercial zone: from points in the Chicago, Ill., commercial zone to points in the Minneapolis-St. Paul, Minn., commercial zone.

No. MC 16354 (Sub No. 2) dated August 13, 1956.

Dairy products, eggs, poultry, and *packing house products* and *supplies,* over irregular routes, between Newport, South St. Paul, St. Paul, Minneapolis, and Minnesota Transfer, Minn., on the one hand, and, on the other, Fairmont,

N. Dak., East Chicago, Ind., points in Minnesota and Wisconsin, those in the upper peninsula of Michigan, and those in Illinois on and north of U. S. Highway 20.

General commodities, between Newport, Minn., on the one hand, and, on the other, Minneapolis and St. Paul, Minn.

No. MC 16503 (Sub No. 5) filed November 21, 1957, JOHN L. GUEX, P. O. Box 359, Shawano, Wis. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 16503, dated October 19, 1949.

Canned goods, over irregular routes, from points in Wisconsin to Menominee, Mich.; from Menominee, Mich., to points in Wisconsin north of U. S. Highway 10; from points in Wisconsin except those north of U. S. Highway 8 and west of U. S. Highway 51, to Ishpeming, Iron Mountain and Escanaba, Mich.

Hardware, fresh meats, and *groceries*, over irregular routes, between Menominee, Mich., on the one hand, and, on the other, points in Wisconsin north of U. S. Highway 10.

No. MC 17731 (Sub No. 7) filed November 6, 1957, KEAL DRIVEAWAY COMPANY, a Corporation, 836 East 73d Street, Cleveland 3, Ohio. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 17731 dated May 26, 1941.

New trucks, new truck chassis, and *new commercial automotive vehicles*, restricted to initial movements, in driveaway service, over irregular routes, from places of manufacture and assembly in Cleveland, Ohio, to all points in the United States.

Automobiles, trucks, chassis, and *commercial automotive vehicles*, new, used, or unfinished, restricted to secondary movements, in driveaway service, over irregular routes, between all points on and east of U. S. Highway 81.

No. MC 17731 (Sub No. 5), dated November 29, 1949.

Automotive show equipment and paraphernalia, over irregular routes, between all points and places in the United States.

Truck chassis in initial movements, in truckaway service, over irregular routes, from Cleveland, Ohio, to all points in the United States.

No. MC 18267 (Sub No. 7) filed November 5, 1957, TEXAS-LOUISIANA EXPRESS, INC., 3728 West Sixth Street, Fort Worth 7, Texas. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 18267, dated May 26, 1955.

Such products, as are manufactured and sold by packing houses for human or animal consumption, *empty boxes and crates* and *new and used bags or bagging* used by such packing houses in the preparation, preserving or shipping of such products, over specified regular routes, between Mercedes, Tex., and New Orleans, La., serving all intermediate points in Louisiana: between Mercedes, Tex., and Baton Rouge, La., serving all intermediate points in Louisiana: between Mercedes, Tex., and Monroe, La., serving all intermediate points in Louisiana: between Mercedes, Tex., and Vicksburg, Miss., serving all intermediate points in Louisiana: between Cuero, Tex., and Vicksburg, Miss., serving all intermediate points in Louisiana: between Cuero, Tex., and New Orleans, La., serving all intermediate points in Louisiana: between Lake Charles, La., and Brownsville, Tex., serving the intermediate points of Beaumont, Houston, and Port Arthur, Tex., restricted to traffic moving to and from Port Arthur: between Lake Charles, La., and Galveston, Tex., serving the intermediate points of Beaumont, Houston, and Port Arthur, Tex., restricted to traffic moving to or from Port Arthur:

Such products, as are manufactured and sold by packing houses for human or animal consumption, *empty boxes and crates and new and used bags or bagging* used by such packing houses in the preparation, preserving or shipping of such products, over irregular routes, between Lake Charles, La., on the one hand, and, on the other, Little Rock, Fort Smith, DeQueen, El Dorado, and Texarkana, Ark., Natchez, Vicksburg, Gulfport, Hattiesburg, Jackson, Meridian, Clarksdale, Greenwood, Greenville, Yazoo City, and West Point, Miss., Mobile, Montgomery, and Birmingham, Ala., Pensacola, Fla., and Memphis, Tenn.

Packing house products, over irregular routes, between Forth Worth and Dallas, Tex., on the one hand, and, on the other, New Orleans, La.: from Forth Worth and Dallas, Tex., to Donaldsonville, Shreveport, Alexandria and Baton Rouge, La.

Edible packing-house products, in refrigerated equipment, over irregular routes, from Dallas, Tex., to Camp Polk, Barksdale Field, Camp Livingston, Camp Beauregard, and Camp Claiborne, La.: from Fort Worth, Tex., to Camp Polk, La.

Returned or rejected shipments of empty boxes and crates and *used bags and bagging*, from the above-specified destination points to Dallas and Fort Worth, Tex.

No. MC 19575 (Sub No. 13) filed October 28, 1947, R. LENGLE TRUCKING CO., INC., 3071 West 46th Street, Cleveland, Ohio. Applicant's representative: G. H. Dilla, 3350 Superior Avenue, Cleveland 14, Ohio. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 19575, dated October 12, 1949.

Furnaces, furnace parts, and *iron castings*, minimum 15,000 pounds from any one consignor, over irregular routes, from Cleveland, Ohio, to points in that part of Michigan on and south of a line beginning at Ludington, and extending along U. S. Highway 10 to junction Michigan Highway 20, thence along Michigan Highway 20 to junction Michigan Highway 25, thence along Michigan Highway 25 to junction U. S. Highway 25, and thence along U. S. Highway 25 via Bay City and Port Austin to Port Huron.

Furnaces and *iron castings*, from Cleveland, Ohio to points in New Jersey, New York, that part of Pennsylvania on and west of U. S. Highway 19, that part of West Virginia on and north of U. S. Highway 50, that part of Indiana on and north of U. S. Highway 40, and those in Cook County, Ill.: *rejected or returned shipments* of the above-specified commodities on return.

Heating and air conditioning units, equipment and parts thereof and *such materials and supplies* as are required for the installation thereof, and *iron and steel castings*, from Cleveland, Ohio, to points in Illinois, Indiana, Kentucky, Michigan, New Jersey, New York, Pennsylvania, and West Virginia; and *rejected, damaged, or repossessed shipments* of the above-specified commodities and *empty containers*, on return.

Patterns, flasks, and *parts thereof*, between Cleveland, on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, Michigan, New Jersey, New York, Pennsylvania, and West Virginia.

Oil burners, from Peoria, Ill., to Cleveland, Ohio.

Malt beverages, from Rochester, N. Y., and New Castle, Erie, and Pittsburgh, Pa., to Cleveland, Ohio: from Minster, Ohio, to points in New York and those in that part of Michigan on and south of a line beginning at Ludington, and extending along U. S. Highway 10 to junction Michigan Highway 20, thence along Michigan Highway 20 to junction Michigan Highway 25, thence along Michigan Highway 25 via Bay City and Port Austin to Port Huron; and *rejected or returned shipments of malt beverages and empty malt beverage containers*, on return.

Carbonated beverages, from Pittsburgh, Pa., to Cleveland, Ohio; and *rejected or returned shipments of carbonated beverages and empty carbonated beverage containers*, on return.

No. MC 19575 (Sub No. 11), dated February 3, 1950.

Malt beverages, over irregular routes, from Baltimore, Md., to points in Ohio, Indiana, and Michigan, and *empty malt beverage containers*, on return.

Empty shipping pallets, from points in Illinois, Indiana, Kentucky, Michigan, New Jersey, New York, Pennsylvania, and West Virginia to Cleveland, Ohio.

No. MC 19575 (Sub No. 12), dated January 19, 1950.

Malt beverages, over irregular routes, from Milwaukee, Wis., to Cleveland, Ohio, and *empty containers* for malt beverages and *damaged and defective shipments* of malt beverages on return.

No. MC 26983 (Sub No. 3) filed November 25, 1957, DISTRICT HAULING & CONTRACTING CO., INC., 2780 Jefferson Davis Highway, Arlington, Va. Applicant's attorney: S. Harrison Kahn, 726–34 Investment Building, Washington, D. C. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 26983, dated March 7, 1957.

Building materials, over irregular routes, from Washington, D. C., Martinsburg, and North Mountain, W. Va., to points in West Virginia, Virginia, Mary-

land, Delaware, Pennsylvania, New Jersey, and New York: between Washington, D. C., and Martinsburg, and North Mountain, W. Va.

Air conditioning and heating equipment, from Martinsburg, and North Mountain, W. Va., to points in West Virginia, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, and New York: from Washington, D. C., to points in West Virginia, Delaware, Pennsylvania, New Jersey, New York, Virginia (except points in Fairfax, Loudoun, and Prince William Counties, Va.), and Maryland (except Baltimore, Md., and points in Anne Arundel, Prince Georges, Calvert, Charles, St. Marys, Baltimore, Montgomery, and Howard Counties, Md.): between Washington, D. C., and Martinsburg and North Mountain, W. Va.

Rough and dressed lumber, from points in North Carolina, to Baltimore, Md., points in Baltimore County, Md., Pennsylvania, and in Atlantic, Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem Counties, N. J.

No. MC 27166 (Sub No. 1), filed October 30, 1957, FRIEDA McLAUGHLIN, doing business as F. McLAUGHLIN, 1624 Kansas Avenue, McKeesport, Pa. Applicant's attorney: Arthur J. Diskin, 810 Frick Building, Pittsburgh 19, Pa. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 27166, dated May 14, 1942.

Bricks, over regular routes, from Wellsville, Ohio, to McKeesport, Pa.

Carbon electrodes, from Niagara Falls, N. Y., to McKeesport, Pa.

Steel castings, from McKeesport, Pa., to Cleveland, Ohio, Service is not authorized to or from intermediate points: from McKeesport, Pa., to Auburn, N. Y., service is authorized to and from the intermediate point of Olean, N. Y.: from McKeesport, Pa., to Nunda, N. Y., service is authorized to and from the intermediate point of Olean, N. Y.

No. MC 28173 (Sub No. 1), filed November 1, 1957, KALAMAZOO VALLEY TRUCKING CO., a Corporation, 7142 East Michigan Avenue (P. O. Box 346), Kalamazoo, Mich. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 28173, dated June 26, 1950.

Paper and *paper products*, over irregular routes, subject to a keystone restriction, from Otsego, Mich., to Milwaukee, Wis., Shelby and Cleveland, Ohio, and points in that part of Ohio north of U. S. Highway 22, and west of a line beginning at Sandusky, Ohio, and extending along Ohio Highway 4 to Bucyrus, Ohio, thence along Ohio Highway 98 to Waldo, Ohio, and thence along U. S. Highway 23 to Circleville, Ohio, those in Indiana north of a line beginning at the Illinois-Indiana State line and extending along U. S. Highway 36 to Indianapolis, Ind., thence along U. S. Highway 40 to the Indiana-Ohio State line, and Rockford, Aurora, Joliet, and Peoria, Ill., and those in the CHICAGO, ILL., COMMERCIAL ZONE, including points on the indicated portions of the highways specified.

Scrap paper and *materials* and *supplies* used or useful in the manufacture of paper and paper products, on return.

No. MC 31953 (Sub No. 2) filed November 6, 1957, VINCENT S. LOWMAN, 438 Belmont Street, Johnstown, Pa. Applicant's attorney: S. Harrison Kahn, 726–34 Investment Building, Washington, D. C. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 31953, dated November 27, 1950.

Food products, over irregular routes, from Baltimore, Md., to Johnstown, Altoona, Bedford, and Philadelphia, Pa.

No. MC 38104 (Sub No. 2), filed November 8, 1957, RUDY NELSON AND EVERETT NELSON, a partnership, doing business as NELSON BROS. TRUCKING CO., P. O. Box 1025, Campbell, Calif. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 38104, dated April 27, 1938.

Between specified points in California, as follows:

Dried and canned fruit and *preserved fruit products*, from San Jose, Campbell, and Berkeley, Calif., to all points, at which recognized water terminals are located, on San Francisco Bay south of and including Richmond, Calif.

Packing house supplies, from the above-specified destination points to San Jose, Campbell, and Berkeley.

No. MC 39521 (Sub No. 15) filed October 23, 1957, CHICAGO SOUTHERN TRANSPORTATION COMPANY, 4000 Packers Avenue, Chicago, Ill. Applicant's attorney: Joseph M. Scanlan, 111 West Washington Street, Chicago 2, Ill. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 39521, dated July 1, 1941.

Fresh meats, packing-house products, and *canned and preserved foodstuffs*, over regular routes, between Chicago, Ill., and St. Louis, Mo.; from Chicago, Ill., to Memphis, Tenn.

No. MC 39521 (Sub No. 1) dated November 21, 1942.

Packing-house products, over irregular routes, from Blue Island, Chicago, East St. Louis, and National City, Ill., and St. Louis, Mo., to Little Rock, Pine Bluff, and Helena, Ark., Chattanooga, Memphis (except from Chicago to Memphis), Nashville (except from St. Louis to Nashville), Murfreesboro, and Tullahoma, Tenn., Clarksdale, Greenville, Greenwood, West Point, Tupelo, Columbus, Meridian, Hattiesburg, Jackson, Vicksburg, and Natchez, Miss., Huntsville, Gadsden, Anniston, Birmingham, Montgomery, and Mobile, Ala., Albany, Atlanta, Columbus, Macon, Moultrie, and Valdosta, Ga., Pensacola, Jacksonville, Miami, and Tampa, Fla., and *returned or rejected shipments of packing-house products*, on return. The above subject to a "Keystone" restriction.

No. MC 39521 (Sub No. 2), dated December 13, 1944.

Rice, fresh fruit, and *vegetables*, over irregular routes, from points in Arkansas to Chicago, Ill.:

Fresh fruit and vegetables, from points in Alabama, Florida, Georgia, and Mississippi and in that part of Tennessee on and east of a line consisting of U. S. Highway 31W from the Kentucky-Tennessee State line to Nashville, Tenn. and U. S. Highway 31 from Nashville to the Tennessee-Alabama State line, to Chicago, Ill.

Such merchandise as is dealt in by meat packing companies, and in connection therewith, *equipment, materials* and *supplies* used in the conduct of such business, subject to a "Keystone" restriction, between Chicago, Ill., on the one hand, and, on the other, East St. Louis, and National City, Ill.: from Chicago, Ill., to Tifton and Augusta, Ga., and Gulfport and Biloxi, Miss.

Equipment, materials and *supplies* used in the conduct of the business engaged in by meat packing companies, from Blue Island, Chicago, East St. Louis, and National City, Ill., and St. Louis, Mo., to Little Rock, Pine Bluff, and Helena, Ark., Chattanooga, Memphis, Nashville, Murfreesboro, and Tullahoma, Tenn., Clarksdale, Greenville, Greenwood, West Point, Tupelo, Columbus, Meridian, Hattiesburg, Jackson, Vicksburg, and Natchez, Miss., Huntsville, Gadsden, Anniston, Birmingham, Montgomery, and Mobile, Ala., Albany, Atlanta, Columbus, Macon, Moultrie, and Valdosta, Ga., and Pensacola, Jacksonville, Miami, and Tampa, Fla., except from St. Louis to Nashville.

No. MC 39521 (Sub No. 3), dated March 20, 1946.

Fresh fruits and vegetables, over irregular routes, from points in Kentucky, and those in that part of Tennessee west of a line beginning at the Tennessee-Kentucky State line and extending along U. S. Highway 31W to Nashville, Tenn., and thence along U. S. Highway 31 to the Tennessee-Alabama State line, to Chicago, Ill.

Equipment, materials and supplies used in the conduct of a meat packing business, over a regular route, subject to a "Keystone" restriction, between Chicago, Ill., and St. Louis, Mo., serving no intermediate points.

No. MC 39521 (Sub No. 5), dated September 10, 1947.

Dairy products, as defined by the Commission, over irregular routes, from Chicago, Ill., to points in Alabama, Florida, Georgia and Mississippi.

Fresh and frozen sea food, from points in that part of Louisiana east of the Mississippi River and on and south of U. S. Highway 90, points in that part of Mississippi on and south of U. S. Highway 90, points in that part of Alabama on and south of U. S. Highway 90, and those in that part of Florida on and south of U. S. Highway 90 from the Alabama-Florida State line to Monticello, thence on and west of U. S. Highway 19 from Monticello to St. Petersburg, to points in Illinois.

Frozen foods, from Chicago, Ill., to points in Alabama, Florida, Georgia, and Mississippi.

Empty containers for the above-specified commodities and *rejected shipments* of the above-specified commodities, on return.

No. MC 39521 (Sub No. 6), dated April 23, 1948.

The commodities classified as (1) meats, meat products and meat by-products and (2) as dairy products, as defined by the Commission, over irregular routes, between Chicago, Ill., and New Orleans, La.

No. MC 39521 (Sub No. 7), dated April 17, 1950.

Such commodities as are directly produced, processed, compounded, and distributed by persons engaged in the slaughtering of animals and the packing and sale of meats, and advertising matter furnished by such persons for use in the sale of such commodities, over regular routes, from St. Louis, Mo., to Nashville, Tenn., over various specified regular routes. Service is authorized to intermediate points in Kentucky and Tennessee restricted to delivery only, and from off-route points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone, as defined by the Commission, restricted to pick-up only.

No. MC 39521 (Sub No. 9), dated July 11, 1949.

Agricultural commodities, over irregular routes, from points in Illinois except Elgin, East St. Louis, and National City to points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina: from points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina and South Carolina, except points in Florida, Alabama, and Mississippi on and north of U. S. Highway 90, to Rochester, Ind., and to points in Illinois, except Elgin, East St. Louis, and National City.

The commodities classified as dairy products as defined by the Commission, from Chicago, Litchfield, Carbondale, Sullivan, Freeport, Dixon, Petersburg, and Rockford, Ill., to points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina.

Canned goods, from Chicago, Rossville, Rochelle, Blue Island, Eureka, Morton, Lanark, Belvidere, and Washington, Ill., to points in Arkansas, Alabama, Mississippi, North Carolina, and South Carolina.

Frozen foods, from Chicago, Ill., to points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina.

Fruit and vegetable plants, from points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina to Harvey and Evansville, Ill., and to points in Illinois within 100 miles of Harvey and Evansville.

The commodities classified as meats, meat products, and meat by-products, as dairy products, and as articles distributed by meat-packing houses, as defined by the Commission, subject to a "Keystone" restriction, from Chicago and Blue Island, Ill., to points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina: from New Orleans, La., Dothan, Ala., and Columbus, Ga., to Chicago, Ill.

No. MC 39976 (Sub No. 7), filed November 4, 1957, RAYMOND D. GIBBS, doing business as DAN GIBBS AND SON, 409 Beach Lane NW., New Philadelphia, Ohio. Applicant's representative: G. H. Dilla, 3350 Superior Avenue, Cleveland 14, Ohio. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 39976 (Sub No. 1), dated January 23, 1947.

Clay products, over irregular routes, between points in Tuscarawas County, Ohio, on the one hand, and, on the other, points in Indiana on and north of U. S. Highway 40, points in the lower peninsula of Michigan, points in Pennsylvania on and west of U. S. Highway 219, and those in West Virginia.

Malt beverages, from points in Pennsylvania on and west of U. S. Highway 219 and points in Kentucky, to points in Tuscarawas County, Ohio, and *empty malt beverage containers* and *refused and rejected shipments* of malt beverages, on return.

No. MC 39976 (Sub No. 3), dated October 3, 1949.

Clay products, over irregular routes, from points in Tuscarawas County, Ohio, to points in that part of Pennsylvania east of U. S. Highway 15, and to points in Illinois, and *pallets and skids* used in moving of clay products, on return.

Malt beverages, in containers, from New Philadelphia, Ohio, to points in Kentucky, West Virginia, Indiana, and those in Washington County, Pa., and *empty malt beverage containers* on return.

Prepared roofing materials, from Wilmington and Waukegan, Ill., to points in West Virginia and Pennsylvania on and west of U. S. Highway 219.

No. MC 41002 (Sub No. 14) filed October 21, 1957, THE VICTOR TRANSIT CORPORATION, P. O. Box 115, Winton Place Station, Cincinnati 32, Ohio. Applicant's attorney: Richard H. Brandon, Hartman Building, Columbus 15, Ohio. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 41002, dated February 8, 1941.

Petroleum products, in drums, and *such supplies and equipment* as are used by filling stations, bulk plants, and refineries in the operation of their business but not sold as merchandise by the, between Latonia, Ky., on the one hand, and, on the other, points in Ohio.

No. MC 41002 (Sub No. 1), dated May 8, 1946.

Malt and vinous beverages, from points in Campbell and Kenton Counties, Ky., to points in Butler County, Ohio, and *empty beverage containers* and *rejected shipments*, on return.

No. MC 41002 (Sub No. 2), dated September 12, 1946.

Malt beverages, from points in St. Louis County, Mo., to points in Butler, Preble and Warren Counties, Ohio, and *empty malt beverage containers*, on return.

No. MC 41002 (Sub No. 3), dated September 30, 1947.

Paper and *paper products*, other than building and roofing paper and building products, from Lockland and Middletown, Ohio, to points in Illinois, Indiana, Ohio, the southern peninsula of Michigan, that part of New York located on and west of U. S. Highway 15, that part of Pennsylvania located on and west of a line extending along U. S. Highway 15 from the New York-Pennsylvania State line south to junction U. S. Highway 111, and thence along U. S. Highway 111 south to the Pennsylvania-Maryland State line, and Harrisburg, Pa., that part of Wisconsin located south and east of a line extending along U. S. Highway 18 from Lake Michigan to Madison, Wis., thence along U. S. Highway 14 to junction U. S. Highway 51, thence along U. S. Highway 51 to Wisconsin-Illinois State line, including points on the indicated portions of the highways specified; Jefferson, Kenton, Campbell, Mason, and Boyd Counties, Ky., Cabell, Kanawha, Wood, Ohio, Brooke, and Hancock Counties, W. Va., and St. Louis County, Mo., and *machinery, equipment, materials and supplies* used in the manufacture of paper and paper products, on return.

No. MC 41002 (Sub No. 4), dated July 21, 1948.

Malt beverages and *empty malt beverage containers*, between points in Vigo County, Ind., on the one hand, and, on the other, points in Butler, Preble, and Warren Counties, Ohio.

No. MC 41002 (Sub No. 5), dated April 12, 1949.

Paper (other than newsprint), from Hamilton, Ohio, to points in Illinois, except Chicago, those in Indiana, Ohio, and the lower peninsula of Michigan, those in New York on and west of a line drawn from Ontario Beach to Rochester, N. Y., thence along U. S. Highway 15 to the New York-Pennsylvania State line, Harrisburg, Pa., and points in that part of Pennsylvania on and west of a line beginning at the New York-Pennsylvania State line and extending along U. S. Highway 15 to junction U. S. Highway 111, and thence along U. S. Highway 111 to the Pennsylvania-Maryland State line, those in that part of Wisconsin on, south and east of a line extending along U. S. Highway 18 from Lake Michigan to Madison, Wis., thence along U. S. Highway 14 to junction U. S. Highway 51, thence along U. S. Highway 51 to the Wisconsin-Illinois State line, and those in Jefferson, Kenton, Campbell, Mason, and Boyd Counties, Ky., Cabell, Kanawha, Wood, Ohio, Brooke, and Hancock Counties, W. Va., and St. Louis County and St. Louis, Mo., and *machinery, equipment, materials and supplies* used in the manufacture of paper, on return.

No. MC 41002 (Sub No. 6), dated February 14, 1950.

Such commodities as are manufactured by or dealt in by such persons (who are engaged in the manufacture of insulation materials, roofing materials, asphalt and asbestos building materials, and asphalt paving materials), from Lockland, Ohio, to points in Illinois, except Chicago and East St. Louis, Indi-

ana, except Indianapolis, Ohio, the lower peninsula of Michigan, except Detroit, those in that part of New York on and west of U. S. Highway 15, Harrisburg, Pa., and points in that part of Pennsylvania on and west of a line extending from the New York-Pennsylvania State line along U. S. Highway 15 to junction U. S. Highway 111, and thence along U. S. Highway 111 to the Pennsylvania-Maryland State line, except Pittsburgh, those in that part of Wisconsin on, south and east of a line extending in a westerly direction from Lake Michigan along U. S. Highway 18 to Madison, Wis., thence along U. S. Highway 14 to junction U. S. Highway 51, and thence along U. S. Highway 51 to the Wisconsin-Illinois State line, and those in Cabell, Kanawha, Wood, Ritchie, Doddridge, Harrison, Marion, Taylor, Ohio, Brooke and Hancock Counties, W. Va., but not including Wheeling, W. Va., and *machinery, equipment, materials and supplies* used in the manufacture, packing and shipping of the above-specified commodities, on return.

No. MC 41002 (Sub No. 7), dated December 30, 1948.

Malt beverages, from St. Louis, Mo., to Hamilton, Ohio, and *empty malt beverage containers*, on return.

Paper and paper products, except building and roofing paper and building paper products, from Lockland and Middletown, Ohio, to St. Louis, Mo., and *equipment, materials and supplies* used in the manufacture of paper and paper products, except building and roofing paper and building paper products, on return.

No. MC 41002 (Sub No. 9), dated October 5, 1955.

Animal and poultry foods and medicine, and *ingredients, equipment, materials and supplies*, used in the manufacture, packing, and shipping of animal and poultry food and medicines, subject to a "Keystone" restriction, between points in Alabama, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Mississippi, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin, restricted, however, against transportation of shipments which originate at a point in Delaware, Maryland, New Jersey, North Carolina, Pennsylvania, South Carolina, and Virginia and are destined to a point in any of those states and further restricted against transportation of animal and poultry feed from points in the Chicago, Ill., Commercial Zone to points in Michigan and from Detroit, Mich., to points in Indiana.

Dry rendered tankage and *tallow* in bulk, in tank vehicles and in containers, between Cincinnati, Ohio, on the one hand, and, on the other, points in Alabama, Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Mississippi, New Jersey, North Carolina, South Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin, subject to the restriction that the transportation of tallow shall only be performed in tank trailers which are the property of persons described above and with whom the applicant maintains individual contracts or agreements.

No. MC 41002 (Sub No. 11), dated October 27, 1954.

Finished paper, from Hamilton, Ohio to Chicago, Ill., over a specified regular route, serving no intermediate points.

Waste paper, rags, casein, steel strappings, starch, sodium, sulphite, hyposulphite of soda, anhydrous sulphite of soda, and *returned paper*, from Chicago, Ill., to Hamilton, Ohio, serving no intermediate points, and return.

Glass containers and *caps, covers, disks or tops therefor*, over irregular routes, from Huntington, W. Va., to points in that part of Ohio on and west of a line beginning at the Ohio River and extending north along U. S. Highway 23 to junction Ohio Highway 98, thence along Ohio Highway 98 to junction Ohio Highway 4, and thence along Ohio Highway 4 to Lake Erie, and points in that part of Indiana on and south of U. S. Highway 40 and on and east of Indiana Highway 3.

Glass containers, caps, covers, disks and *tops*, and *fibreboard boxes*, corrugated or knocked down flat, from Huntington, W. Va., to points in Kentucky and points in Indiana on and south of U. S. Highway 36 and on and west of Indiana Highway 37. From Owens, W. Va., to points in Kentucky and points in Indiana on and south of U. S. Highways 40 and 36.

No. MC 41002 (Sub No. 12), dated December 18, 1956.

Glass bottles, caps and closures therefor and *corrugated paper boxes*, knocked down, when transported in connection with shipments of glass bottles, from Vienna, W. Va., to points in Illinois, Indiana, and Kentucky and points in Dallas, Tuscaloosa, Jefferson, Morgan, and Limestone Counties, Ala., and Lincoln, Hamilton, Marion, Sullivan, and Carter Counties, Tenn.

No. MC 41133 (Sub No. 1) filed November 12, 1957, KEITH FULTON & SONS, INC., 178 Second Street, Cambridge, Mass. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 41133, dated March 29, 1951.

Iron and *steel*, over irregular routes, from Boston, Mass., to Malden, Mass.

Iron, steel and *wooden tanks*, and *iron and steel*, from Boston and Cambridge, Mass., to Providence, R. I., and points within ten miles of Providence.

No. MC 46203 (Sub No. 4), filed November 29, 1957, HOWARD SHIREMAN TRUCKING SERVICE, INC., P. O. Box 201, Camp Hill, Pa. Applicant's attorney: S. Harrison Kahn, 726–34 Investment Building, Washington, D. C. For authority to operate as a *common carrier*, of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 46203, dated January 21, 1953.

Silk and *rayon*, and *such materials and supplies* as are used or useful in the manufacture of silk and rayon, over irregular routes, between Columbia, Marietta, and Athens, Pa., on the one hand, and, on the other, Waverly, Binghamton, Pine Bush, and Walden, N. Y., and Paterson, N. J.

Machinery, machine parts, and equipment used or useful in the manufacture of silk and rayon, between Philadelphia and Milton, Pa., on the one hand, and, on the other, Waverly, Binghamton, Pine Bush, and Walden, N. Y., and Paterson, N. J.

Warp beams, bobbins and machinery, machine parts, and equipment, used in the manufacture of yarn and woven fabrics, between York, Marietta, Columbia, and Athens, Pa., on the one hand, and, on the other, Paterson, N. J., and points in that part of New York and New Jersey within 30 miles of Paterson.

Yarn, other than silk and rayon yarn, from Columbia, Pa., to Pine Bush, Walden, and Waverly, N. Y.

Woven fabrics, other than silk and rayon fabrics, from Columbia, Athens, and Marietta, Pa., to Paterson, N. J., and points in that part of New York and New Jersey within 30 miles of Paterson.

Woven fabrics, from Pine Bush, Walden, and Waverly, N. Y., to Paterson, N. J., and points in New Jersey within 30 miles of Paterson. From York, Pa., to Paterson, N. J., and points in New Jersey and New York within 30 miles of Paterson.

Dresses, from Paterson, N. J., and points in New York and New Jersey within 30 miles of Paterson, to Columbia and Marietta, Pa.

No. MC 48399 (Sub No. 1) filed October 28, 1957, D. B. FORD, INC., 226 Spring Street, Aurora, Ill. Applicant's attorney: R. E. Powell, 1005–6 Trust Building, Lincoln, Nebr. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 48399, dated August 23, 1957.

Tanks, towers, incinerators, heavy machinery, and *building contractors' tools and supplies*, over irregular routes, between points in Illinois, Iowa, Kansas, Minnesota, Missouri, South Dakota, Nebraska, and Wisconsin.

No. MC 49326 (Sub No. 1) filed November 25, 1957, HARRY G. SLOCOMBE, 1500 Jefferson Davis Highway, Arlington, Va. Applicant's attorney: S. Harrison Kahn, 726–34 Investment Building, Washington, D. C. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 49326, dated January 18, 1951.

Newsprint paper, coffee, bakery products, and *such materials, equipment* and *supplies* as are used in or incidental to the conduct of a bakery business, over a regular route, between Washington, D. C., and Baltimore, Md., serving no intermediate points.

No. MC 50420 (Sub No. 2) filed October 24, 1957, JAHNEKE BROS. TRUCKING AND PAPER CO., INC., Railroad and McDonough Streets, Joliet, Ill. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 50420 (Sub No. 1), dated October 9, 1951.

Tile, slate and *metal roofing*, and *roofing material* and *commodities used in the manufacture thereof*, except lumber, sand and gravel, over irregular routes, between Joliet, Ill., and St. Louis, Mo.

No. MC 50936 (Sub No. 1) filed November 12, 1957, R. A. GOULD, 622 I Street, Salt Lake City, Utah. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 50936, dated October 18, 1938.

Gasoline, over a regular route, from Woods Cross, Utah, to Lyman, Wyo., serving the intermediate point of Evanston, Wyo., for delivery only.

NOTE: Applicant is authorized to conduct operations as a *common carrier* in Certificates No. MC 113094 and Sub No. 3 thereunder, dated July 22, 1957, and October 24, 1955, respectively.

No. MC 51077 (Sub No. 4), filed November 29, 1957, ROBERT J. EICHELBERGER, 1220 Roosevelt Avenue, York, Pa. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 51077, dated January 31, 1950.

Paper and paper manufacturing machinery, materials and equipment, over irregular routes, between York, Pa., on the one hand, and, on the other, Richmond, Va., New York, N. Y., and points in Delaware, the District of Columbia, Maryland, and New Jersey.

Roofing and siding, and roofing and siding materials and equipment, and *building metal work and sheet metal*, between York, Pa., on the one hand, and, on the other, Jersey City, N. J., New York, N. Y., and points in the District of Columbia, and that part of Maryland north of U. S. Highway 40 and east of U. S. Highway 111, including points on the indicated portions of the highways specified.

No. MC 51077 (Sub No. 3), dated August 15, 1952.

Paper, over irregular routes, from York, Pa., to points in that part of New York north of New York Highway 7 and west of New York Highway 30.

Machinery, materials, and *equipment* used in the manufacture of paper, from points in that part of New York north of New York Highway 7 and west of New York Highway 30 to York, Pa.

No. MC 52552 (Sub No. 14) (Correction) filed October 18, 1957, published November 22, 1957, DARL D. WOMELDORF, doing business as W. I. WOMELDORF & SONS, P. O. Box 232, Lewistown, Pa. Applicant's attorney: Robert H. Shertz, 811–819 Lewis Tower Building, Philadelphia 2, Pa. Previous publication gave applicant's address as McKeesport, Pa. This was in error. Applicant's correct address is P. O. Box 232, Lewistown, Pa.

No. MC 52556 (Sub No. 5) filed November 25, 1957, G. KAY, INC., Box 38, Fairmont, Nebraska. Applicant's representative: C. A. Ross, 1004–05 Trust Building, Lincoln, Nebr. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 52556, dated July 25, 1951.

Salt, over irregular routes, from Hutchinson, Lyons, and Kanopolis, Kans., to points in Nebraska.

Flour and *feed*, from Crete, Nebr., to points in Kansas.

No. MC 54389 (Sub No. 8), filed November 14, 1957, O. L. HARE, doing business as GREEN COUNTY FAST FREIGHT, Monroe, Wis. Applicant's representative: Adolph E. Solie, 715 First National Bank Building, Madison 3, Wis. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 54389, dated April 27, 1950.

Casein, feed, casein equipment, and *empty containers* for casein, between points in that part of Wisconsin bounded by a line beginning at Wisconsin Dells, and extending along Wisconsin Highway 23 to Reedsburg, thence along Wisconsin Highway 33 to Union Center, thence along Wisconsin Highway 80 to Elroy, thence along Wisconsin Highway 71 to junction Wisconsin Highway 142, thence along Wisconsin Highway 142 to Tomah, and thence along U. S. Highway 12 to point of beginning, including points on the indicated portions of the highways specified except those on U. S. Highway 12, on the one hand, and, on the other, Chicago, Ill. Farm machinery and farm supplies, from Chicago, Ill., and points in Illinois in the CHICAGO, ILL., COMMERCIAL ZONE, to points in Wisconsin within 200 miles of Madison, located south and west of U. S. Highway 12, not including points on the indicated portion of the highway specified.

Such merchandise as is dealt in by such manufacturing establishments and wholesale food business houses, and, in connection therewith, equipment, materials, and supplies used in the conduct of such business, subject to a keystone restriction, between Chicago, Ill., on the one hand, and, on the other, points in Wisconsin south and west of U. S. Highway 12, (not including points located on U. S. Highway 12): from Chicago, Ill., to points in Jo Daviess, Stephenson, and Winnebago Counties, Ill., through Wisconsin.

Cheese, from points in Jo Daviess, Stephenson and Winnebago Counties, Ill., to Chicago, Ill., through Wisconsin. RESTRICTION: Carrier shall not traverse U. S. Highway 12 in performing the above-described transportation service.

No. MC 54389 (Sub No. 6), dated March 6, 1953.

Fertilizer, over irregular routes, from Bloom Township (Cook County), Ill., to points in Crawford, Grant, Green, Iowa, Lafayette, Richland, Rock, and Vernon Counties, Wis., and those in Dane and Sauk Counties, Wis., located on, south, and west of U. S. Highway 12.

No. MC 54420 (Sub No. 1) filed October 29, 1957, WILLIAM LUSTIGMAN, 202 Avenue F, Brooklyn, N. Y. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 54420, dated November 29, 1946.

Bakery materials, over irregular routes, subject to a "Keystone" restriction, between New York, N. Y., on the one hand, and, on the other, points in Bergen, Essex, Hudson, Middlesex, Passaic, and Union Counties, N. J., and Nassau, Suffolk, and Westchester Counties, N. Y.

No. MC 58995 (Sub No. 2), filed November 30, 1957, MAPES MOVING & STORAGE CO., INC., Box 444, East Vestal Parkway, Binghamton, N. Y. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 58995, dated April 6, 1956.

Undertakers' supplies and equipment, over irregular routes, between Binghamton, N. Y., on the one hand, and, on the other, points in Pennsylvania within 50 miles of Binghamton, N. Y.

Such merchandise as is dealt in by wholesale or retail department stores, subject to a keystone restriction, from Binghamton, N. Y., to points in Pennsylvania within 50 miles of Binghamton, N .Y.

Such merchandise as is dealt in by wholesale, retail, and chain grocery stores, and, in connection therewith, *equipment, materials and supplies* used in the conduct of such business, subject to a keystone restriction: from Binghamton, N. Y., to points in Susquehanna County, Pa., Broome County, Green, Coventry, Bainbridge, and Afton Townships, Chenango County, Unadilla and Otego Townships, Otsego County, and Sidney, Masonville, Deposit, Tompkins, Hancock, Colchester, Walton, Franklin, Delhi, Hamden, and Meredith Townships, Delaware County, N. Y., and *such above-specified commodities* as may be refused or damaged, from the above-specified destination points to Binghamton, N. Y.

No. MC 59685 (Sub No. 10), filed November 7, 1957, DISTRIBUTORS SERVICE CO., a corporation, 4551 South Racine Avenue, Chicago 9, Ill. For authority to operate as a *Common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 59685, dated August 31, 1954.

REGULAR ROUTES: *Malt beverages*, and *empty malt-beverage containers*, between Chicago, Ill., and Marion, Ind., serving no intermediate points. Between Chicago, Ill., and Fort Wayne, Ind., serving no intermediate points.

IRREGULAR ROUTES: *Packinghouse products, packing-house by-products*, and *fresh meats*, from Chicago, Ill., to points in that part of Indiana on, north, and east of a line beginning at the Indiana-Michigan State line and extending along U. S. Highway 31 to Plymouth, Ind., thence along U. S. Highway 30 to the Indiana-Ohio State line, and those in that part of Ohio on, north, and west of a line beginning at the Ohio-Michigan State line and extending along U. S. Highway 127 to junction U. S. Highway 24, thence along U. S. Highway 24 to the Ohio-Indiana State line; and *Such sup-*

plies and materials as are used in the operation and maintenance of packing houses, from points in the above-specified Indiana and Ohio destination territory to Chicago, Ill. *Malt beverages*, from Chicago, Ill., to all points in Iowa. From Fort Wayne, Ind., to all points in Illinois except Chicago; and *empty malt-beverage containers*, from all points in Iowa, to Chicago, Ill., from all points in Illinois except Chicago, to Fort Wayne, Ind.

Packing-house products, canned goods, and *materials, equipment, and supplies* used in the packing-house business, subject to "Keystone" restriction, between Chicago and Blue Island, Ill., on the one hand, and, on the other, National City and East St. Louis, Ill., and St. Louis, Mo.

Malt and cereal beverages, and *advertising matter and ice* when shipped in conjunction with such beverages, subject to "Keystone" restriction, from South Bend, Ind., to points in Illinois in the Chicago, Ill., Commercial Zone as defined by the Commission; and *empty malt and cereal beverage containers*, and *rejected shipments of malt and cereal beverages*, from points in the Chicago, Ill., Commercial Zone as defined by the Commission, to South Bend, Ind.

No. MC 59799 (Sub No. 5), filed November 14, 1957, JIM CHELF, INC., 5226 Brighton Boulevard, Denver, Colo. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 59799, dated March 15, 1956.

Petroleum products, in bulk, over irregular routes, from Sinclair, Wyo. (formerly known as Parco, Wyo.), to Ogallala and Big Spring, Nebr., and Loveland, Eads, Castle Rock, Byers, Bennett, Boulder, Sterling, Julesburg, Briggsdale, Pueblo, Lamar, Hooper, La-Veta, Salida, Agate, Grand Junction, Glenwood Springs, Pagosa Springs, Golden, Leadville, Graig, Alamosa, Limon, Brush, Haxtum, Ovid, Colorado Springs, Fort Lupton, Wiggins, Fort Collins, Longmont, Rocky Ford, Greeley, Eaton, Canon City, Cripple Creek, Trinidad, Roggen, Yuma, Elizabeth, Wray, and Buena Vista, Colo. From Sinclair, Wyo. (formerly known as Parco, Wyo.), to construction projects in Colorado not located within the limits of an incorporated city or town.

Refined petroleum products, from refining and distributing points in Kansas, to Longmont, Denver, Roggen and Keenesburg, Colo.

No. MC 61978 (Sub No. 6), filed October 21, 1957, HALLIE ZERKLE, doing business as ZERKLE TRANSFER CO., 34½ Race Street, Middleport, Ohio. Applicant's attorney: Herbert Baker, 50 West Broad Street, Columbus 15, Ohio. For authority to operate as a *common carrier* of the same commodities beween the same points or within the same territory as authorized in the following permit:

No. MC 61978 (Sub No. 1), dated July 30, 1938.

Petroleum products, in metal cans and other packages, between Cabin Creek, W. Va., and points in Ohio, as follows: from Cabin Creek to points in that part of Ohio east of a line beginning at Portsmouth, Ohio, and extending in a northerly direction along U. S. Highway 23 to Columbus, Ohio, thence in a northeasterly direction along U. S. Highway 62 to the Ohio-Pennsylvania State line, including points on the indicated portions of the highways specified; and *empty petroleum containers*, on return.

No. MC 61978 (Sub No. 2), dated March 22, 1940.

Petroleum products, in packages, from Cabin Creek, W. Va., to points in that part of Ohio bounded by a line beginning at Columbus and extending along U. S. Highway 62 to Utica, thence along Ohio Highway 13 to Mansfield, thence along U. S. Highway 30S to Marion, thence along Ohio Highway 4 to Springfield, thence along U. S. Highway 68 to Wilmington, thence along Ohio Highway 73 to Portsmouth, and thence along U. S. Highway 23 to point of beginning; and *empty petroleum product containers*, on return.

No. MC 61978 (Sub No. 3), dated February 6, 1943.

Fresh meats, packing-house products and *such other commodities as are dealt in or distributed by packing-houses*, and *advertising matter used in promoting the sale of such commodities*, over irregular routes, from Middleport, Ohio, and Huntington and Parkersburg, W. Va., to points in that part of Ohio bounded by a line beginning at the Ohio-West Virginia State line and extending along Alternate U. S. Highway 50 to Athens, Ohio, thence along U. S. Highway 50 to junction Ohio Highway 28, thence along Ohio Highway 28 to Leesburg, Ohio, thence along U. S. Highway 62 to the Ohio-Kentucky State line, thence along the Ohio-Kentucky State line to the Ohio-West Virginia State line, and thence along the Ohio-West Virginia State line to point of beginning, and those in that part of West Virginia west of U. S. Highway 19, including points on the indicated portions of the highways specified.

Food products, from Cincinnati, Ohio, to points in that part of West Virginia on and west of U. S. Highway 19.

Salt, from Pomeroy, Ohio, to points in West Virginia and that part of Kentucky on and east of U. S. Highway 31W.

Meats, from Middleport, Ohio, to points in that part of West Virginia on and west of U. S. Highway 19, and those in that part of Ohio on and south of U. S. Highway 22.

Cheese, and *packing-house products*, not including meats, from Huntington and Parkersburg, W. Va., to points in that part of Ohio on and south of U. S. Highway 22.

No. MC 63258 (Sub No. 2) filed November 21, 1957, ALEXANDER CARLUCCI, 262 North Belmont Avenue, Belleville, N. J. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 63258, dated August 18, 1943.

Groceries and *such commodities*, as are dealt in by wholesale and retail grocery houses, over irregular routes, subject to a "Keystone" restriction, between points in Bergen, Hudson, Essex, Passaic, Union, Middlesex, Morris, and Somerset Counties, N. J., on the one hand, and, on the other, New York, N. Y., and points in Westchester, Nassau, and Suffolk Counties, N. Y.

No. MC 63993 (Sub No. 4), filed November 7, 1957, CITY WAREHOUSE, INC., 1516 Bluefield Avenue, Bluefield, W. Va. Applicant's attorney: Clarence D. Todd, 1825 Jefferson Place NW., Washington 6, D. C. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 63993, dated May 10, 1954.

Packing-house products and by-products, over specified regular routes between Bluefield, W. Va., and Christianburg, Va., serving all intermediate points and the off-route point of Newbern, Va.; between Bluefield, W. Va., and Williamson, W. Va., in truckload lots only, serving no intermediate points.

Lubricating oils and greases, over a specified regular route between Bluefield, W. Va., and Roanoke, Va., serving all intermediate points.

Lubricating oils and greases, over irregular routes, between points in Raleigh, Mercer, Summers, Wyoming, and McDowell Counties, W. Va., and those in Tazewell and Bland Counties, Va.

Alcoholic liquors and *incidental store supplies*, between Charleston, W. Va., on the one hand, and, on the other, all points in West Virginia.

Alcoholic liquors and *incidental store supplies*, over regular and irregular routes, between Charleston, W. Va., and points in West Virginia as follows: from Charleston over irregular routes to the West Virginia-Virginia State line near White Sulphur Springs, W. Va., thence over U. S. Highway 60 to Lexington, Va., thence over U. S. Highway 11 to Winchester, Va., thence over U. S. Highway 11 and/or 50 to the Virginia-West Virginia State line, thence over irregular routes to all points in West Virginia, and return over the same routes, serving no intermediate points on regular route portion. From Charleston over irregular routes to the West Virginia-Maryland State line near Brookside, W. Va., thence over U. S. Highway 50 to the Maryland-West Virginia State line near Gormania, W. Va., thence over irregular routes to all points in West Virginia, and return over the same routes serving no intermediate points on regular route portion. Catalogues, over irregular routes, from Bluefield, W. Va., to points in Rockbridge, Allegheny, Botetourt, Craig, Roanoke, Franklin, Henry, Patrick, Floyd, Montgomery, Giles, Pulaski, Carroll, Grayson, Wythe, Bland, Tazewell, Smyth, Washington, Russell, Buchanan, Dickenson, Wise, Scott, and Lee Counties, Va., and those in Mercer, McDowell, Mingo, Logan, Wyoming, Fayette, Summers, Raleigh, Greenbrier, Pocahontas, and Monroe Counties, W. Va.

Such merchandise as is dealt in by wholesale, retail and grocery and food business houses, and in connection therewith, *equipment, materials* and *supplies*, used in the conduct of such business, between points in Raleigh, Mercer, Sum-

mers, Wyoming, and McDowell Counties, W. Va., and those in Tazewell and Bland Counties, Va.

Such merchandise as is dealt in by wholesale, retail and chain grocery and food business houses, and in connection therewith, *equipment, materials* and *supplies* used in the conduct of such business, subject to a "Keystone" restriction, over a specified regular route, between Bluefield, W. Va., and Roanoke, Va., serving all intermediate points.

No. MC 66344 (Sub No. 14), filed November 20, 1957, L. R. CYRUS, doing business as CYRUS PETROLEUM TRUCK LINE, Box 327, Iola, Kans. Applicant's attorney: Howard M. Immel, Allen County State Bank Building, Iola, Kans. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 66344, dated November 18, 1956.

Petroleum products, in bulk, in tank vehicles, over irregular routes, from refining and producing points in Kansas, to points in that part of Missouri south of U. S. Highway 36, west of U. S. Highway 63, and north of U. S. Highway 60, including points on the indicated portions of the highways specified.

Petroleum and *petroleum products*, in bulk, in tank vehicles, from refining and producing points in Kansas, and points in the Kansas City, Mo.-Kansas City, Kans., Commercial Zone as defined by the Commission to points in that part of Missouri south of U. S. Highway 60 and on and west of U. S. Highway 65: from refining and producing points in Kansas and points in the Kansas City, Mo.-Kansas City, Kans., Commercial Zone, as defined by the Commission, to points in that part of Missouri south of U. S. Highway 60 and on and west of U. S. Highway 65: from refining and producing points in Kansas, and points in the Kansas City, Mo.-Kansas City, Kans., Commercial Zone as defined by the Commission to Ava, Mo.

No. MC 66344 (Sub No. 13), dated March 20, 1950.

Liquid petroleum products, in bulk, in tank vehicles, from points within 2 miles of Iola, Kans., and Coffeyville, Kans., to Ava, Mo., and points in that part of Missouri bounded on the south by the Missouri-Arkansas State line beginning at the Missouri-Oklahoma State line and extending easterly to U. S. Highway 65, thence north along U. S. Highway 65 to junction with U. S. Highway 60, thence east along U. S. Highway 60 to junction U. S. Highway 63, thence north along U. S. Highway 63 to the Missouri-Iowa State line to the Missouri-Nebraska State line, thence south along the Missouri-Nebraska State line to the Missouri-Kansas State line, and thence south along the Missouri-Kansas State line to the Missouri-Oklahoma State line, and thence south along the Missouri-Oklahoma State line to the point of beginning at the Missouri-Arkansas State line, including points along the indicated portions of the highways specified.

Damaged, refused and *contaminated liquid petroleum products*, in bulk, in tank vehicles, from points in that part of Missouri indicated above to points in Kansas.

No. MC 66906 (Sub No. 4), filed November 7, 1957, THE BERRODIN TRANSPORT, INC., 3155 Conlin Drive, Akron, Ohio. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 66906, dated August 30, 1943.

Such commodities as are manufactured, processed and/or dealt in by rubber manufacturers and steel product manufacturers, and *equipment, materials*, and *supplies* used in the conduct of such businesses, over irregular routes, from Akron, Ohio, to points in Rhode Island, Massachusetts, and Connecticut, those in that part of New York east of a line beginning at Port Jervis, N. Y., and extending along U. S. Highway 209 to Kingston, N. Y., thence along U. S. Highway 9W to Albany, N. Y., thence along U. S. Highway 20 to Fayette, N. Y., thence along U. S. Highway 11 to Watertown, N. Y., and thence along New York Highway 12 to Clayton, N. Y., including New York, N. Y., and points on Long Island, N. Y., and those in New Jersey north of New Jersey Highway 33, including points on the indicated portions of the highways specified.

Tire fabric, from Fall River and New Bedford, Mass., to Akron, Ohio.

Chemicals, from Naugatuck, Conn., to Akron, Ohio.

Scrap tires and tubes, from Boston, Cambridge, New Bedford, Pittsfield, Fall River, and Springfield, Mass., Hartford, Conn., Newark, N. J., and Albany and New York, N. Y. and points on Long Island, N. Y., to Akron, Ohio.

No. MC 68105 (Sub No. 7), filed November 14, 1957, ALFRED E. ANDING, Arena, Wis. Applicant's attorney: Edward Solie, 715 First National Bank Building, Madison 3, Wis. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 68105, dated August 12, 1957.

Butter, over regular and irregular routes, from points in Grant, Crawford, Vernon, Richland, Sauk, Dane, and Iowa Counties, Wis., over irregular routes to Cross Plains, Wis., thence over U. S. Highway 14 to junction U. S. Highway 12, and thence over U. S. Highway 12 to Chicago, Ill., and *empty containers* on return.

Agricultural insecticides, herbicides, and *fungicides*, in bags and in containers, from Spring Green, Wis. to points in Illinois, and Indiana (except points located in the Chicago, Ill., Commercial Zone as defined by the Commission), Iowa, Ohio, Michigan, Minnesota (except points located in the Minneapolis-St. Paul, Minn., Commercial Zone as defined by the Commission), North Dakota, South Dakota, and Missouri, and *empty containers* used in transporting the commodities specified above on return.

Explosives, other than liquid explosives, from Ishpeming, Mich., and Madison, Wis., to points in Illinois, Iowa, Minnesota, and Wisconsin and *empty containers* used in the transportation of explosives, and *rejected shipments* of the commodities specified immediately above on return.

No. MC 69239 (Sub No. 2), filed November 21, 1957, RAUSCH TRANSPORTATION COMPANY, INC., 4727 East 49th Street, Los Angeles 58, Calif. Applicant's attorney: Ivan McWhinney, 639 South Spring Street, Los Angeles 14, Calif. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 69239, dated February 14, 1956.

Fertilizer, feed, seed, peat moss, bale ties, nails, fencing, bagging, meat scraps, oil well clay, paint, and *materials* used in the manufacture of paint, over irregular routes between Vernon and Los Angeles, Calif., and points in Los Angeles County within five miles of the intersection of Ninth and Indiana Streets, Los Angeles, Calif., on the one hand, and, on the other, Los Angeles Harbor and Long Beach, Calif.

Piling casings, from Los Angeles Harbor, Calif., to Los Angeles and Vernon, Calif.

No. MC 75566 (Sub No. 4), filed November 14, 1957, SHERIDAN & DUNCAN INC., 471 Eleventh Avenue, New York, N. Y. Applicant's attorney: Herbert Burstein, 160 Broadway, New York 38, N. Y. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 75566, dated January 30, 1942.

Conduit, from New York, N. Y., to points in Bergen, Essex, Hudson, Morris, and Passaic Counties, N. J., Rockland County, N. Y., and Fairfield County, Conn. *Carbonated beverages* and *containers*, therefor, from New York, N. Y., to Newark and Belmar, N. J.; and *empty bottles* and *carbonated beverage containers*, on return.

No. MC 75566 (Sub No. 1), dated November 2, 1943.

Carbonated beverages, over irregular routes, from Mt. Vernon, N. Y., to Newark, N. J., *empty carbonataed beverage containers*, over irregular routes, from Newark, N. J., to Mt. Vernon, N. Y.: from New York, N. Y., and points in Hudson County, N. J., to Hudson, N. Y.

No. MC 75566 (Sub No. 2), dated October 28, 1943.

Carbonated beverages, over irregular routes, from New York, N. Y., to Sea Girt, N. J., and *rejected shipments of carbonated beverages and empty carbonated beverage containers*, on return.

No. MC 75566 (Sub No. 3), dated April 24, 1947.

Carbonated beverages, over irregular routes, from New York, N. Y., to Orange, N. J., *rejected shipments* of carbonated beverages, and *empty carbonated beverage containers*, on return.

No. MC 77874 (Sub No. 5), filed November 19, 1957, ALVIN D. FREY, 966 York Street, Hanover, Pa. Applicant's attorney: Norman T. Petow, 43 North Duke Street, York, Pa. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 77874, dated October 22, 1942.

Canned goods, over regular routes, from Hanover, Pa., to New York, N. Y., serving the intermediate points of Newark, Elizabeth and Jersey City, N. J., and the off-route point of Camden, N. J., restricted to delivery only. From Hanover, Pa., to Wilmington, Del., serving no intermediate points.

No. MC 77874 (Sub No. 1), dated May 16, 1947.

Canned fruits and vegetables, over irregular routes, from Hanover, Pa., to points in New York, except New York City, and points in Putnam, Westchester, Dutchess, Rockland, Orange, Ulster, and Sullivan Counties, N. Y., and Ohio, and *rejected shipments* of the above-specified commodities on return.

Sauerkraut, in barrels, and *fresh vegetables*, from points in New York, except New York City, and points in Putnam, Westchester, Dutchess, Rockland, Orange, Ulster, and Sullivan Counties, N. Y. to Hanover, Pa.

No. MC 77874 (Sub No. 3), dated April 5, 1949.

Canned fruits and vegetables, over irregular routes, from Hanover, Pa., to points in New Jersey, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maryland, Virginia, West Virginia, North Carolina, Kentucky, District of Columbia, and points in Putnam, Westchester, Dutchess, Rockland, Orange, Ulster, and Sullivan Counties, N. Y.

No. MC 77874 (Sub No. 4), dated August 2, 1951.

Canned fruits and vegetables, over irregular routes, from Oak Hall and Mt. Holly Springs, Pa., to points in Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maryland, Delaware, Virginia, West Virginia, North Carolina, Ohio, Kentucky, and the District of Columbia.

Empty cans, from Baltimore, Md., to Oak Hall and Hanover, Pa.

No. MC 79382 (Sub No. 7), filed November 6, 1957, RUPERT E. HUTTON, 802 West Waterloo Road, Akron, Ohio. Applicant's representative: Edwin C. Reminger, Standard Building, Cleveland, Ohio. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 79382, dated June 27, 1941.

Structural iron and steel and *products* used or useful in the fabrication of structural iron and steel, over irregular routes, between Newton Falls and Ravenna, Ohio, on the one hand, and, on the other, points in Ohio, that part of Pennsylvania on and west of U. S. Highway 219, and those in that part of West Virginia on and west of U. S. Highway 19.

No. MC 79382 (Sub No. 1), dated November 7, 1941.

Iron and steel billets, bars, and rods, minimum length 22 feet, over irregular routes, from Warren, Ohio, and points within 3 miles thereof, to points in Pennsylvania, West Virginia, Indiana, New York, Maryland, and New Jersey.

Structural iron and steel and *material* used or useful in the fabrication thereof, minimum length 22 feet, between Newton Falls, Ohio, and points within 3 miles thereof, on the one hand, and, on the other, points in New York, points in that part of West Virginia east of U. S. Highway 19, and those in that part of Pennsylvania east of U. S. Highway 219.

Rubber lined steel tanks, rubber lined pipe and fittings, rubber covered rollers and *paper mill rolls*, between Akron, Ohio, on the one hand, and, on the other, points in Kentucky, Indiana, Michigan, New York, Pennsylvania, West Virginia, Illinois, New Jersey, and Maryland.

No. MC 79382 (Sub. No. 2), dated July 15, 1942.

Iron and steel tanks and *iron and steel tank fittings, iron and steel pipe* and *iron and steel pipe fittings*, and *iron and steel rollers* unlined, over irregular routes, from points in Kentucky, Indiana, Michigan, New York, Pennsylvania, West Virginia, Illinois, New Jersey, and Maryland to Akron, Ohio.

No. MC 79382 (Sub No. 4), dated April 12, 1951.

Portable or fabricated wooden buildings, in sections, including *hardware and fixtures* to be used therein, from Akron, Ohio, and points within 3 miles thereof to points in Indiana, Kentucky, New York, Pennsylvania, and West Virginia.

Iron or steel pipe fittings, iron or steel tank fittings, materials used in the lining or repairing of iron or steel tanks, and commodities used in the installation and assembling of belting and hose, when moving as an integral part of and used in connection with the commodities specified below, as part of the complete assembly, from Akron, Ohio, and points within 3 miles thereof to points in the destination territory specified below.

Rubber belts or belting and hose, iron or steel tanks, iron or steel pipe, and *iron or steel rollers*, restricted to shipments which, by reason of size, shape, or weight, require the use of special equipment for the transportation thereof, between Akron, Ohio, and points within 3 miles thereof, on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, District of Columbia, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin.

No. MC 79382 (Sub No. 5), dated April 27, 1953.

Storage tanks, the transportation of which because of size or weight requires special handling or special equipment, *storage tank fittings and pipe* when moved with such tanks, and *equipment and materials* used in the erection, installation and dismantling of such tanks, over irregular routes, between points in Erie County, N. Y., on the one hand, and, on the other, points in Arkansas, Illinois, Iowa, Indiana, Kansas, Kentucky, Michigan, Minnesota, New Jersey, New York, Ohio (except Akron), Pennsylvania, Texas, West Virginia, and Wisconsin.

No. MC 81349 (Sub No. 3), filed November 7, 1957, W. C. FULLMER TRANSFER, INC., Baraboo, Wis. Applicant's attorney: Claude J. Jasper, One West Main Street, Madison 3, Wis. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 81349, dated April 6, 1956.

Condensed milk and *canned goods*, over irregular routes, from Wisconsin Dells, Wis., and points in Wisconsin within 150 miles of Wisconsin Dells, other than Baraboo, Wis., to Chicago, Ill.

Groceries, from Chicago, Ill., to Muscoda and Middleton, Wis., points in Adams, Columbia, Crawford, Juneau, Marquette, Monroe, Richland, and Vernon Counties, Wis., and those in Sauk County, Wis., other than Baraboo, Wis.

Butter and *eggs*, from Wisconsin Dells, Wis., to Chicago, Ill., and *empty egg containers* on return.

Metal water control gates, metal sheets and piling, metal cattle passes, metal guard rails, corrugated metal pipe and fittings, and *commodities used in the installation of such commodities*, from the site of the plant of Armco Drainage and Metal Products, Inc., near Portage, Wis., to points in the Upper Peninsula of Michigan and those in Illinois on and north of U. S. Highway 6 (except points in the Chicago, Ill., Commercial Zone, as defined by the Commission), and *damaged* or defective shipments of the above-named commodities on return.

No. MC 83338 (Sub No. 8), filed December 2, 1957, WARREN MAHNENSMITH AND GERALD MAHNENSMITH, doing business as MAHNENSMITH TRUCKING SERVICE, Ossian, Ind. Applicant's attorney: Ferdinand Born, 1019 Chamber of Commerce Building, Indianapolis 4, Ind. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 83338, dated June 27, 1941.

Petroleum products, over irregular routes, from Chicago, Ill., to Fort Wayne, Lafayette and Logansport, Ind.

Fertilizer, from Chicago, Ill., to Ossian, Ind.

No. MC 83338 (Sub 1), dated May 18, 1939.

Feed, from Chicago, Ill., to New Haven, Ind.

Fertilizer, from Cincinnati, Ohio to New Haven, Ind.

No. MC 83338 (Sub 4), dated June 14, 1943.

Raw peanuts, over irregular routes, from Albany, Columbus, Leesburg, Ashburn, Dawson, and Americus, Ga., Suffolk, Windsor, Holland, Wakefield, and Petersburg, Va., to Fort Wayne, Ind.

No. MC 83338 (Sub 5), dated May 21, 1948.

Fresh fruits and vegetables, empty containers and *equipment materials and*

supplies, used in, or in connection with the growing, grading, packing, and transportation of fresh fruits and vegetables, from points in Indiana and Ohio, and those in Berrien, Van Buren, Cass, and St. Joseph Counties, Mich., to Blue Island, Ill. From points in Indiana and Illinois and those in Berrien, Van Buren, Cass, and St. Joseph Counties, Mich., to Leipsic and Holgate, Ohio. From points in Illinois and Ohio and those in Berrien, Van Buren, Cass, and St. Joseph Counties, Mich., to Brazil and Kokomo, Ind.

Empty containers, and *equipment, materials and supplies*, used in, or in connection with the growing, grading, packing, and transportation of fresh fruits and vegetables, from the above-specified destination points to the above-designated origin points.

Tomato plants, from points in Arkansas, Florida, Georgia, Kentucky, and Tennessee to points in Indiana, Illinois and Ohio, and points in Berrien, Van Buren, Cass, and St. Joseph Counties, Mich.

No. MC 86594 (Sub No. 11), filed November 12, 1957, J. J. TAYLOR, INCORPORATED, 2028 Jefferson Davis Highway, Arlington, Va. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 86594, dated January 10, 1951.

Cinder blocks, over irregular routes, from Richmond, Va., to points in Montgomery, Howard, Anne Arundel, Prince Georges, Charles, Calvert, and Saint Marys Counties, Md., and the District of Columbia.

Cinders, from Arlington, Va., to points in Maryland within 15 miles of Arlington, Va., not including those in the Washington, D. C., Commercial Zone as defined by the Commission.

From Baltimore, Md., to points in the District of Columbia and those in Virginia within 15 miles of Arlington, Va.

From Richmond, Va., to points in the District of Columbia and those in Maryland within 15 miles of Arlington, Va.

Brick, chimney blocks, chimney tile and *building tile*, from Woodbridge, Va., to points in Maryland.

Building materials, between points in Virginia and Maryland within 75 miles of Washington, D. C., including Washington.

No. MC 86690 (Sub No. 3), filed November 25, 1957, WILLIAM ELMER CONSTANTINE, JR., doing business as BOND TRANSFER CO., 5262 Nelson Avenue, Baltimore, Md. Applicant's attorney: S. Harrison Kahn, 726–34 Investment Building, Washington, D. C. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 86690 dated June 24, 1954.

Such commodities as are dealt in by wholesale, retail, and chain grocery and food business houses, and, in connection therewith, *equipment, materials, and supplies used in the conduct of such business*, subject to a "keystone" restriction, between points in that part of Pennsylvania, West Virginia, Maryland, Delaware, Virginia, and the District of Columbia, bounded by a line beginning at Cape Charles, Va., and extending in a southerly direction along the Chesapeake Bay to the Atlantic Ocean, thence northerly along the Atlantic Coast to the Delaware Bay, thence along the west shore of the Delaware Bay and Delaware River to Delaware City, Del., thence in a northwesterly direction through Newark, Del., to the point of intersection of the Maryland-Delaware-Pennsylvania State lines, thence in a westerly direction along the Maryland-Pennsylvania State line to the Susquehanna River, thence in a northwesterly direction along the Susquehanna River to Columbia, Pa., thence in an easterly direction to Lancaster, Pa., thence in a northwesterly direction to Lebanon, Pa., thence in a westerly direction to Newport, Pa., thence in a southwesterly direction through McConnellsburg, Pa., to Hancock, Md., thence in a southerly direction to Winchester, Va., and thence in a southeasterly direction through Fredericksburg, Va., to Cape Charles, including points on the above-described boundary line.

Paperboard, scrap paper, alum, rosin size, and *press rolls*, between Baltimore, Md., on the one hand, and, on the other, Adamstown, Avon, Allentown, Cleona, Cressona, Denver, Ephrata, Hazleton, Hanover, Lancaster, Lykens, Lebanon, Millersburg, McAdoo, Nazareth, Norristown, New Freedom, Old Forge, Pittsburgh, Philadelphia, Plymouth, Quakertown, Reading, Selinsgrove, Spring Grove, Sayre, Sheppton, Shoemakersville, and York, Pa.

No. MC 88756 (Sub No. 3), filed October 21, 1957, R. V. ESTELL, 2007 Overland Road, Boise, Idaho. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 88756, dated April 13, 1953.

Cement, over regular routes, from Lime, Oreg., to Boise, Idaho.

Cement and *cement products*, over regular and irregular routes, from Lime, Oreg., over U. S. Highway 30 to the Oregon-Idaho State line, thence over irregular routes to points in Ada, Canyon, Gem, Idaho, and Owyhee Counties, Idaho and *empty cement sacks* over the above routes on return.

Lumber and *such lumber products* as are handled by retail lumber dealers, from mills located within one mile of LaGrande, Oreg., over irregular routes to junction U. S. Highway 30, thence over U. S. Highway 30 to the Oregon-Idaho State line and thence over irregular routes to points in the above-specified Idaho Counties. Service is authorized from the intermediate points of Union and Baker, Oreg., and those within one mile of Union and Baker, restricted to pick-up only; and the off-route points of Pondosa, Oreg., and those within one mile of Union, Baker, and Pondosa, restricted to pick-up only.

No. MC 88757 (Sub No. 8), filed October 21, 1957, FORREST H. McCLURE, 2015 Overland Road, Boise, Idaho. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 88757 (Sub No. 1), dated June 16, 1950.

Shingles, posts, lumber, and *such lumber products* as are handled by retail lumber dealers, in truckloads, over regular and irregular routes, from Portland, Oreg., to points in Idaho, as follows: from Portland over U. S. Highway 30 to the Oregon-Idaho State line, and thence over irregular routes to points in Ada, Canyon, and Gem Counties, Idaho, service is authorized from the intermediate and off-route points of Hood River, The Dalles, La Grande, Baker, Pondosa, and Dee, Oreg., and those within one mile of each, and those within five miles of Portland, for pick-up only.

Shingles, posts, lumber, and *such lumber products* as are handled by retail lumber dealers (restricted to shipments weighing not less than 15,000 pounds), from Longview, Wash., and Enterprise, Oreg., to points in Adams, Payette, Washington, Canyon, Valley, Ada, Owyhee, Gem, Elmore, Gooding, Jerome, Minidoka, Twin Falls, Lincoln, Blaine and Cassia Counties, Idaho: from Longview over U. S. Highway 830 to Kelso, Wash., thence over U. S. Highway 99 to Portland, Oreg., thence over U. S. Highway 30 to the Idaho-Oregon State line, and thence over irregular routes to points in the Idaho counties named above. Service is authorized from the intermediate point of Kelso, Wash., for pick-up only: from Longview, Wash., via Tollbridge across the Columbia River to Ranier, Oreg., thence over U. S. Highway 30 to Portland, Oreg., and thence as above described, to points in the Idaho counties heretofore specified, service is not authorized to or from intermediate points, from Longview, Wash., to Portland, Oreg., as described above, thence over Oregon Highway 50 to junction U. S. Highway 97, thence over U. S. Highway 97 to Bend, Oreg., thence over U. S. Highway 20 to Vale, Oreg., thence over U. S. Highway 20 (also U. S. Highway 28) to the Idaho-Oregon State line, and thence over irregular routes to points in above-specified Idaho counties, service is authorized from the intermediate points of Bend and Burns, Oreg., for pick-up only: from Longview, Wash., to Portland, Oreg., as described above, thence over Oregon Highway 50 to junction U. S. Highway 97, thence over U. S. Highway 97 to Redmond, Oreg., and thence over U. S. Highway 28 to the Idaho-Oregon State line, and thence over irregular routes to points in the above-specified Idaho counties. Service is authorized from the intermediate point of John Day, Oreg., for pick-up only.

From Longview, Wash., to Portland, Oreg., as described above, thence over U. S. Highway 30 to The Dalles, Oreg., thence over Oregon Highway 23 to junction U. S. Highway 50 (near Maupin, Oreg.), thence as described above to points in said Idaho counties, service is authorized from the intermediate points of Hood River and The Dalles, Oreg., for pick-up only: from Longview, Wash., to Portland, Oreg., as described above, thence over U. S. Highway 30 to Arlington, Oreg., thence over Oregon Highway 19 to junction U. S. Highway 28 (near Dayville, Oreg.), thence over U. S. Highway 28 to the Idaho-Oregon State line,

and thence over irregular routes to points in said Idaho counties, service is authorized from the intermediate point of John Day, Oreg., for pick-up only: from Enterprise, Oreg., over Oregon Highway 82 to La Grande, Oreg., thence over U. S. Highway 30 to the Idaho-Oregon State line, and thence over irregular routes to the points in the above-specified Idaho counties, service is authorized from the intermediate points of Wallowa and Elgin, Oreg., for pick-up only.

No. MC 88757 (Sub No. 5), dated July 15, 1948.

Shingles, posts, lumber, and *such lumber products* as are handled by retail lumber dealers, over irregular routes, from Portland and points within 10 miles of Portland, Pondosa, Dee, La Grande, Baker, Union, Redmond, and Eugene, Oreg., and points within 5 miles of each, to points in Adams, Payette, Washington, Valley, Owyhee, Elmore, Gooding, Jerome, Minidoka, Twin Falls, Lincoln, Blaine, Boise, Power, Bonneville, Bingham, Bannock, and Cassia Counties, Idaho; from Klamath Falls, Lakeview, Burns, Joseph, Enterprise, Wallowa, and Elgin, Oreg., and points within 5 miles of each, and White Salmon and Vancouver to points in Adams, Payette, Washington, Canyon, Valley, Ada, Owyhee, Gem, Elmore, Gooding, Jerome, Minidoka, Twin Falls, Lincoln, Blaine, Boise, Power, Bonneville, Bingham, Bannock, and Cassia Counties, Idaho; from Boise, Idaho, to points in Malheur, Baker, Union, Umatilla, Deschutes, Hood River, Multnomah, and Wallowa Counties, Oreg., from points more than one mile from, but within 5 miles of, The Dalles, La Grange, and Baker, Oreg., to points in Ada, Canyon and Gem Counties, Idaho; from Union to points in Ada, Canyon and Gem Counties; from points within 5 miles of, but not including Elgin, Burns, Wallowa, and Enterprise, Oreg., to points in Adams, Payette, Washington, Canyon, Valley, Ada, Owyhee, Gem, Elmore, Gooding, Jerome, Minidoka, Twin Falls, Lincoln, Blaine, Boise, Power, Bonneville, Bingham, Bannock, and Cassia Counties, Idaho; from points within 5 miles of, but not including Bond, Hood River, and The Dalles, to points in Adams, Payette, Washington, Canyon, Valley, Ada, Owyhee, Gem, Elmore, Gooding, Jerome, Minidoka, Twin Falls, Lincoln, Blaine, Boise, Power, Bonneville, Bingham, Bannock, and Cassia Counties, Idaho.

No. MC 88757 (Sub No. 7), dated February 18, 1952.

Lumber, over irregular routes, from Etna, Wyo., and points within 15 miles of Etna, and Missoula, Mont., to points in Bonneville, Bingham, Bannock, Franklin, Oneida, Bear Lake, Butte, and Caribou Counties, Idaho.

No. MC 92095 (Sub No. 11) filed October 23, 1957, AUTO TRANSPORT, INC., 622 Union Street, West Springfield, Mass. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 92095, dated November 8, 1950.

Automobiles, trucks, chassis, and parts, in driveaway or truckaway service, from Detroit, Mich., to Boston, Mass., Hartford, Conn., and Providence, R. I., over regular routes. Service is authorized from the intermediate point of Buffalo, N. Y., restricted to pick-up only; and to all intermediate points on the specified routes in Massachusetts, Connecticut and Rhode Island, and to off-route points within 20 miles of Boston and Springfield, Mass., Hartford, Conn., and Providence, R. I., respectively, restricted to delivery only. Restriction: Service from Detroit is restricted to the season of closed navigation on the Great Lakes, and that from Buffalo is restricted to the season of open navigation on the Great Lakes. Used automobiles and trucks, in driveaway and truckaway service, between Springfield, East Longmeadow, Monson, and Willimansett, Mass., and Washington, D. C. Service is authorized to and from the intermediate and off-route points of New York, N. Y., Philadelphia, Pa., and Baltimore, Md., and points within 20 miles of Springfield, East Longmeadow, Monson, and Willimansett, respectively.

New trailers, in initial movements, in truckaway service, over irregular routes, from Elizabeth, N. J., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hamsphire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, and *rejected shipments* of new trailers on return.

Trailers, in secondary movements, in truckaway service, between points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia.

Motorcycles, uncrated, from East Springfield, Mass., to points in the United States.

No. MC 92095 (Sub No. 1), dated October 19, 1940.

Used automobiles and trucks, in driveaway and truckaway service, between Springfield, East Longmeadow, Monson, and Willimansett, Mass., and Washington, D. C., serving the intermediate and off-route points of New York, N. Y., Philadelphia, Pa., and Baltimore, Md., and points within 20 miles of Springfield, East Longmeadow, Monson, and Willimansett, respectively.

NOTE: Applicant conducts *common carrier* operations by virtue of Certificate Nos. MC 106205 and 106205 (Sub No. 2).

No. MC 94385 (Sub No. 7), filed November 6, 1957, OSENGA'S TRUCKING SERVICE, INC., P. O. Box No. 71, Montgomery, Ind. Applicant's attorney: John E. Lesow, 3737 North Meridian Street, Indianapolis 8, Ind. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 94385, dated May 24, 1955.

Prepared animal and poultry feeds, grain, fertilizer, tankage, meat scraps, and *bone meal,* from Chicago and Riverdale, Ill., to points in Indiana.

Chipboard, from Brownstown, Ind., to points in that part of Illinois north and east of a line beginning at the Illinois-Indiana State line and extending along U. S. Highway 40 to junction U. S. Highway 51, and thence along U. S. Highway 51 to the Illinois-Wisconsin State line, including points on the indicated portions of the highways specified.

Fertilizer and *animal and poultry feed,* from Chicago, Ill., to Antigo, Wis., and points in Wisconsin on and south of a line beginning at Algoma, Wis., and extending in a westerly direction along Wisconsin Highway 54 to Waupaca, Wis., thence in a northwesterly direction along U. S. Highway 10 to the Wisconsin-Minnesota State line, except points on U. S. Highway 41 between the Illinois-Wisconsin State line and Milwaukee, Wis., including Milwaukee.

Live poultry and *eggs,* from Baraboo, Wis., and points within 15 miles of Baraboo to Chicago, Ill.

No. MC 96129 (Sub No. 2) filed November 20, 1957, CARLTON REPSHER, R. D. 1, Laceyville, Pa. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 96129, dated December 3, 1940.

Lumber and *building supplies,* over regular routes, between Skinners Eddy, Pa., on the one hand, and, on the other, Binghamton and Elmira, N. Y., serving no intermediate points.

No. MC 100170 (Sub No. 2), filed October 23, 1957, GLEN R. ELLIS, 607 Midland Pike, Chattanooga, Tenn. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 100170, dated September 12, 1951, over regular routes.

Malt beverages, between Terre Haute, Ind., and Chattanooga, Tenn.

Empty malt-beverage containers, from Chattanooga over a specified regular route to Terre Haute.

Malt beverages, between Cincinnati, Ohio and Gainesville, Ga., serving the intermediate points of Chattanooga and Atlanta, restricted to delivery only.

Empty malt-beverage containers, from Gainesville over a specified regular route to Cincinnati, serving the intermediate points of Atlanta and Chattanooga, restricted to pick-up only.

Malt beverages, between Louisville, Ky., and Gainesville, Ga., serving the intermediate points of Chattanooga and Atlanta, restricted to delivery only.

Empty malt-beverage containers, from Gainesville over a specified regular route to Louisville, serving the intermediate points of Atlanta and Chattanooga, restricted to pick-up only.

Malt beverages, between Evansville, Ind., and Chattanooga, Tenn.

Empty malt-beverage containers, from Chattanooga over a specified regular route to Evansville.

No. MC 100495 (Sub No. 9), filed November 18, 1957, R. A. WACHENDORF, R. F. D. 1, Waukesha, Wis. Applicant's attorney: Claude J. Jasper, One West Main Street, Madison 3, Wis. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 100495, dated March 20, 1943. *Ice cream mix* and *sweetened and unsweetened milk products*, over irregular routes, from Rockford, Ill., to Beloit and Janesville, Wis.

Ice cream mix, soup in cans or bottles, and *bottled milk*, from points in the Town of Genesee, Waukesha County, Wis., to Rockford, Ill.

Fruit juices, from points in the Town of Genesee, Waukesha County, Wis., to Chicago and Rockford, Ill.

Fruit juices, bottled, from Chicago, Ill., to points in the Town of Genesee, Waukesha County, Wis.: between points in the Town of Summit, Waukesha County, Wis., and those in Racine and Kenosha Counties, Wis., on the one hand, and, on the other, Chicago, Ill.

Milk, ice cream mix, soups, in cans or bottles, *sweetened and unsweetened milk products*, and *empty containers*, between points in the Town of Genesee and Summit, Waukesha County, Wis., and those in Racine and Kenosha Counties, Wis., on the one hand, and, on the other, Chicago, Ill.

No. MC 100495 (Sub No. 3), dated June 13, 1947.

Creamed and *condensed skim milk*, over regular routes, between the junction of Wisconsin Highways 67 and 30 and Nashville, Tenn.: Service is authorized from the intermediate and off-route points within one mile of the junction of Wisconsin Highways 67 and 30 for the pick-up of cream and condensed skim milk.

Empty cream and skim milk containers, from Nashville over the above-specified route to the junction of Wisconsin Highways 67 and 30. Service is authorized to the intermediate and off-route points within one mile of the junction of Wisconsin Highways 67 and 30 for the delivery of empty cream and skim milk containers.

No. MC 100495 (Sub No. 6), dated August 27, 1948.

Condensed skim milk and cream, in containers, over irregular routes, from points in Waukesha County, Wis., to Knoxville, Johnson City, and Chattanooga, Tenn., Atlanta, Ga., Birmingham, Ala., and St. Louis, Mo.

No. MC 100495 (Sub No. 8), dated September 21, 1954.

Mineral spring water, over irregular routes, from Genesee Township, Waukesha County, Wis., to points in Illinois on and east of a line beginning at the Illinois-Wisconsin State line and extending along Illinois Highway 31 through Richmond, McHenry, and Elgin, Ill., to Aurora, Ill., thence along U. S. Highway 30 through Plainfield and Joliet, Ill., to the Illinois-Indiana State line.

Empty mineral spring-water containers, from points in Illinois on and east of a line beginning at the Illinois-Wisconsin State line and extending along Illinois Highway 31 through Richmond, McHenry and Elgin, Ill., to Aurora, Ill., thence along U. S. Highway 30 through Plainfield and Joliet, Ill. to the Illinois-Indiana State line, to Genesee Township, Waukesha County, Wis.

No. MC 101982 (Sub No. 2), filed November 29, 1957, DONALD H. GUNDERSON, 332 2d Street, Menominee, Mich. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 101982, dated October 2, 1956.

Such commodities as are dealt in by chain, retail and mail order department stores, over irregular routes, from Menominee, Mich., to points in that part of Michigan and Wisconsin within 50 miles of Menominee, Mich., and *rejected or returned shipments* of the above-described commodities, on return.

No. MC 102347 (Sub No. 1), filed November 14, 1957, JOHN M. KING TRANSPORTATION, INC., 1336 North Mascher Street, Philadelphia, Pa. Applicant's representative: John H. Derby, 816 Commonwealth Building, 1201 Chestnut Street, Philadelphia 7, Pa. For authority to operate as a *common carrier* of the same commodities between the same territory as authorized in the following permit:

No. MC 102347, dated July 7, 1950.

Oils and *chemicals*, in containers, over irregular routes, between Philadelphia, Pa., on the one hand, and, on the other, points in New Jersey, except Ocean City, N. J., and those in Delaware and Maryland; and empty containers, on return.

NOTE: Applicant is authorized to conduct operations as a common carrier in Certificate No. MC 61622 dated July 7, 1950.

No. MC 102541 (Sub No. 6), filed November 4, 1957, NEWMAN AND PEMBERTON CORPORATION, 222 Daylight Building, Knoxville 30, Tenn. Applicant's attorney: Clarence D. Todd, 1825 Jefferson Place NW., Washington 6, D. C. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 102541, dated December 12, 1950.

Malt beverages, between Cincinnati, Ohio, Louisville, Ky., Evansville, Ind., and High Cliff, Tenn., over specified regular routes, *empty malt-beverage containers*, from High Cliff, Tenn., on return.

No. MC 102541 (Sub No. 2), dated January 10, 1952.

Meats and lard, from Columbus, Ohio, to Detroit, Mich., over regular routes, and *empty lard containers*, on return, serving no intermediate points.

Paper cartons, from Monroe, Mich., to Columbus, Ohio: serving no intermediate points.

Bakery products, groceries, and *packing-house products*, subject to a "Keystone" restriction: from Columbus, Ohio, to Detroit, Mich.

Groceries, candy, aprons, uniforms, stoves, furnaces, paint, oleomargarine, food products, bakery goods, dried fruits, and *non-alcoholic beverages*, between Cincinnati, Ohio, and Cordele, Ga.

Peanuts, over regular and irregular routes, from points in Georgia to Cincinnati, Ohio, as follows: from points in that part of Georgia south and west of a line beginning at Columbus, Ga., and extending east along U. S. Highway 80 to Dublin, Ga., thence south along Georgia Highway 31 to junction U. S. Highway 129, and thence south along U. S. Highway 129 to the Georgia-Florida State line, including portions of the highways specified, over irregular routes to Atlanta, Ga., thence over the above-specified regular route to Cincinnati.

Such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and, in connection therewith, equipment, materials, and supplies used in the conduct of such business, subject to a "Keystone" restriction, between Cincinnati, Ohio, and certain points in Georgia.

Bakery products, from Mariemont, Ohio, to points in Georgia, as follows: from Mariemont over U. S. Highway 50 to Cincinnati, Ohio, thence as specified above to the Tennessee-Georgia State line, and thence over irregular routes to points in that part of Georgia last described above.

Bakery products, groceries, and *packing-house products*, subject to a "Keystone" restriction: from Columbus, Ohio, to points in Indiana.

Canned goods, from Indianapolis, Jeffersonville, Whiteland, Greenwood, Martinsville, Anderson, Elwood, Tipton, Peru, Wabash, Austin, Edinburg, Underwood, Scottsburg, and Seymour, Ind., to St. Louis, Mo., points in Illinois, Kentucky, Tennessee, that part of North Carolina on and west of U. S. Highway 29, those in West Virginia on and west of U. S. Highway 21, and those in Georgia, Alabama, and Mississippi on and north of U. S. Highway 80: from Newport, Jefferson City, Sevierville, and Tellico Plains, Tenn., to Cincinnati, Columbus, Dayton, and Springfield, Ohio, Chicago, Bloomington, and Springfield, Ill., Lexington, Covington, Louisville, and Newport, Ky., Indianapolis, Jeffersonville, Whiteland, Greenwood, Martinsville, Anderson, Elwood, Tipton, Peru, and Wabash, Ind.: from Napoleon, Ohio, to West Point, Columbus, Rome, and La Grange, Ga., Lexington, Louisville, Hopkinsville, and Glasgow, Ky., Chattanooga, Fayetteville, Lebanon, Crossville, and Memphis, Tenn., Birmingham, Montgomery, Anniston, Decatur, and Ensley, Ala., and Ripley, Corinth, and Tupelo, Miss.: from points in Ohio and Illinois and those in Indiana except Indianapolis, Jeffersonville, Whiteland, Greenwood, Martinsville, Anderson, Elwood, Tipton, Peru, Wabash, Austin, Edinburg, Underwood, Scottsburg, and Seymour, Ind., to Nashville, Tenn., and Atlanta, Ga.: from points in Indiana to points in Ohio: from Akron, Cleveland, Norwalk, and Fremont, Ohio, and points in that part of Ohio on and west of U. S. Highway 23 to points in Indiana.

Garden seeds, from points in Indiana to points in Georgia, and Tennessee.

Garden plants, from points in Georgia and Tennessee to points in Indiana.

Mangos and pimientos, in kegs, from Griffin, Ga., and points within 50 miles of Griffin, to Austin, Ind.

Canning factory machinery and equipment, between Hoopeston and Waukegan, Ill., and Indianapolis, Jeffersonville, Whiteland, Greenwood, Martinsville, Anderson, Elwood, Tipton, Peru, and Wabash, Ind., on the one hand, and, on

the other, Newport, Jefferson City, Sevierville, and Tellico Plains, Tenn.

Building, roofing and specified insulating materials and supplies used in the installation thereof and automobile body panels, from St. Louis, Mo., to points in Ohio.

Crackers and cakes, from Columbus, Ohio, to Buffalo, N. Y., Pittsburgh, Pa., and Wheeling, W. Va.

No. MC 102541 (Sub No. 3), dated October 20, 1953.

Canned goods, over irregular routes, from Chestnut Hill and Clinton, Tenn., to points in Kentucky, Ohio, Indiana, Illinois, and West Virginia, *materials, equipment and supplies* used in the production and distribution of canned goods, from Cincinnati, Ohio, to Chestnut Hill and Clinton, Tenn., and *used canning machinery*, and *damaged, defective, rejected or returned shipments* of material, equipment and supplies used in the production and distribution of canned goods, on return.

No. MC 102541 (Sub No. 4), dated August 15, 1956.

Peanuts, from points in Covington, Crenshaw, Bullock, Barbour, Pike, Coffee, Dale, Henry, Geneva, and Houston Counties, Ala., to Cincinnati, Ohio.

No. MC 102557 (Sub No. 2), filed December 2, 1957, ROBERT F. STEGMEIER, R. D. No. 3, Tamaqua, Pa. Applicant's representative: A. E. Enoch, Brodhead Block, 556 Main Street, Bethlehem, Pa. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 102557, dated June 28, 1950.

Malt beverages, over irregular routes, from Pottsville, Pa., to points in New Jersey, Maryland, Delaware, and the District of Columbia; and *empty malt beverage containers*, on return.

No. MC 103027 (Sub No. 1), filed November 27, 1957, J. C. WOOLDRIDGE, INC., 1209 Memorial Boulevard, Martinsville, Va. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 103027, dated May 20, 1953.

Such commodities as are dealt in by chain retail department stores, irregular routes, subject to a Keystone restriction, from Martinsville, Va., to points in that part of Rockingham and Stokes Counties, N. C., within 30 miles of Martinsville, and *damaged, defective, rejected or returned shipments* of the commodities described above.

No. MC 104201 (Sub No. 39), filed October 21, 1957, MERLE S. DENNY, doing business as DENNY MOTOR FREIGHT, 1506 Shelby Place, New Albany, Ind. Applicant's attorney: Gerald L. Phelps, Munsey Building, Washington 4, D. C. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 104201 (Sub No. 12), dated November 3, 1949.

Oil and *grease*, in containers, and *empty containers*, over irregular routes, between Lawrenceville, Ill., on the one hand, and, on the other, Paoli, Scottsburg, Jeffersonville, and Lawrenceburg, Ind., and Burnside, Corbin, Cynthiana, Danville, Falmouth, Frankfort, Georgetown, Hazard, Lothair, Irvine, Lexington, Louisville, Mason, Mayking, Whitesburg, Maysville, Middleboro, Mt. Sterling, Paris, Richmond, Winchester, Campbellsburg, Campbellsville, and Baxter, Ky.

No. MC 104201 (Sub No. 29), dated June 28, 1949.

Prefabricated buildings, complete, knocked down or in sections, and when transported in connection with the transportation of such buildings, *component parts* thereof and *equipment and materials* incidental to the erection and completion of such buildings, over irregular routes: from New Albany, Ind., and points within 1 mile thereof, to points in Pennsylvania, Kentucky, Missouri, Ohio, and Illinois.

No. MC 104201 (Sub No. 32), dated December 22, 1949.

Flavoring syrup, liquid sugar, and *invert sugar*, in bulk, in tank vehicles, over irregular routes, from Louisville, Ky., to points in Alabama, Arkansas, Florida, Georgia, Iowa, Louisiana, Maryland, Illinois, Indiana, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia.

No. MC 104201 (Sub No. 33), dated October 3, 1951.

Petroleum products, in containers, *asphalt (asphaltum) by-products of pertoleum*, in containers, and *anti-freeze preparations*, in containers, over irregular routes, from Lawrenceville, Ill., to Paoli, Scottsburg, Jeffersonville, and Lawrenceburg, Ind., and Burnside, Cynthiana, Corbin, Danville, Falmouth, Frankfort, Georgetown, Hazard, Lothair, Irvine, Lexington, Louisville, Mason, Mayking, Whitesburg, Maysville, Middleboro, Mt. Sterling, Paris, Richmond, Winchester, Campbellsburg, Campbellsville, Baxter, Ashland, Beattyville, Burgin, Covington, Dumesnil, East Bernsteadt, Elizabethtown, Fort Knox, Idamay, Latonia, London, Millersburg, Newport, Nicholasville, Paintsville, Pikesville, Prestonburg, Pryse, Ravenna, Williamsburg, Winston, and Wofford, Ky., and *empty containers* for the above-described commodities, on return.

No. MC 104201 (Sub No. 34), dated December 23, 1949.

Farm machinery and farm implements when transported in special equipment, over irregular routes, from Louisville, Ky., to points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Louisiana, Mississippi, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

No. MC 104201 (Sub No. 35), dated June 21, 1951.

Farm machinery and *farm implements* when transported in special equipment, over irregular routes, from Louisville, Ky., to points in Colorado, Connecticut, Delaware, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Pennsylvania, Vermont, and Wisconsin.

No. MC 105498 (Sub No. 6), filed November 25, 1957, F. S. MILLARD, Grimes, Iowa. Applicant's attorney: Robert E. Dreher, 212 Equitable Building, Des Moines 9, Iowa. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 105498, dated April 19, 1950.

Prepared animal and poultry feed, over irregular routes, From Des Moines, Iowa to points in Arkansas, Colorado, Illinois, Indiana, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin.

Animal and poultry feed ingredients, from the above-specified destination points to Des Moines, Iowa.

Radios, from Chicago, Ill., to Des Moines, Iowa.

Ironers and *parts* therefor, and *washing machines*, and *parts* therefor, from Peoria, Ill., to Des Moines, Iowa. From Newton, Iowa, to points in that part of Illinois on and north of U. S. Highway 36 and on and west of U. S. Highway 45.

Washing machines, washing machine parts, and *materials*, used in the manufacture thereof, *ironers*, and *parts* thereof, *drain tubs*, and *paper fibre cartons*, between Newton and Des Moines, Iowa, on the one hand, and, on the other, points in Nebraska and Illinois.

No. MC 105498 (Sub No. 4), dated December 21, 1953 *Animal and poultry feed*, from Danville, Ill., to points in Arkansas and Kansas, and *damaged, defective, rejected*, or *returned shipments of animal and poultry feed*, and *empty containers* used in transporting animal and poultry feed on return.

No. MC 105906 (Sub No. 6), filed November 18, 1957, HAAG TRUCK LINE, INC., 570 West 17th Street, Indianapolis, Ind. Applicant's attorney: John E. Lesow, 3737 North Meridian Street, Indianapolis, Ind. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 105906, dated January 11, 1954, over irregular routes.

Animal and poultry feed, animal and poultry tonics and medicines, paint, insecticides, advertising matter, and *premiums* used in the sale and distribution of the foregoing commodities, from Quincy, Ill., to points in that portion of Indiana south of U. S. Highway 36 from the Illinois-Indiana State line to Indianapolis, and south of U. S. Highway 40 from Indianapolis to the Indiana-Ohio State line.

Dried blood, tankage, bone meal, and *meat scraps*, from Evansville, Fort Branch, Loogootee, Newberry, Palmyra and Terre Haute, Ind., to Quincy, Ill.

Clay products, from Loogootee, Ind., to points in Alabama, Illinois, Kentucky (except Louisville and Owensboro), and Tennessee.

Lumber, roofing, and *siding*, from points in Alabama, Mississippi, and Tennessee to Loogootee, Ind.

Soy bean oil meal and *ingredients* used in the manufacture and mixture of animal and poultry feeds, from points in Alabama, Kentucky (except Louis-

ville and Owensboro), and Tennessee to Indianapolis, Ind.

Soy bean oil meal, animal and poultry feed and *ingredients thereof, animal and poultry tonics, insecticides,* and *advertising matter,* used in connection with the sale and distribution of these commodities, from Indianapolis, Ind., to points in Alabama, Kentucky (except Louisville and Owensboro), and Tennessee.

No. MC 106026 (Sub No. 4), filed November 7, 1957, FRANK WOODROW, doing business as WESTERN TRANSPORT SERVICE, 115 West 21st Street, Scottsbluff, Nebr. Applicant's representative: Robert S. Stauffer, 1510 East 20th Street, Cheyenne, Wyo. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 106026, dated October 21, 1949.

Refined petroleum products, in bulk, over specified regular routes, from Arkansas City and Eldorado, Kans., to Mitchell, Hemingford, Melbeta, Bull Canyon, and Grant, Nebr., serving the intermediate points of Augusta, Wichita, McPherson, and Potwin, Kans., for pick-up only, and to Ogallala, Big Spring, Lisco, Scottsbluff, Alliance, Berea, Potter, Chappell, Sidney, and Kimball, Nebr., for delivery only, and an off-route point approximately ten miles from Oshkosh, Nebr., for delivery only.

From Augusta, Kans., to Dickens, Nebr., Service to Dickens is restricted to traffic originating at Augusta only.

Petroleum products, in bulk, in tank trucks, from all refining and distributing points in Wyoming, to Lisco, Venango, North Platte, Sutherland, Roscoe, Paxton, Broadwater, Alliance and South Bayard, Nebr., and Julesburg, Colo.

Refined petroleum products, in bulk, from all refinery and distribution points in Wyoming to Melbeta, Morrill, Bayard, Mitchell, and Bridgeport, Nebr.

No. MC 106871 (Sub No. 4), filed November 20, 1957, CLARENCE M. MAY AND SCOTT PEARSON, doing business as MAY TRUCKING COMPANY, P. O. Box 398, Payette, Idaho. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 106871, dated January 15, 1952.

Cement, over a regular route, from Lime, Oreg., to Boise, Idaho.

Cement, over regular and irregular routes, from Lime, Oreg., to points in Adams, Payette, Valley, Elmore, Owyhee, Gooding, Jerome, Minidoka, Twin Falls, Lincoln, Blaine, Washington, Canyon, Ada, Gem and Cassia Counties, Idaho.

Cinder blocks, concrete blocks, brick, and *concrete pipe,* from Boise, Caldwell, Nampa, Jerome, Twin Falls, and Burley, Idaho to points in Malheur, Harney, Baker, and Union Counties, Oregon.

No. MC 106969 (Sub No. 2), filed November 25, 1957, ARROW AUTO LINE INC., 37 No. 1st W. Price, Utah. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 106969 (Sub No. 1), dated January 19, 1948.

Malt beverages, from Evanston, Wyo., to Price, Utah, over a regular route, and *empty malt beverage containers* on return. Applicant conducts common carrier operations of property and passengers by virtue of Certificates Nos. MC 80152 and MC 57725, respectively.

No. MC 110339 (Sub No. 4), filed November 8, 1957, GENE ADAMS REFRIGERATED TRUCKING SERVICE, INC., 600 Cayuga Creek Road, Buffalo, N. Y. Applicant's representative: Floyd B. Piper, Crosby Building, Franklin Street at Mohawk, Buffalo 2, N. Y. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 110339, dated March 14, 1955.

Meats, meat products, and *meat by-products,* between Buffalo, N. Y., on the one hand, and, on the other, Newark, N. J., Stamford, Conn., and points in the New York, N. Y., Commercial Zone as defined by the Commission: from Buffalo, N. Y., to the sites of military installations in Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, West Virginia, and the District of Columbia.

Fresh carcass meats, on hangers, and, incidental thereto and in the same vehicle therewith, the commodities described as *meats, meat products and meat by-products,* as defined by the Commission: from Rochester, N. Y., to the sites of military installations in Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, West Virginia and the District of Columbia.

No. MC 110364 (Sub No. 4) filed November 6, 1957, OHIO CARRIER CORPORATION, 233 Second Drive SW., New Philadelphia, Ohio. Applicant's representative: G. H. Dilla, 3350 Superior Avenue, Cleveland 14, Ohio. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 110364, dated July 13, 1949.

Mining machinery, mining equipment, materials, supplies and repair parts therefor, except such of these commodities as, due to size or weight require the use of special equipment, over irregular routes between New Philadelphia, Ohio, on the one hand, and, on the other, points in Ohio, Pennsylvania (except those in Venango County), West Virginia, Kentucky, Indiana, and Illinois.

No. MC 110364 (Sub No. 1), dated October 14, 1949.

Liquid shampoo, in containers, over irregular routes from New Philadelphia, Ohio, to points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, and points in the Missouri portion of the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone, New Hampshire, New Jersey, New York, North and South Carolina, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, and *ingredients* used in the manufacture of liquid shampoo, and *containers* and *caps* therefor, on return.

No. MC 110364 (Sub No. 3), dated July 20, 1951.

Stainless steel stampings, over irregular routes from New Philadelphia, Ohio, to Detroit, Flint, Jackson, Lansing, Pontiac, and Ann Arbor, Mich.

No. MC 111214 (Sub No. 2) filed November 1, 1957, CLARK V. GRAHAM, doing business as CONTRACT TRUCKING COMPANY, 457 Dory Street, Jackson, Miss. Applicant's attorney: Phineas Stevens, Suite 900 Milner Building, P. O. Box 141, Jackson, Miss. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 111214, dated April 4, 1955.

Cast building stone and *concrete building blocks,* from Jackson, Miss., to points in Mississippi, Alabama, Tennessee, Arkansas, and Louisiana.

Feed, animal and poultry, from Memphis, Tenn., to Jackson, Miss.

No. MC 112835 (Sub No. 5) filed October 21, 1957, MORRIS H. APPLEBAUM, 6206 North Bernard Street, Chicago, Ill. Applicant's attorney: Joseph M. Scanlan, 111 West Washington Street, Chicago 2, Ill. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permits:

No. MC 112835, dated November 3, 1955.

Radio sets, television sets, phonographs, and *combinations thereof,* in containers, and *parts of the described commodities,* over irregular routes, between Chicago, Ill., Charlotte, Mich., and New York, N. Y., subject to the condition that service between Chicago, Ill., and New York, N. Y., shall, in every instance, be performed through Charlotte, Mich.

Television tubes, over irregular routes, from Harrison, N. J., and Plainfield, N. J., to Charlotte, Mich.

Television tubes, and *parts of and for,* television sets, phonographs, and combinations thereof, over irregular routes, between Chicago, Ill., and Charlotte, Mich., on the one hand, and, on the other, Bloomfield, Clifton, Harrison, Kearny, Nutley, Passaic, Paterson, East Paterson, and Plainfield, N. J., subject to the condition that service between Chicago, Ill., and the above-named New Jersey points, shall in every instance be performed through Charlotte, Mich.

Radio and television sets, phonographs, recording sets, and *combinations thereof,* over irregular routes, between Chicago, Ill., and Charlotte, Mich., on the one hand, and on the other, Bloomfield, Clifton, East Paterson, Harrison, Kearny, Newark, Nutley, Passaic, Paterson, and Plainfield, N. J., subject to the condition that service between Chicago, Ill., and the above-named New Jersey points, shall in every instance be performed through Charlotte, Mich.

No. MC 112835 (Sub No. 3), dated December 10, 1956.

Television, radio, phonograph and recording sets and *combinations thereof* and *parts* of and for such commodities, over irregular routes, between Chicago, Ill., and Charlotte, Mich., on the one hand, and, on the other, points in Massachusetts, Connecticut, and New Jersey (except Bloomfield, Clifton, Harrison, Kearney, Nutley, Passaic, Paterson, East Paterson, and Plainfield, N. J.). Service between Chicago and points in Massachusetts, Connecticut, and New Jersey shall be performed through Charlotte, Mich.

No. MC 114795 (Sub No. 6) filed October 30, 1957, EDGAR W. LONG, Route 4, Zanesville, Ohio. For authority to operate as a *common carrier* of the same commodities between the same points or within the same territory as authorized in the following permit:

No. MC 114795 (Sub No. 1), dated November 21, 1955.

Pottery, over irregular routes, from Roseville, Ohio, to Chicago, Ill., Fort Wayne, Portland, and South Bend, Ind., Covington and Louisville, Ky., Detroit, Mich., Buffalo, Rochester, and Syracuse, N. Y., Pittsburgh, Pa., and Bridgeport, W. Va.

Clay products, other than pottery, over irregular routes, from Roseville, Ohio, to Buffalo, Rochester, and Syracuse, N. Y., Pittsburgh, Pa., and Bridgeport, W. Va.

Clay products, over irregular routes, from Zanesville, Crooksville, and New Lexington, Ohio, and points within five miles of each, and from points within five miles of Roseville, Ohio, to points in West Virginia, Pennsylvania and those in that part of New York west of a line, beginning at Maple View, N. Y., and extending along U. S. Highway 11 to the New York-Pennsylvania State line, and south of a line beginning at Maple View, N. Y., and extending along U. S. Highway 104 to Oswego, N. Y., including points on the indicated portions of the highways specified: from Roseville, Ohio, to the above-specified destination points except Buffalo, Rochester, and Syracuse, N. Y., Pittsburgh, Pa., and Bridgeport, W. Va.: from Crooksville and Zanesville, Ohio, to Chicago, Ill., Fort Wayne, Portland, and South Bend, Ind., Covington and Louisville, Ky., and Detroit, Mich.: from Crooksville, Ohio, to points in the lower peninsula of Michigan, except Detroit.

Clay products, and materials used in the manufacture thereof, except brick, tile, and sewer pipe, over irregular routes, from Roseville, Zanesville, and New Lexington, Ohio, and points within five miles of Roseville, to points in the lower peninsula of Michigan, except Detroit.

Animal foods, in cans, *soap*, and *soap powder*, subject to a "Keystone" restriction, over irregular routes, from Cleveland, Ohio, to Zanesville, Ohio, and points within 50 miles of Zanesville.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 57-10624; Filed, Dec. 26, 1957; 8:45 a. m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 23, 1957.

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. 34374: *Caustic soda from, to, and between points in official territory.* Filed by O. E. Schultz, Agent (ER No. 2416), for interested rail carriers. Rates on sodium (soda), caustic (sodium hydroxide), liquid, tank-car loads between points in official territory, excluding points in Illinois territory and extended zone C in Wisconsin, and between points in official, excluding points in Illinois territory and extended zone C in Wisconsin, on the one hand, and points in southern territory, on the other.

Grounds for relief: Short-line distance formula, grouping, and short or weak line arbitraries.

Tariffs: Supplement 11 to Agent H. R. Hinsch's tariff I. C. C. 4796. Supplement 21 to Agent H. R. Hinsch's tariff I. C. C. 4772.

FSA No. 34375: *Grain and grain products—Western points to Freeport, Tex.* Filed by F. C. Kratzmeir, Agent (SWFB No. B-7158), for interested rail carriers. Rates on grain, grain products, and related articles, carloads from specified points in Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota and Wisconsin to Freeport, Tex., for export.

Grounds for relief: Port competition with other Gulf ports.

Tariffs: Supplement 25 to Agent Kratzmeir's tariff I. C. C. 4238, and 23 other supplemental schedules of individual carriers, submitted as exhibits 1 through 24 to the application.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 57-10713; Filed, Dec. 26, 1957; 8:55 a. m.]

[Ex Parte No. 212]

INCREASED FREIGHT RATES, 1958

SPECIAL PERMISSION NO. 75100

At a general session of the Interstate Commerce Commission held at its office in Washington, D. C., this 23d day of December 1957.

Upon consideration of a petition for special permission filed by H. R. Hinsch, Tariff Publishing Agent, Edward A. Kaier, and other attorneys, dated December 19, 1957, for and on behalf of carriers named therein, for authority to depart from the Commission's tariff-publishing rules to the extent necessary to enable such carriers to publish general increases in varying amounts in freight rates and charges for selected commodities, by means of a master tariff and other short-form methods, and for modification of all outstanding orders of the Commission to the extent necessary to permit only the publication of the aforesaid increases in rates and charges;

And upon consideration of a reply filed by George H. Leonard and other attorneys for the A B C Freight Forwarding Co., and other specified freight forwarders subject to Part IV of the Interstate Commerce Act, in opposition to the above petition for special permission:

For good cause shown it is ordered:

1. Carriers for and on whose behalf the above-mentioned petition was filed, and their tariff-publishing agents, be, and they are hereby, authorized to depart from the Commission's tariff-publishing rules when providing for increased rates and charges as set forth above in the following manner:

(a) By publication and filing of a master tariff of increased rates and charges, which shall contain a provision substantially as follows:

> In the event any increases resulting from the application of this tariff exceed the increases subsequently approved or prescribed by the Interstate Commerce Commission, the carriers will refund the difference between the increases resulting from the application of this tariff and any increases which may subsequently be approved or prescribed by the Interstate Commerce Commission.
>
> In the event an increase resulting from the application of this tariff is disapproved by the Commission and no increase is authorized, the carriers will refund the full amount of the increase collected.

(b) By publication and filing of connecting-link supplements to one or more tariffs connecting such a tariff or tariffs with the master tariff of increased rates and charges,

(c) By publication and filing of tariffs or supplements of specific increased rates and charges, subject to the same provision concerning refunds as contained in paragraph 1 (a), and

(d) By publication of provisions in tariffs or supplements subjecting the rates and charges therein to the provisions of the master tariff.

2. (1) Master tariffs, supplements thereto, and supplements to tariffs which are issued in short form method shall bear notation reading substantially as follows:

> The form of this publication is permitted by authority of Interstate Commerce Commission Permission No. 75100 of December 23, 1957.

(2) Other tariffs or supplements containing specific increased rates or charges shall bear notation reading:

> This publication is issued under authority of Interstate Commerce Commission Permission No. 75100 of December 23, 1957.

3. Connecting-link supplements authorized herein shall be exempt from the Commission's tariff-publishing rules relating to the number of supplements and volume of supplemental matter permitted. This and all other relief from the Commission's tariff-publishing rules authorized herein shall expire with February 28, 1959.

4. Outstanding orders of the Commission are modified only to the extent

necessary to permit the filing of tariffs containing the proposed increased rates and charges, which tariffs shall be subject to protest, suspension, or rejection.

And it is further ordered, That a copy of this order be filed with the Director, Division of the Federal Register, for publication in the FEDERAL REGISTER as notice to interested parties.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

[F. R. Doc. 57-10715; Filed, Dec. 26, 1957; 8:55 a. m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

Correction

In Federal Register Document 57-10466, published on page 10251 in the issue for Thursday, December 19, 1957, the first application number should read: "FSA No. 34359".

PART II

FEDERAL REGISTER

VOLUME 22 NUMBER 250

Washington, Friday, December 27, 1957

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State

REPUBLICATION OF REGULATIONS

Since the last complete publication of Chapter I of Title 22, Code of Federal Regulations, there have been numerous amendments and additions which through December 23, 1957, have been codified in annual supplements.

To facilitate the use of Chapter I of Title 22, its content, current as of December 23, 1957, is hereafter published in its entirety, in revised and renumbered order of arrangement, as set forth below. A listing of the respective new and former part numbers precedes the published text.

This republication makes no substantive changes in the content of Title 22, Chapter I, Code of Federal Regulations as amended through December 23, 1957.

For the Secretary of State.

ROBERT NEWBEGIN,
Acting Assistant Secretary for Administration.

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11 Examinations for the appointment of Foreign Service Officers.
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Subchapter C—Fees and Funds

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SUBCHAPTER A—GENERAL

PART 1—INSIGNIA OF RANK

Sec.
1.1 Office of the Secretary of State.
1.2 Office of the Under Secretary of State.

AUTHORITY: §§ 1.1 and 1.2 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c.

§ 1.1 *Office of the Secretary of State.* The official flag indicative of the office of Secretary of State shall be as follows: On a blue rectangular field a white disk bearing the official coat of arms of the United States adopted by the act of June 20, 1782; in proper colors. In each of the four corners a white five-pointed star with one point upward. The colors and automobile flag to be the same design, adding a white fringe. For the colors a cord and tassel of blue and white to be added. The sizes to be in accordance with military and naval customs.

§ 1.2 *Office of the Under Secretary of State.* The official flag indicative of the office of the Under Secretary of State shall be as follows: On a white rectangular field a blue disk bearing the official coat of arms of the United States adopted by act of June 20, 1782, in proper colors. In each of the four corners a five-pointed star with one point upward. The colors and automobile flag to be the same design, adding a blue fringe. For the colors a cord and tassel of white and blue to be added. The sizes to be in accordance with military and naval customs.

PART 2—PROTECTION OF DIGNITARIES

§ 2.1 *Assignment of personnel to carry firearms.* The Administrator, Bureau of Security and Consular Affairs, is authorized to designate certain employees of the Foreign Service and the Department of State as Security Officers who when so designated shall be authorized to carry firearms when assigned to protect the Secretary or the Under Secretary of State, heads of foreign states, high officials of foreign governments and other distinguished visitors to the United States, and official representatives of foreign governments and of the United States attending international conferences or performing special missons. No person shall be so designated unless he has qualified in the use of firearms in accordance with standards established by the Director, Office of Security.

(Sec. 4, 63 Stat. 111, as amended, 69 Stat. 188; 5 U. S. C. 151c, 170e)

PART 3—ADVICE TO FOREIGN GOVERNMENTS

Sec.
3.1 Uniform practice.
3.2 Statement of circumstances of employment.
3.3 Submission of statement to the Secretary of State.

AUTHORITY: §§ 3.1 to 3.3 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c. Interpret or apply R. S. 190, sec. 1, 62 Stat. 698, as amended, 744; 5 U. S. C. 99, 18 U. S. C. 284, 953.

§ 3.1 *Uniform practice.* In order that there shall be a uniform practice in considering requests that American citizens be permitted to counsel, advise, or assist foreign governments, officers, or agents thereof in matters coming before the Department, and in determining whether persons formerly employed by this Government should be permitted to prosecute claims against this Government before the Department, or any officer or agent thereof, the following regulations in this part are prescribed.

§ 3.2 *Statement of circumstances of employment.* Any such person shall be required to make full disclosure, under oath, of the circumstances of his employment, including a statement as to how and through whom such employment was brought about, particularly whether the employment was the result of solicitation direct or indirect, the inducements, if any, that were held out by him, the nature and amount of compensation received or to be received for his service, and whether such compensation was or is on a contingent basis. If the person has previously been employed by this Government, the statement should indicate the capacity in which he was so employed, the date of the termination of such employment, and whether the subject-matter of his present or proposed employment was before him or the Department or branch of this Government in which he was so employed during the time of such employment. Like information shall be furnished with respect to any and all persons associated with, advising, or counseling him in connection with his present or proposed employment, or who is to share in any fee or compensation on account of such employment.

§ 3.3 *Submission of statement to the Secretary of State.* Before any discussion or correspondence is begun with a person to whom the preceding section applies, or, if already begun, may be continued, his statement, together with a statement of the pertinent facts of the subject-matter dealt with or to be dealt with, should be brought to the attention of the Secretary of State in order that he may determine whether such discussion or correspondence would be proper under the circumstances.

PART 4—NOTIFICATION OF FOREIGN OFFICIAL STATUS

Sec.
4.1 Persons required to give notification.
4.2 Persons exempted from the requirement to give notification.
4.3 Form to be used in giving notification.
4.4 Form required in duplicate.
4.5 Time limit for the submission of the form.
4.6 Termination of official status and departure from the United States.

AUTHORITY: §§ 4.1 to 4.6 issued under sec. 10, 56 Stat. 257, sec. 4, 63 Stat. 111, as amended, 22 U. S. C. 620, 5 U. S. C. 151c.

§ 4.1 *Persons required to give notification.* All persons who are entitled to exemption from the registration and finger-printing requirements of the Alien Registration Act of 1940 (54 Stat. 670), as amended, are required to give notification to the Secretary of State of their presence in the United States. Such persons comprise foreign government officials, members of their families (including relatives by blood or marriage regularly residing in or forming a part of their household), and their employees and attendants.

§ 4.2 *Persons exempted from the requirement to give notification.* Ambassadors and ministers, and members of their missions named in the Diplomatic List issued monthly by the Department of State, are exempted from the requirement to give notification to the Secretary of State under this part.

§ 4.3 *Form to be used in giving notification.* A Notification of Status with a Foreign Government form is to be used by the several diplomatic missions in Washington in giving notification of foreign official status to the Secretary of State.

§ 4.4 *Form required in duplicate.* The form is to be submitted to the Secretary of State in duplicate.

§ 4.5 *Time limit for the submission of the form.* (a) The form is to be submitted within 30 days after the arrival of the foreign official in the United States or after a change from a non-official to an official status.

(b) If the official status claimed is not recognized by the Secretary of State, the person submitting the form must register within another 30 days under the requirements of the Alien Registration Act.

§ 4.6 *Termination of official status and departure from the United States.* (a) The diplomatic missions in Washington should notify the Secretary of State of the termination of service of all officials and employees, giving the dates of such termination of service, the dates and ports of their departure from the United States, or their addresses if they are remaining in the United States.

(b) Aliens remaining in the United States after terminating their status as officials or employees are required to be registered and finger-printed within 30 days thereafter under sections 37 (a), 34 (a) and 32 (c) of the Alien Registration Act (54 Stat. 674, 675; 8 U. S. C. 453, 455, 458).

SUBCHAPTER B—PERSONNEL

PART 11—EXAMINATIONS FOR THE APPOINTMENT OF FOREIGN SERVICE OFFICERS

Sec.
11.1 Examinations for appointment as Foreign Service officer.
11.2 When and where given.
11.3 Designation to take examination.

Sec.
11.4 The written examination.
11.5 Eligibility to take oral examination.
11.6 The oral examination.
11.7 Eligibility to take physical examination.
11.8 The physical examination.
11.9 Certifications for appointment.
11.10 Affiliations.
11.11 Expenses of candidates.

AUTHORITY: §§ 11.1 to 11.11 issued under sec. 212, 60 Stat. 1001; 22 U. S. C. 827.

§ 11.1 *Examinations for appointment as Foreign Service officer.* In addition to the requirement set out in § 11.9 (a), eligibility for appointment as Foreign Service officer, class 8, is established by means of competitive written and oral examinations, a physical examination, and a suitability investigation.

§ 11.2 *When and where given.* The written examination will be given annually, or semi-annually if required, in designated cities in the United States and at Foreign Service posts abroad on dates established by the Board of Examiners for the Foreign Service. The oral examination will be given at Washington throughout the year and periodically in selected cities throughout the United States and at selected Foreign Service posts abroad. The physical examination will be given as indicated in § 11.8.

§ 11.3 *Designation to take examination.* (a) No person will be permitted to take the written examination for appointment as Foreign Service officer who has not been specifically designated by the Board of Examiners for the particular examination.

(b) Prior to each written examination the Board will establish a closing date for the receipt of applications for designation to take that examination. No person who has not as of that closing date filed an application with the Board of Examiners will be designated for the examination.

(c) To be designated for the written examination an applicant must be, as of the closing date for the filing of applications, at least 20 years of age and under the age of 31, and must have been a citizen of the United States for at least 9 years.

§ 11.4 *The written examination.* The written examination is designed to permit the Board to test the candidate's intelligence and the breadth and quality of his knowledge and understanding. It will consist of four parts: a general ability test, an English expression test, a general background test, and a test in a modern language (French, German, Russian or Spanish). The several parts of the written examination, exclusive of the modern language test, will be weighted in accordance with rules laid down by the Board of Examiners. The modern language examination will be graded separately.

§ 11.5 *Eligibility to take oral examination.* (a) A candidate who receives a weighted average grade of 70 or higher on the first three parts of the written examination will be eligible to take the oral examination.

(b) A candidate who receives a grade of 70 or above in the written Modern Language examination will receive a bonus of five points to be added to the weighted average grade he receives in the first three parts of the written examination.

(c) A candidate whose weighted average grade on the first three parts of the written examination, with the addition of the five bonus points mentioned in paragraph (b) of this section, is 70 or higher will be eligible to take the oral examination.

§ 11.6 *The oral examination.* (a) The oral examination will be given by a panel of deputy examiners selected by the Board of Examiners from a roster of Foreign Service officers and officers from the Department of State and other Government departments and agencies. The examination will be conducted in the light of all available information concerning the candidate and will be designed to determine his competence to perform the work of a Foreign Service officer at home and abroad, his potential for growth in the Service, and his suitability to serve as a representative of the United States abroad.

(b) Candidates appearing for the oral examination will be graded "passed", "deferred", or "failed."

(c) Candidates graded "deferred" may take another oral examination without repeating the written examination after the expiration of one year and before the expiration of two years. The interval of one year between oral examinations may in exceptional cases be reduced to nine months.

§ 11.7 *Eligibility to take physical examination.* A candidate accorded a passing grade on the oral examination will be eligible for the physical examination and for an investigation to determine his loyalty to the Government and his personal suitability to represent this country.

§ 11.8 *The physical examination.* (a) The physical examination will be designed to determine the candidate's physical fitness to perform the duties of a Foreign Service officer and to determine the presence of any physical, nervous, or mental disease or defect of such a nature as to make it unlikely that he would become a satisfactory officer.

(b) The physical examinations will be conducted by medical officers of the Armed Services, the Public Health Service, or the Foreign Service or, in exceptional circumstances, by private physicians designated by the Board of Examiners.

(c) The Board of Examiners will determine, on the basis of the report of the physician or physicians who have conducted the physical examination, whether or not the candidate has met the requirements.

§ 11.9 *Certifications for appointment.* (a) No person will be certified as eligible for appointment as Foreign Service officer of class 8 unless he is at least 21 years of age, has been a citizen of the United States for at least 10 years, and, if married, is married to a citizen of the United States.

(b) A candidate who meets the requirements of paragraph (a) of this section, who passes his physical examination and who, on the basis of the suitability investigation, is adjudged suitable, will be certified for appointment in accordance with the needs of the Service.

(c) Any candidate certified for appointment without first having passed the written examination in a modern language will enter on duty subject to the condition that he may not be promoted to a higher class unless he passes the written examination in French, German, Russian or Spanish, or an oral examination in a modern language of his choice administered by the Foreign Service Institute in accordance with standards approved by the Board of Examiners.

§ 11.10 *Affiliations.* The religion, race, and political affiliations of candidates will not be considered in designations, examinations, or certifications, except that candidates will be required to demonstrate their loyalty to the Government of the United States and their attachment to the principles of the Constitution.

§ 11.11 *Expenses of candidates.* The traveling and other personal expenses of candidates in connection with taking the written and oral examinations will not be borne by the Government.

PART 12—COMPLAINTS AGAINST EMPLOYEES BY ALLEGED CREDITORS

Sec.
12.1 No cognizance taken of complaint.
12.2 Claimants denied access to employees.

AUTHORITY: §§ 12.1 and 12.2 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c.

§ 12.1 *No cognizance taken of complaint.* The Department of State will take no cognizance of a complaint against an employee by an alleged creditor, so far as the complainant is concerned, beyond acknowledging receipt of his communication.

§ 12.2 *Claimants denied access to employees.* Persons claiming to be creditors or collectors of debts or claims will be denied access to employees for the purpose of presenting or collecting claims during the hours set apart for the transaction of public business or while the employees concerned are on duty.

PART 13—PERSONAL

Sec.
13.1 Improper exaction of fees.
13.2 Embezzlement.
13.3 Liability for neglect of duty or for malfeasance generally; action on bond; penalty.
13.4 False certificate as to ownership of property.

AUTHORITY: §§ 13.1 to 13.4 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842.

§ 13.1 *Improper exaction of fees.* Any consular officer who collects, or knowingly allows to be collected for any services any other or greater fees than are allowed by law for such services, shall, besides his liability to refund the same, be liable to pay to the person by whom or in whose behalf the same are paid, treble the amount of the unlawful

charge so collected, as a penalty. The refund and penalty may be recovered with costs, in any proper form of action, by such person for his own use. The amount of such overcharge and penalty may at the discretion of the Secretary of the Treasury be ordered withheld from the compensation of such officer for payment to the person entitled to the same (22 U. S. C. 1189).

NOTE: The foregoing relates to improper collection and personal withholding of funds by consular officers. For procedure where a collection, having been erroneously made, has been returned by the officer to the Treasury in good faith, making a subsequent accounting adjustment necessary, see § 22.4. *Refund of fees* of this chapter.

§ 13.2 *Embezzlement.* Every consular officer who shall receive money, property, or effects belonging to a citizen of the United States and shall not within a reasonable time after demand made upon him by the Secretary of State or by such citizen, his executor, administrator, or legal representative, account for and pay over all moneys, property, and effects, less his lawful fees, due to such citizen, shall be deemed guilty of embezzlement, and shall be punishable by imprisonment for not more than five years, and by a fine of not more than $2,000 (22 U. S. C. 1198). Penalties of imprisonment and fine are also prescribed for embezzlement in connection with the acceptance, without execution of a prescribed form of bond, of appointment from any foreign state as administrator, guardian, or to any other office of trust for the settlement or conservation of estates of deceased persons or of their heirs or of persons under legal disabilities (22 U. S. C. 1178 and 1179). Acceptance of such appointments is not ordinarily permitted under existing regulations. See § 92.81 of this chapter.

§ 13.3 *Liability for neglect of duty or for malfeasance generally; action on bond; penalty.* Whenever any consular officer willfully neglects or omits to perform seasonably any duty imposed upon him by law, or by any order or instruction made or given in pursuance of law, or is guilty of any willful malfeasance or abuse of power, or of any corrupt conduct in his office, he shall be liable to all persons injured by any such neglect, or omission, malfeasance, abuse, or corrupt conduct, for all damages occasioned thereby; and for all such damages, he and his sureties upon his official bond shall be responsible thereon to the full amount of the penalty thereof to be sued in the name of the United States for the use of the person injured. Such suit, however, shall in no case prejudice, but shall be held in entire subordination to the interests, claims, and demands of the United States, as against any officer, under such bond, for every willful act of malfeasance or corrupt conduct in his office. If any consul neglects or omits to perform seasonably the duties imposed upon him by the laws regulating the shipment and discharge of seamen, or is guilty of any malversation or abuse of power, he shall be liable to any injured person for all damage occasioned thereby; and for all malversation and corrupt conduct in office, he shall be punishable by imprisonment for not more than five years and not less than one, and by a fine of not more than $10,000 and not less than $1,000 (22 U. S. C. 1199).

§ 13.4 *False certificate as to ownership of property.* If any consul or vice consul falsely and knowingly certifies that property belonging to foreigners is property belonging to citizens of the United States, he shall be punishable by imprisonment for not more than three years, and by a fine of not more than $10,000 (22 U. S. C. 1200).

SUBCHAPTER C—FEES AND FUNDS

PART 21—FEES FOR SERVICES IN THE UNITED STATES

Sec.
21.1 Schedule of fees.
21.2 Requesting services and forwarding remittances.
21.3 Effective date.

AUTHORITY: §§ 21.1 to 21.3 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c. Interpret or apply sec. 501, 65 Stat. 290; 5 U. S. C. 140.

§ 21.1 *Schedule of fees.*

Item No.	Description of service	Fee
1	a. For each search for a record and for making a copy or extract thereof, by photostat or otherwise (single page)	$1.50
	b. For each additional copy of the first page, for 25 copies or less, for each copy of the second page, for 25 copies or less and for each copy of each additional page, for 25 copies or less	.60 .20
	c. For each copy in excess of the 25 copies of each page (This fee does not apply to such customary activities as issuance of copies of records (1) from supplies kept for distribution, such as press releases and information leaflets; (2) as part of normal and generally reciprocal services performed by the Library of the Department at the request of similar agencies or institutions; or (3) in lieu of or as enclosures to letters with the purpose of saving costs in preparing mail.) (The routine servicing of requests of persons having permission to do research in the records under section 185.4 of the Manual of Regulations and Procedures of the Department of State is not to be considered as searching within the meaning of this item. Any copying performed under this proviso, including the first copy of any first page, shall be at the rate indicated in Item No. 1b or 1c, and authenticating at the rate under Item No. 3.)	
2	For each signed statement of negative result of a search for a record (Item 1 above)	1.00
3	For certifying under official seal that a copy or extract made by the Department from its records is a true copy (Fees for searching and for copying, if required, are an additional charge under Item 1.)	1.00
4	Authenticating a Federal, State or Territorial seal, or certifying to the official status of an officer of the United States Department of State or of a foreign diplomatic or consular officer accredited to or recognized by the United States Government, on any document submitted to the Department for that purpose	2.50
5	Any service described in Items 1, 2, 3, or 4 above, when— a. Required for official use by an agency of the Federal Government or of any of the States or their subdivisions or of the District of Columbia, or of any of the territories and possessions of the United States	No fee
	b. Required for official use by a foreign government, or by an international agency of which the Government of the United States is a member, or by a foreign official to whom the United States has granted diplomatic or consular status, in circumstances where furnishing the service is an appropriate courtesy	No fee
	c. Performed in response to a subpoena or other order of a court. (However, fees are chargeable when the service is for the benefit of a party in interest and a court order or subpoena is issued in his behalf.)	No fee
	d. Performed in providing to a party in interest, one copy of the transcript of a hearing held before a panel, board, or other authority of the Department	No fee
	e. Performed in providing to an agency of the Federal Government, one copy under seal of a personal document (viz., consular form report of birth, certificate of witness to marriage, or report of death of an American citizen, etc.)	No fee
	f. Performed in providing to a near relative or legal representative, one copy under seal of a consular form report of death of an American citizen	No fee

§ 21.2 *Requesting services and forwarding remittances.* (a) Request for services, accompanied by remittance of the exact total fee chargeable (as well as by a stamped addressed return envelope if certified mail, registered mail, air mail, or special delivery mail service is desired), shall be addressed to the Authentication Officer, Department of State, Washington 25, D. C.

(b) Remittances shall be in the form either of (1) check or bank draft drawn on a bank in the continental United States, or (2) postal money order, or (3) cash. Remittances shall be made payable to the order of the Department of State. The Department will assume no responsibility for cash which is lost in the mail.

(c) Fees must be paid in full prior to issuance of requested documents. If uncertainty as to the existence of a record, or as to the number of sheets to be copied, precludes remitting the exact fee chargeable with the request the Department of State will inform the interested party of the exact amount required.

§ 21.3 *Effective date.* The charges hereby established will become effective on July 1, 1956 with respect to all services rendered pursuant to requests received in the Department of State on or after the effective date.

PART 22—FEES AND CHARGES, FOREIGN SERVICE

Sec.
22.1 Tariff of fees, Foreign Service of the United States of America.
22.2 Remittances to Foreign Service posts.
22.3 Receipts for fees; register of services.
22.4 Refund of fees.
22.5 Time at which fees become payable.
22.6 Deposits to guarantee payment of fees or incidental costs.
22.7 Collection and return of fees.

AUTHORITY: § 22.1 to 22.7 issued under secs. 3, 4, 63 Stat. 111, as amended; 5 U. S. C. 151c, 22 U. S. C. 811a. E. O. 10718, 22 F. R. 4632.

§ 22.1 *Tariff of fees, Foreign Service of the United States of America.* (a) Officers of the Foreign Service shall charge for official services performed abroad at the rates prescribed in this tariff, in coin of the United States or at its representative value in exchange (22 U. S. C. 1202). For definition of representative value in exchange, see § 23.4 of this chapter. No fees named in this tariff shall be charged or collected for the official services to American vessels and seamen (22 U. S. C. 1186). The term

"American vessels" is defined to exclude, for the purposes of this tariff, undocumented American vessels and the fees prescribed herein shall be charged and collected for such undocumented vessels. However, the fees prescribed herein shall not be charged or collected for American public vessels, which includes any vessel owned or operated by a United States Government department or agency and engaged exclusively in official business on a non-commercial basis. This tariff shall be kept posted in a conspicuous place in each Foreign Service office, subject to the examination of all persons interested therein (22 U. S. C. 1197).

Effective November 14, 1957

PASSPORT AND CITIZENSHIP SERVICES

Item No.		*Fee*
1.	Execution of application for passport—no exceptions (22 U. S. C. 214)	$1.00
2.	Examination of passport application executed before a foreign official	$1.00
3.	Issuance of passport (22 U. S. C. 214)	$9.00
4.	Renewal of passport (22 U. S. C. 217a)	$5.00
5.	Issuance of certificate or card of identity and registration, or card of identification for use on the Mexican border	$1.00
6.	Issuance or renewal of passport—	
	(a) to officers or employees of the United States proceeding abroad or returning to the United States in the discharge of their official duties, or members of their immediate families (22 U. S. C. 214)	No fee
	(b) to seamen when employed as such on American vessels (22 U. S. C. 214)	No fee
	(c) to widows, children, parents, brothers, and sisters of American soldiers, sailors, or marines buried abroad, whose journey is for the purpose of visiting graves of such soldiers, sailors, or marines (22 U. S. C. 214)	No fee
7.	Amendment of passport	No fee
8.	Verification of passport	No fee
9.	Execution of application for registration	No fee
10.	Execution of affidavit in regard to American birth in connection with application for registration or for passport	No fee
11.	Administering the oath of allegiance to a native-born American woman who lost her citizenship solely by marriage to an alien	No fee
12.	For delivery to the applicant of a certified copy of an executed form—	
	(a) of repatriation of a native-born American woman whose marital status with an alien terminated prior to January 13, 1941	$5.00
	(b) of repatriation of a native-born American woman under sec. 324 of the Immigration and Nationality Act (8 U. S. C. 1435)	$5.00
	(c) of repatriation under the act of July 20, 1954 (8 U. S. C. 1438 Supp.), of a person who while a citizen of the United States lost his citizenship by voting in Japan between September 2, 1945, and April 27, 1952, inclusive	$5.00
13.	Completion of birth and death reports in number of copies prescribed by regulations. (Charge under item 75 below for any additional copies made and furnished, as well as under item 47 below if certification is furnished of the correctness thereof.)—	
	(a) report of birth of American citizen including the furnishing of one copy to the parents	No fee
	(b) report of death of American citizen and sending one copy each to legal representative and to closest known relative or relatives	No fee
14.	Certificate of witness to marriage in quadruplicate. (Charge under item 75 below for any additional copies made and furnished, as well as under item 47 below if certification is furnished of the correctness thereof.)	$3.00
	(Item numbers 15 through 19 vacant.)	

VISA SERVICES FOR ALIENS

20.	Furnishing and verification of application for immigrant visa, including duplicate copy (8 U. S. C. 1351)	$5.00
21.	Issuance of each immigrant visa (8 U. S. C. 1351)	$20.00
22.	Furnishing and verification of application and issuance of nonimmigrant visa. (Fees prescribed in Appendix C, Visa Handbook of Department of State, as amended from time to time.)	

VISA SERVICES FOR ALIENS—continued

Item No.		*Fee*
23.	Furnishing and verification of application and issuance of nonimmigrant visa to alien proceeding solely in transit to and from the headquarters district of the United Nations under the provisions of section 11 of the Agreement between the United Nations and the United States of America regarding the headquarters of the United Nations (61 Stat. 756)	No fee
24.	Visa of alien crew list	$2.00
25.	Supplemental visa of alien crew list	No fee
	(Item numbers 26 through 29 vacant.)	

SERVICES RELATING TO VESSELS AND SEAMEN

30.	Noting marine protest, when required by a master of a foreign or an undocumented vessel	$5.00
31.	Extending marine protest, when required by master of a foreign or an undocumented vessel	$10.00
	If it exceeds 200 words, for every additional 100 words or fraction thereof	$1.00
32.	Protest of master against charterers or freighters, when required by master of a foreign or an undocumented vessel	$5.00
33.	Shipment or discharge of seaman on undocumented vessel, each seaman	$2.00
34.	Recording of bill of sale of vessel purchased abroad, taking of application for provisional certificate of registry or certificate of American ownership, and investigation	$10.00
35.	Issuance of provisional certificate of registry or certificate of American ownership	$5.00
36.	Services under this tariff (unless designated "no exceptions") when performed for American vessels or for American seamen (22 U. S. C. 1186)	No fee
	(Item numbers 37 through 44 vacant.)	

NOTARIAL SERVICES AND AUTHENTICATIONS

45.	Administering an oath and certificate thereof	$2.50
46.	Taking the acknowledgment of the execution of a document, and certificate thereof	$2.50
47.	Certifying under official seal that a copy or extract made from an official or a private document is a true copy. (Fees for copying, if required, are an additional charge under item 75.)	$1.00
48.	Certifying to official character of a foreign notary or other official (i. e., authenticating a document)	$2.50
49.	Administering oaths, taking acknowledgments, or supplying authentications, in connection with application for letters patent or registration of trademarks, or with the assignment or transfer of rights thereunder	$2.50
50.	Administering an oath and certificate thereof for petition for nonquota, temporary worker nonimmigrant, or preference quota status	$2.50
51.	Administering oaths or taking acknowledgments, or authenticating the signatures of foreign officials, in connection with kinsmen's petitions for wages and effects of deceased seamen of the American merchant marine (46 U. S. C. 627)	$2.50
52.	For affidavit of petitioner or his agent on documents or evidence to be presented to the Federal Government	$2.50
	(Item numbers 53 and 54 vacant.)	
55.	Noting of a negotiable instrument for want of acceptance or payment, certifying to protest, and giving notice to issuer and endorsers when requested to do so. (In addition to this fee the consular officer should charge under item 85 for time spent outside the consular office in presentment of the instrument for acceptance or payment.)	$5.00
	(Item numbers 56 and 57 vacant.)	
58.	Services under this heading "Notarial Services and Authentications", when rendered—	
	(a) in connection with the execution of forms or documents required by or to be presented to any department or agency of the Federal Government	No fee
	(b) in connection with the assignment and transfer of United States bonds or other Federal financial obligations or the execution of powers of attorney therefor or to collect interest thereon	No fee

NOTARIAL SERVICES AND AUTHENTICATIONS—continued

Item No.		Fee
58.	Services under this heading "Notarial Services and Authentications", when rendered—Continued	
	(c) to claimants and beneficiaries and their witnesses, in connection with Federal, State and municipal allotment, pension, retirement, insurance, medical, compensation, or like benefits	No fee
	(d) in the execution of tax returns for filing with the Federal or State Governments or political subdivisions thereof	No fee
	(e) to American citizens, while outside the United States, in preparation of ballots to be used in any primary, general, or other public elections in the United States or in territories under their jurisdiction	No fee
	(f) for official non-commercial use by a foreign government or by an international agency of which the Government of the United States is a member	No fee
	(g) to an official of a foreign government in circumstances where furnishing the service is an appropriate or reciprocal courtesy	No fee
	(Item numbers 59 through 64 vacant.)	

SERVICES RELATING TO TAKING OF EVIDENCE

65.	In taking depositions or executing commissions to take testimony (for additional hourly charge to be assessed for service of officer when rendered outside of the consular office and for provision for collection of transportation and other incidental costs see item 85 and § 22.1 (b))—	
	(a) for the services of the diplomatic or consular officer, including completion by him of caption, introductory statement and certificate (likewise including interpreting and reduction to writing or typewriting where these are done personally by the officer), for the first hour or fraction thereof	$15.00
	(b) for the services of the diplomatic or consular officer, as above, for each additional hour or fraction thereof	$10.00
	(e) for the services, if required, of a staff member of the Foreign Service post as interpreter, per hour or fraction thereof	$4.00
	(d) stenographic and typing service when supplied by the Foreign Service post, for each 100 words or fraction thereof (charge additionally under item 75 for extra copies, if requested)	$1.00
66.	Executing commissions to take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of Federal court on behalf of an indigent party as contemplated by 18 U. S. C. 3495	No fee
67.	Providing seal and certificate for return of letters rogatory executed by foreign officials	$5.00
	(Item numbers 68 and 69 vacant.)	

DECEDENTS' ESTATES

70.	Taking into possession under 22 U. S. C. 1175 the personal estate of any citizen who shall die within the limits of a consular district, inventorying, selling, and finally disposing thereof according to law, for each $100 of inventory value or fraction thereof	$2.00
71.	Service as described under item 70 above, when performed in the case of a deceased officer or employee of the United States	No fee
72.	Placing or removal of official seal on estates of decedents; for disbursing funds supplied by relatives and others; for forwarding to legal representative or other authorized person of securities and other instruments not negotiated (or not negotiable) by the consular officer, or evidence of bank deposits of the decedent; or for releasing on the spot against memorandum receipt and without occasion either for safekeeping on official accountability or for consular inventory and appraisal, to the legal representative or other authorized person in the country, of personal property taken into nominal possession for the explicit purpose of transfer of custody	No fee
	(Item numbers 73 and 74 vacant.)	

COPYING AND RECORDING

Item No.		Fee
75.	Copies made by typewriter (letter-size, double-spaced page or equivalent), photostat or otherwise—	
	(a) a copy or extract thereof, single page	$1.50
	(b) for each additional copy of the first page, for 25 copies or less; for each copy of the second page, for 25 copies or less; and for each copy of each additional page, for 25 copies or less	$0.50
	(c) for each copy in excess of the 25 copies of each page	$0.20
	(This fee does not apply to such customary activities as issuance of copies of records (1) from supplies kept for distribution, such as press releases and information leaflets; (2) as part of normal and generally reciprocal services performed by the post's library or the Library of the Department at the request of similar agencies or institutions; or (3) in lieu of or as enclosures to letters with the purpose of saving costs in preparing mail.)	
76.	Recording unofficial documents in the Miscellaneous Record Book, if by hand-copying—	
	(a) for the first 200 words or fraction thereof	$5.00
	(b) and for each additional 100 words or fraction thereof	$2.00
77.	Recording unofficial documents in the Miscellaneous Record Book, if typewritten or by other mechanical process—	
	(a) for the first two pages or less	$5.00
	(b) for each additional page	$1.00
	(Item numbers 78 through 81 vacant.)	

DEPARTMENTAL SERVICES FOR WHICH COLLECTION IS EFFECTED AT FIELD POST

82.	Services described in the Departmental "Schedule of Fees" (§ 21.1) when collection is effected at a Foreign Service post. (The fee prescribed in the Departmental "Schedule of Fees".)	

EXEMPTION FOR FEDERAL AGENCIES AND CORPORATIONS

83.	Any and all services (unless above designated "no exceptions") performed for the official use of the Government of the United States or of any corporation in which the Federal Government or its representative shall own the entire outstanding capital stock	No fee
	(Item number 84 vacant.)	

SERVICES RENDERED OUTSIDE OF OFFICE

85.	Additional fee for services of officer under the above headings Passport and Citizenship Services, Visa Services for Aliens, Notarial Services and Authentications, and Services Relating to Taking of Evidence, when rendered elsewhere than at a Foreign Service office at the request of the interested parties, for each hour or fraction thereof	$4.00

(b) In addition to the fees prescribed above, transportation and other incidental costs actually and necessarily incurred by officers of the Foreign Service performing services elsewhere than at a Foreign Service office shall be collected from the persons requesting the performance of such services. Such collections shall not be considered as part of the official fees but shall be recorded as deposit funds and accounted for as such.

§ 22.2 *Remittances to Foreign Service posts.* Remittances to Foreign Service posts from persons in the United States in payment of official fees and charges or for the purpose of establishing deposits in advance of rendition of services shall be in a form acceptable to the post, drawn payable to the "American Embassy at [name of city]" (or American Legation, American Consulate General, or American Consulate, as the case may be). This will permit encashment of negotiable instruments by the post when necessary. For method of endorsement of instruments for deposit in the Treasury, when not negotiated locally, see § 23.2 of this chapter.

§ 22.3 *Receipts for fees; register of services.* Every officer of the Foreign

Service responsible for the performance of services as enumerated in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1), shall give receipts for fees collected for his official services, specifying the nature of the service and numbered to correspond with entries in a register maintained for the purpose (22 U. S. C. 1192, 1193, and 1194). The register serves as a record of official acts performed by officers of the Foreign Service in a governmental or notarial capacity, corresponding in this regard with the record which notaries are usually expected or required to keep of their official acts (see § 92.2) of this chapter.

§ 22.4 *Refund of fees.* Fees which have been collected for deposit in the Treasury are refundable (a) as specifically authorized by law (see 22 U. S. C. 214a concerning passport fees erroneously charged persons excused from payment, 22 U. S. C. 216 concerning passport fees in cases where the appropriate representative in the United States of a foreign government refuses a visa, and 46 U. S. C. 8 concerning fees improperly imposed on vessels or seamen), (b) when the principal officer at the consular post where the fee was collected (or the officer in charge of the consular section at a combined diplomatic consular post) finds upon review of the facts that the collection was erroneous upon the part of the officer under applicable law and regulation and directs that refund be made, or (c) when a finding that the collection was erroneous under applicable law and regulation is made by the Department of State with a view to payment of the refund in the United States in cases in which it is impracticable to have the facts reviewed and refund effected at the direction of the responsible consular officer. See § 13.1 of this chapter concerning refunds of fees improperly exacted by consular officers who have neglected to return the same to the Treasury.

§ 22.5 *Time at which fees become payable.* Fees are due and payable prior to issuance or delivery to the interested party of a signed document, a copy of a record, or other paper representative of a service performed.

§ 22.6 *Deposits to guarantee payment of fees or incidental costs.* When the amount of any fee is determinable only after initiation of the performance of a service, or if incidental costs are involved, the total fee and incidental costs shall be carefully estimated and an advance deposit required, subject to refund of any unused balance to the person making the deposit.

§ 22.7 *Collection and return of fees.* No fees other than those prescribed in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1), or by or pursuant to an act of Congress, shall be charged or collected by officers of the Foreign Service for official services performed abroad (22 U. S. C. 1201). All fees received by any officer of the Foreign Service for services rendered in connection with the duties of his office or as a consular officer shall be accounted for and paid into the Treasury of the United States (22 U. S. C. 99, 1942 Edition, as amended by sec. 1131 (26) of the Foreign Service Act of 1946, 60 Stat. 1037, and as modified by 22 U. S. C. 812 of the 1952 Edition). For receipt, registry, and numbering provisions, see § 22.3.

PART 23—FINANCE AND ACCOUNTING

Sec.
23.1 Remittances made payable to the Department of State.
23.2 Endorsing remittances for deposit in the Treasury.
23.3 Refunds.
23.4 Representative value in exchange.
23.5 Claims for settlement by Department of State or General Accounting Office.

AUTHORITY: §§ 23.1 to 23.5 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c.

§ 23.1 *Remittances made payable to the Department of State.* Except as otherwise specified in this title, remittances of moneys shall be drawn payable to the Department of State and sent to the Department for action and deposit. (See §§ 21.2, 51.40, and 22.2 of this chapter.)

§ 23.2 *Endorsing remittances for deposit in the Treasury.* The Office of Finance—Cashier Unit, the Authentication Office, the Passport Office or Passport Agency, American Embassy, American Legation, American consular office, or other office or unit of the Department of State authorized and required to deposit funds in the Treasury of the United States, is hereby authorized to endorse, or to have endorsed, to the order of the Treasurer of the United States by appropriate stamp, checks, drafts, money orders, or other forms of remittance, regardless of how drawn, which are for payment to the Department of State for deposit in the Treasury of the United States, including those payable to the Secretary of State.

§ 23.3 *Refunds*—(a) *Rectifications and readjustments.* See § 22.4 of this chapter for outline of circumstances under which fees which have been collected for deposit in the Treasury may be refunded.

(b) *Refund of wrongful exactions.* See § 13.1 of this chapter concerning recovery from consular officers of amounts wrongfully exacted and withheld by them.

§ 23.4 *Representative value in exchange.* Representative value in exchange for the collection of a fee means foreign currency equivalent to the prescribed United States dollar fee at the current rate of exchange at the time and place of payment of the fee. "Current rate" of exchange for this purpose means the bank selling rate at which the foreign bank will sell the number of United States dollars required to liquidate the obligation to the United States for the Foreign Service fee.

§ 23.5 *Claims for settlement by Department of State or General Accounting Office.* Claims for settlement by the Department of State or by the General Accounting Office shall be submitted to the Department in duplicate over the handwritten signature, together with the post office address of the claimant, and with appropriate recommendations of the officer of the Foreign Service, for items such as:

(a) Refunds of amounts representing payroll deductions such as for any retirement and disability fund;

(b) Amounts due deceased, incompetent, or insolvent persons including payees or bona-fide holders of unpaid Government checks;

(c) Amounts claimed from the Government when questions of fact affect either the amount payable or the terms of payment, when for any reason settlement cannot or should not be affected at the Foreign Service office; and

(d) Amounts of checks, owned by living payees or bona-fide holders, which have been covered into outstanding liabilities. The Foreign Service post or the Department of State shall be consulted before preparing the claim to ascertain whether any special form is required to be used. Claims for unpaid compensation of deceased alien employees shall be forwarded to the respective Foreign Service post.

SUBCHAPTER D—CLAIMS AND STOLEN PROPERTY

PART 31—ADMINISTRATIVE SETTLEMENT OF TORT CLAIMS AND CERTAIN PROPERTY DAMAGE CLAIMS

Sec.
31.1 Purpose.
31.2 Delegation of authority.

Subpart A—General Provisions

31.3 Definitions.
31.4 Action by claimant.
31.5 Penalties.
31.6 Investigation of claims.
31.7 Determination of claims.
31.8 Payment of claims.

Subpart B—Federal Tort Claims Act

31.9 General.
31.10 Allowable claims.
31.11 Claims not allowable.
31.12 Limitations.
31.13 Acceptance of award or settlement by claimant.
31.14 Attorneys' fees.

Subpart C—Act of August 1, 1956

31.15 General.

Subpart D—Act of June 19, 1939

31.16 General.
31.17 Exclusion.
31.18 Limitations.
31.19 Action by claimant.
31.20 Payment of claim.

AUTHORITY: §§ 31.1 to 31.20 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c. Interpret or apply 49 Stat. 906, as amended, sec. 1, 62 Stat. 983, as amended, sec. 2, 70 Stat. 890; 22 U. S. C. 277e, 28 U. S. C. 2672, 5 U. S. C. 170g.

§ 31.1 *Purpose.* The purpose of this part is to establish and provide a procedure for the preparation and submission of claims for personal injury, death, and property loss or damage cognizable under the Federal Tort Claims Act (62 Stat. 983; 28 U. S. C. 2672) and the act of August 1, 1956 (70 Stat. 890; 5 U. S. C. Supp. IV, 170g), and claims for property loss or damage cognizable under the act of June 19, 1939 (53 Stat. 841; 22 U. S. C. 277e), and to authorize certain officers of the Department of State and of the United States Section, International

Boundary and Water Commission, United States and Mexico, to consider, ascertain, adjust, determine and settle such claims.

§ 31.2 *Delegation of authority.* The Legal Adviser and the Deputy Legal Adviser are authorized to consider, ascertain, adjust, determine and settle claims cognizable under the Federal Tort Claims Act and the act of August 1, 1956, except claims arising out of activities of the Commission. Chiefs of mission and principal officers of fiscal reporting posts are authorized to consider, ascertain, adjust, determine and settle claims cognizable under the act of August 1, 1956, arising out of the activities of their respective establishments. The Commissioner is authorized to consider, ascertain, adjust, determine and settle claims cognizable under the Federal Tort Claims Act and the act of June 19, 1939, arising out of activities of the Commission.

SUBPART A—GENERAL PROVISIONS

§ 31.3 *Definitions.* As used in this part, the term:

(a) "Secretary" means the Secretary of State.

(b) "Department" means the Department of State, its offices, bureaus, and divisions and its Foreign Service establishments abroad.

(c) "Commission" means the United States Section, International Boundary and Water Commission, United States and Mexico.

(d) "Legal Adviser" means the Legal Adviser of the Department of State.

(e) "Deputy Legal Adviser" means the Deputy Legal Adviser of the Department of State.

(f) "Chiefs of mission" means principal officers appointed by the President, by and with the advice and consent of the Senate, in charge of embassies or legations of the United States.

(g) "Principal officers of fiscal reporting posts" means principal officers in charge of embassies, legations, or other diplomatic missions, or of a consulate general or consulate of the United States, which are designated fiscal reporting posts by the Department of State.

(h) "Commissioner" means the United States Commissioner, International Boundary and Water Commission, United States and Mexico.

(i) "Employee" includes any officer or employee of the Department or the Commission, or any person acting on behalf of the Department or the Commission in an official capacity, temporarily or permanently in the service of the Department or the Commission, whether with or without compensation.

§ 31.4 *Action by claimant*—(a) *Claimant.* Claims for property loss or damage may be filed by the owner of the property or his duly authorized agent or legal representative. If the property was insured and the insurer is subrogated, in whole or in part, and if both the owner and the insurer desire to file a claim for their respective losses, they should join in one claim. Claims for personal injury may be filed by the injured person or his agent or legal representative. Claims for death may be filed by the personal representative of the decedent or any other legally qualified person. When filed by an agent or legal representative, the claim must show the title or capacity of the person representing the claimant and be accompanied by evidence of the appointment of such person as agent, legal representative, executor, administrator, guardian, or other fiduciary.

(b) *Form of claim.* Claims arising in the United States and in the Territories and possessions of the United States should be prepared, in duplicate, on the standard form, "Claim For Damage or Injury," promulgated by the Bureau of the Budget. Copies of this form will be furnished upon a request to the Department or the Commission, as the case may be. All information requested therein should be given in detail. It is especially important that the amount claimed for property damage and for personal injury be indicated in the spaces provided. Claims arising in foreign countries should be prepared in form of a sworn statement and submitted in duplicate. The original copy of the claim should be sworn to or affirmed before an official with authority to administer oaths or affirmations and should contain the following information, at least: (1) The name and address of the claimant; (2) the amount claimed for injury or death and for property loss or damage; (3) if property was lost or damaged, the amount paid or payable by the insurer and the name of the insurer; (4) the facts and circumstances in detail giving rise to the claim including the date, place and time of the accident or incident; (5) if property was involved, a description of the same and of the nature and extent of the damage and of the cost of repair or replacement; (6) if personal injury was involved, the nature of the injury, the cost of medical services and time and income lost from incapacitation; (7) if death is involved, the names and ages of the claimants and their relationship to the decedent; (8) the name of the employee of the United States who is alleged to be responsible for the accident or incident and the name and address of the Foreign Service establishment by whom he is or was employed; (9) the names and addresses of any witnesses to the accident or incident; and (10) if desired, the law applicable to the claim.

(c) *Place of filing claim.* Claims should be submitted directly to the office, bureau, division, or Foreign Service establishment of the Department, or of the Commission, out of whose activities the acident or incident occurred, if known; or, if not known, to the Legal Adviser, Department of State, Washington 25, D. C.

(d) *Evidence to be submitted by claimant*—(1) *General.* The amount claimed on account of damage to or loss of property or on account of personal injury or death should, so far as possible, be substantiated by competent evidence. Supporting statements, estimates and the like should, if possible, be obtained from disinterested parties. All evidence should be submitted in duplicate. Original evidence or certified copies should be attached to the original copy of the claim, and simple copies should be attached to the other copy of the claim. All documents in other than the English language should be accompanied by English translations.

(2) *Personal injury or death.* In support of claims for personal injury or death, the claimant should submit, as may be appropriate, itemized bills for medical, hospital or burial expenses actually incurred; a statement from the claimant's or decedent's employer as to time and income lost from work; and a written report by the attending physician with respect to the nature and extent of the injury, the nature and extent of treatment, the degree of disability, the period of hospitalization or incapacitation, and the prognosis as to future treatment, hospitalization and the like.

(3) *Damage to personal property.* In support of claims for damage to personal property which has been repaired, the claimant should submit an itemized receipt, or, if not repaired, itemized estimates of the cost of repairs by two reliable parties who specialize in such work. If the property is not economically repairable, the claimant should submit corroborative statements of two reliable qualified persons with respect to cost, age of the property and salvage value.

(4) *Damage to real property.* In support of claims for damage to land, trees, buildings, fences, or other improvements to real property, the claimant should submit an itemized receipt if repairs have been made, or, if repairs have not been made, itemized estimates of the cost of repairs by two reliable persons who specialize in such work. If the property is not economically repairable, the claimant should submit corroborative statements of two reliable qualified persons with respect to the value of the improvements both before and after the accident or incident and the cost of replacements.

(5) *Damage to crops.* In support of claims for damage to crops, the claimant should submit an itemized signed statement showing the number of acres, or other unit measure of crop damaged, the probable yield per unit, the gross amount which would have been realized from such probable yield and an estimate of the costs of cultivating, harvesting and marketing the crop. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop should also be stated.

§ 31.5 *Penalties.* A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be liable to a fine of not more than $10,000 or to imprisonment of not more than five years, or both (62 Stat. 698, 749; 18 U. S. C. 287, 1001) and, in addition, to a forfeiture of $2,000 and a penalty of double the loss or damage sustained by the United States (12 Stat. 696, 698; 31 U. S. C. 231).

§ 31.6 *Investigation of claims.* When a claim is received, the office, bureau, division or Foreign Service establishment out of whose activities the claim arose shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim and thereafter shall forward the claim, together with all pertinent material, and

a recommendation regarding allowance or disallowance of the claim, to the Legal Adviser, Deputy Legal Adviser, Commissioner, Chief of Mission or principal officer of fiscal reporting post, as the case may be.

§ 31.7 *Determination of claims.* Claims will be determined in accordance with the applicable statute and the applicable subpart of this part.

§ 31.8 *Payment of claims.* When a claim is approved, it will be referred to the appropriate fiscal office for payment out of funds appropriated or to be appropriated for the purpose.

SUBPART B—FEDERAL TORT CLAIMS ACT

§ 31.9 *General.* The Federal Tort Claims Act (62 Stat. 983; 28 U. S. C. 2672) authorizes the head of each Federal agency, or his designee for the purpose, acting on behalf of the United States, to consider, ascertain, adjust, determine, and settle certain tort claims for money damages of $1,000 or less against the United States.

§ 31.10 *Allowable claims.* Tort claims, except those specifically excluded by the Federal Tort Claims Act (28 U. S. C. 2680), are allowable under the act and this subpart for damage to or loss of property and for personal injury or death, caused by the negligent or wrongful act or omission of any employee of the Department or of the Commission, while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable for such damage, loss, injury, or death, in accordance with the law of the place where the act or omission occurred. Payment of more than $1,000 in settlement of a claim may not be authorized. The claimant's only remedy, if any, for a claim exceeding $1,000 in amount or for a claim which is disallowed, is by suit in the United States District Court for the district where the claimant resides or wherein the act or omission complained of occurred.

§ 31.11 *Claims not allowable.* The following claims, among others, are not allowable under the Federal Tort Claims Act and this subpart:

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(d) Any claim arising in a foreign country. Such claims may be allowable under the act of August 1, 1956. See Subpart C of this part.

§ 31.12 *Limitations.* (a) Claims arising under the Federal Tort Claims Act must be presented in writing, within two years after accrual.

(b) A suit may not be filed while a claim is pending. The claimant may, however, upon fifteen days written notice, withdraw the claim and commence action thereon within six months from the date of notice. If a claim is denied, the claimant may commence action thereon within six months from the date of notice of denial. The amount of the suit may not exceed the amount of the claim, except where the increased amount is based upon newly discovered evidence.

§ 31.13 *Acceptance of award or settlement by claimant.* The acceptance by the claimant of an award, compromise or settlement is final and conclusive on the claimant, and constitutes a complete release of any claim against the United States and against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

§ 31.14 *Attorneys' fees.* As part of any award or settlement, reasonable attorneys' fees may be allowed out of, but not in addition to, the amount of the award or settlement. If the award or settlement is $500 or more the fee shall not exceed 10 per centum of the amount of the award or settlement. Any attorney who receives more than the amount allowed may be liable to a fine of not more than $2,000 or imprisonment of not more than one year, or both. Attorneys' fees will be fixed only upon the written request of the claimant or his attorney.

SUBPART C—ACT OF AUGUST 1, 1956

§ 31.15 *General.* The act of August 1, 1956 (70 Stat. 890; 5 U. S. C. Supp. IV, 170g) authorizes the Secretary of State, when funds are appropriated therefor, to pay tort claims in the manner authorized in the first paragraph of 28 U. S. C. 2672, as amended, when such claims arise in foreign countries in connection with Department of State operations abroad. Consequently, the Federal Tort Claims Act and Subpart B of this part are applicable to claims filed under the act of August 1, 1956, except that no provision has been made in that act for the institution of suit if a claim is denied.

SUBPART D—ACT OF JUNE 19, 1939

§ 31.16 *General.* The act of June 19, 1939 (53 Stat. 841; 22 U. S. C. 277e), provides as follows:

The Secretary of State acting through such officers as he may designate, is further authorized to consider, adjust, and pay from funds appropriated for the project, the construction of which resulted in damages, any claim for damages occurring after March 31, 1937, caused to owners of land or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of any project constructed or administered through the American Commissioner, International Boundary Commission, United States and Mexico, if such claim does not exceed $1,000 and has been filed with the American Commissioner within one year after the damage is alleged to have occurred, and when in the opinion of the American Commissioner such claim is substantiated by a report of a board appointed by the said Commissioner.

This act covers only claims for damages to lands or other private property and not claims for personal injuries. (Decision Comptroller General B-36817, September 28, 1943, unpublished.) To the extent that claims for damages to lands or other private property are based upon negligence, the provisions of this act have been superseded by the Federal Tort Claims Act (26 Comp. Gen. 452, Decision B-61757, January 6, 1947). Hence claims cognizable under the act of June 19, 1939, are limited to claims for damages accruing after March 31, 1937; (a) for damages to lands or other private property of any kind by reason of the operations of the United States, its officers or employees, in the survey, construction, operation, or maintenance of any project constructed or administered through the Commissioner; (b) where such claims do not exceed $1,000; and (c) which claims are not based upon the negligence of any officer or employee of the Government acting within the scope of his employment.

§ 31.17 *Exclusion.* Claims which are cognizable under the Federal Tort Claims Act are not cognizable under the act of June 19, 1939.

§ 31.18 *Limitations.* No claim will be considered by the Commissioner under this subpart unless filed with him within one year after the damage is alleged to have occurred.

§ 31.19 *Action by claimant.* The provisions of § 31.4 shall be applicable to claims for damages cognizable under this subpart, except those provisions relating to personal injury or death.

§ 31.20 *Payment of claim.* Upon receipt of a claim by the Commissioner, the Commissioner will appoint a board to investigate the facts surrounding the claim and to make its report and recommendations to the Commission. The Commissioner will thereupon approve the claim in whole or in part, or disapprove the claim. If the claim is approved in whole or in part, and claimant accepts the settlement tendered by the Commissioner, the claimant will execute a release of his claim in the form prescribed by the Commissioner and will execute a voucher in the sum approved by the Commissioner. The file on the case, including the claim, the findings of the board, the approval of the Commissioner, the release, and the voucher, will thereupon be transmitted by the Commissioner through the Department to the General Accounting Office for settlement.

PART 32—STOLEN PROPERTY UNDER TREATY WITH MEXICO

Sec.

32.1 Mexican motor vehicles, trailers, airplanes, etc., in the United States.

32.2 American motor vehicles, trailers, airplanes, etc., in Mexico.

AUTHORITY: §§ 32.1 and 32.2 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c.

§ 32.1 *Mexican motor vehicles, trailers, airplanes, etc., in the United States.* Whenever, in accordance with the pro-

visions of article I of the convention[1] (50 Stat. 1334), the United Mexican States shall request the detention in the United States of America of alleged stolen or embezzled motor vehicles, trailers, airplanes, or the component parts of any of them, the request shall be accompanied by documents legally valid in the United Mexican States. The said documents shall be as follows: (a) the original or a certified copy of the sales or conditional sales contract and where registration of title is required by law the certificate of such registration of title; (b) the original or a certified copy of the official registration card; (c) not more than three affidavits identifying the claimant as the owner of the legal or equitable title, or both, to the property alleged to have been stolen or embezzled; (d) the original or a certified copy of any assignment of the property by the insured to the insurer pursuant to a contract of insurance in force at the time the theft or embezzlement was committed.

§ 32.2 *American motor vehicles, trailers, airplanes, etc., in Mexico.* Whenever, in accordance with the provisions of article II of the convention (50 Stat. 1334), the United States of America shall request the detention in the United Mexican States of alleged stolen or embezzled motor vehicles, trailers, airplanes, or the component parts of any of them, the request shall be accompanied by documents legally valid in the United States of America. The said documents shall be as follows: (a) the original or a certified copy of the sales or conditional sales contract and where registration of title is required by law the certificate of such registration of title; (b) the original or a certified copy of the official registration card; (c) not more than three affidavits identifying the claimant as the owner of the legal or equitable title, or both, to the property alleged to have been stolen or embezzled; (d) the original or a certified copy of any assignment of the property by the insured to the insurer pursuant to a contract of insurance in force at the time the theft or embezzlement was committed.

SUBCHAPTER E—VISAS

PART 40—DIPLOMATIC VISAS UNDER THE IMMIGRATION AND NATIONALITY ACT

Sec.

40.1 Definitions.
40.2 Officers authorized to issue diplomatic visas.
40.3 Types and validity of diplomatic visas.
40.4 Classes of aliens eligible to apply for diplomatic visas.
40.5 Classes of aliens ineligible to receive diplomatic visas.
40.6 Advisory opinions from the Department.
40.7 Application for diplomatic visa.
40.8 Passport requirement.
40.9 Evidence of diplomatic status.
40.10 Procedure in issuing diplomatic visas.
40.11 Diplomatic visas issued without charge.
40.12 Significance of diplomatic visa.
40.13 Revocation or cancellation of diplomatic visa.

[1] Convention of October 6, 1936 between the United States and Mexico for the recovery and return of stolen or embezzled motor vehicles, etc.

AUTHORITY: §§ 40.1 to 40.13 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 40.1 *Definitions.* The following definitions, in addition to the pertinent definitions contained in the Immigration and Nationality Act, shall be applicable to this part:

(a) "Act" means the Immigration and Nationality Act.

(b) "Department" means the Department of State of the United States of America.

(c) "Diplomatic visa" means a nonimmigrant visa bearing the title "Diplomatic Visa" and issued to a nonimmigrant in accordance with the regulations contained in Part 41 of this chapter and in this part.

(d) "Diplomatic passport" means a national passport bearing the title "Diplomatic Passport" and issued by a competent authority of the foreign government to which the bearer owes allegiance.

(e) "Equivalent of a diplomatic passport" means (1) a national passport, other than a specifically described diplomatic passport, which is issued by a foreign government to which the bearer owes allegiance and which indicates the career diplomatic or consular status of the bearer, the issuing government being one which does not issue diplomatic passports to its career diplomatic and consular officers, or (2) a national passport, other than a specifically described diplomatic passport, which is in the possession of a nonimmigrant who is an accredited official of a foreign government or a member of his immediate family, and who is within the purview of section 212 (d) (8) of the act, or (3) such other passport as may be acceptable to the Secretary of State in individual cases.

(Sec. 101, 66 Stat. 167; 8 U. S. C. 1101)

§ 40.2 *Officers authorized to issue diplomatic visas.* (a) A diplomatic or consular officer attached to a diplomatic mission of the United States may issue diplomatic visas if he is authorized to do so by the chief of the mission.

(b) A consular officer assigned to a consular office may issue diplomatic visas if so authorized by the Department or by the chief of the United States diplomatic mission to the foreign country in which such consular office is located.

(c) The Director of the Visa Office of the Department, and such members of his staff as he may designate, are authorized, in their discretion, to issue diplomatic visas to qualified aliens in the United States, who are within one of the classes described in § 40.4, who, if within a nonimmigrant category defined in section 101 (a) (15) (A) or (G) of the act, have been duly notified to the Secretary of State, and who, after a temporary absence, desire to reenter the United States in the nonimmigrant status specified in the visa.

§ 40.3 *Types and validity of diplomatic visas.*—(a) *Regular diplomatic visa.* A regular diplomatic visa shall be valid for the period indicated therein, as determined under the provisions of § 41.15 of this chapter, and may be used during the period of its validity in making any number of applications for admission into the United States: *Provided,* That the status of the bearer as a person entitled to a diplomatic visa is maintained.

(b) *Limited diplomatic visa.* A limited diplomatic visa shall be valid for the period specified therein, as determined under the provisions of § 41.15 of this chapter, and may be used during the period of its validity in making a single application for admission into the United States: *Provided,* That the status of the bearer as a person entitled to a diplomatic visa is maintained.

§ 40.4 *Classes of aliens eligible to apply for diplomatic visas.*—(a) *Regular diplomatic visas.* Aliens of the following classes seeking to enter the United States as nonimmigrants may apply for regular diplomatic visas:

(1) Heads of states and their alternates;

(2) Members of a reigning royal family;

(3) Governors - general, governors, high commissioners, and other similar high administrative or executive officers of a territorial unit, and their alternates;

(4) Cabinet ministers and their assistants holding executive or administrative positions not inferior to that of the head of a departmental division, and their alternates;

(5) Presiding officers of chambers of national legislative bodies;

(6) Justices of the highest national judicial tribunal of a foreign country;

(7) Officers of the diplomatic service and consular officers of career of a foreign government;

(8) Diplomatic couriers regularly and professionally employed as such by a foreign government;

(9) Military, naval, air and other attachés of career, and assistant attachés of career, assigned to a foreign diplomatic mission in the United States or elsewhere;

(10) Military officers holding a rank not inferior to that of a brigadier general in the United States Army or Air Force and naval officers holding a rank not inferior to that of a rear admiral in the United States Navy;

(11) Members of a diplomatic mission of a temporary character;

(12) Officers and representative-members of international bodies of an official nature, other than international organizations so designated by Executive order;

(13) Representatives of foreign governments, and the staff members of foreign-government delegations, to international organizations so designated by Executive order;

(14) Attendants, servants, and personal employees, as defined in § 41.30 of this chapter, of a principal alien who is within one of the classes described in subparagraphs (1) to (13), inclusive, of this paragraph;

(15) Members of the immediate family of a principal alien who is within one of the classes described in subparagraphs (1) to (13), inclusive, of this paragraph;

(16) Members of the immediate family accompanying or following to join the principal alien who is within one of the classes described in subparagraph (14) of this paragraph; and

(17) Any other alien in whose individual case the Department may specifically authorize the diplomatic or consular officer to accept an application for a regular diplomatic visa.

(b) *Limited diplomatic visas.* Aliens of the following classes seeking to enter the United States as nonimmigrants, if not classifiable within one of the categories specified in paragraph (a) of this section, may apply for limited diplomatic visas:

(1) Subordinate members, including employees, of international bodies of an official nature, other than international organizations so designated by Executive order, who are traveling on official business of such international body;

(2) Subordinate staff members, including employees, of foreign-government delegations to international organizations so designated by Executive order;

(3) Members of delegations proceeding to or from a specific international conference of an official nature;

(4) Members of the immediate family, attendants, servants, and personal employees, accompanying or following to join the principal alien who is within one of the classes described in subparagraphs (1) to (3), inclusive of this paragraph;

(5) Any other alien in whose individual case the Department may specifically authorize the diplomatic or consular officer to accept an application for a limited diplomatic visa.

§ 40.5 *Classes of aliens ineligible to receive diplomatic visas.* Ineligibility to receive a diplomatic visa shall not preclude an alien from applying for a nondiplomatic visa appropriate to his case as an immigrant or as a nonimmigrant. The following classes of aliens shall be considered ineligible to receive diplomatic visas:

(a) Aliens declared by the Department to be individually persona non grata;

(b) Aliens not in possession of a diplomatic passport or the equivalent of a diplomatic passport, unless such requirement has been waived.

(c) Aliens not within one of the classes described in § 40.4;

(d) Aliens not within one of the classes of nonimmigrants defined in section 101 (a) (15) or section 212 (d) (8) of the act;

(e) Aliens who are ineligible to receive nonimmigrant visas under the immigration laws and regulations, unless the Attorney General shall have authorized their temporary admission under the authority contained in section 212 (d) (3) of the act, if applicable.

§ 40.6 *Advisory opinions from the Department.* Subject to appropriate instructions from the Department, a diplomatic or consular officer may issue a diplomatic visa, or may refuse to issue a diplomatic visa in the case of an alien eligible for a nondiplomatic nonimmigrant visa, without reference to the Department for an advisory opinion. In the case of an applicant for a diplomatic visa who is found to be ineligible to receive a nonimmigrant visa of any kind, the diplomatic or consular officer shall be governed by the regulations contained in Part 41 of this chapter, and by any special instructions received from the Department, regarding the requirement of advisory opinions.

§ 40.7 *Application for diplomatic visa*—(a) *Form and place of application.* Every alien applying for a diplomatic visa shall make application therefor on Form FS–257. The application shall be made at a United States diplomatic mission or at a United States consular office which is authorized to issue diplomatic visas, regardless of the nationality or residence of the applicant.

(b) *Separate application for each alien.* Every alien applying for a diplomatic visa shall make a separate application therefor. In the case of an alien under fourteen years of age, or an alien physically incapable of making an application, such application may be made by the alien's parent or guardian, and if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, such alien.

(c) *Personal appearance.* Application for a diplomatic visa shall be made in person unless this requirement is waived in the discretion of the diplomatic or consular officer. If a waiver of personal appearance is granted, the application form shall be completed by the diplomatic or consular officer from available information relating to the alien. No oath or affirmation shall be required in connection with the execution of an application for a diplomatic visa.

(d) *Photographs.* Except as otherwise provided in this paragraph, every alien who makes application for a diplomatic visa shall furnish with his application identical photographs of himself in such number as may be required in the discretion of the consular officer. A child under ten years of age shall not be required to furnish photographs unless he is the bearer of a separate passport. The photographs shall reflect a reasonable likeness of the alien as of the time they are furnished, and shall be two inches by two inches in size, unmounted, without head covering, have a light background, and clearly show a full front view of the facial features of the alien. Each copy of the photograph shall be signed by the person making the application with the full name of the alien in such a manner as not to obscure the alien's features. The photograph requirement may be waived in the discretion of the diplomatic or consular officer in the case of any alien granted a diplomatic visa. A signed notation of any such waiver shall be made in the space provided in the application form for the alien's photograph.

(e) *Exemption from fingerprint requirement.* Every alien who is eligible to apply for and who receives a diplomatic visa on a diplomatic passport or on the equivalent of a diplomatic passport shall be exempt from the fingerprint requirement.

§ 40.8 *Passport requirement.* (a) Every alien applying for a diplomatic visa shall be required to present a valid diplomatic passport, or the equivalent thereof, issued by a competent authority of a foreign government recognized de jure by the United States, unless such requirement has been waived pursuant to the authority contained in section 212 (d) (4) of the act.

(b) The issuance of a diplomatic visa to an alien within Class A–3 or G–5 as described in § 41.5 of this chapter shall be subject to the condition that the initial period for which the alien may properly be admitted into the United States under the act is to be determined by the Immigration and Naturalization Service after the alien arrives at a port of entry, and the period of stay authorized by that Service may not extend beyond a date which is 6 months prior to the expiration of the alien's passport. An alien whose passport is not valid for the necessary period shall be required to obtain and present such a passport before the diplomatic visa is issued.

§ 40.9 *Evidence of diplomatic status.* A diplomatic or consular officer to whom an alien applies for a diplomatic visa may require any reasonable evidence he deems necessary to establish such alien's eligibility to receive a diplomatic visa. In the case of an alien classifiable within the provisions of section 101 (a) (15) (A) or (G) of the act, the officer to whom application is made shall have discretionary authority to require confirmation of the status of such alien from the foreign office or the international organization concerned.

§ 40.10 *Procedure in issuing diplomatic visas.* (a) The form of a diplomatic visa shall be the same as the nondiplomatic nonimmigrant visa, except that it may bear the title "Diplomatic Visa" or the word "Diplomatic" shall be stamped diagonally across the lower left hand margin of the visa stamp, in such manner as to be partially covered by the impression seal of the office. The word "Gratis" shall be inserted in the space provided for a fee stamp. The printed title of the signing officer in the visa stamp shall be appropriately amended to show the exact title of the officer who signs the visa.

(b) The diplomatic visa stamp shall be impressed upon the alien's passport. The "V" number of the application of each alien included in the diplomatic visa shall be inserted in the blank space provided therefor in the visa stamp. The visa shall be considered as covering all aliens whose application numbers are so listed and who are included in the passport. In the case of an alien who is a member of the immediate family, or an attendant, servant, or personal employee, of a foreign-government official or employee, or who otherwise derives status from a principal alien who is not accompanying him, the name and position of the principal alien from whom such status is derived, shall be written below the lower margin of the visa stamp in the diplomatic passport.

(c) A diplomatic visa shall show the classification of the bearer to be a nonimmigrant under section 101 (a) (15) of

the act. The applicable classification symbol, as specified in § 41.5 of this chapter, shall be inserted in the space provided in the visa stamp. The date of issuance and the date of expiration of the visa shall be inserted in the visa stamp, showing the date, month, and year in that order, the name of the month being spelled out, as "24 December 1952."

(d) The diplomatic or consular officer shall affix his signature, indicate his title, and impress the seal of his office in the spaces provided therefor in the visa stamp. The visaed passport may be delivered to the applicant or his authorized representative together with any other documents required in connection with the applicant's examination at a port of entry in the United States. The executed Form FS–257 shall be retained in the files of the issuing diplomatic or consular office.

§ 40.11 *Diplomatic visas issued without charge.* In accordance with international comity and practice, and upon a basis of reciprocity, no fee shall be charged for the application for a diplomatic visa or for the issuance of such a visa.

§ 40.12 *Significance of diplomatic visa.* An alien to whom a diplomatic visa has been issued shall be entitled to apply at a port of entry for admission into the United States as a nonimmigrant, and the presentation of such a visa by such alien at a port of entry in the United States shall, in the case of an alien properly classified under the provisions of section 101 (a) (15) (A) or (G) of the act, or in the case of an alien who is an accredited official of a foreign government in immediate and continuous transit through the United States, as referred to in section 212 (d) (8) of the act, and who is classified under the provisions of section 101 (a) (15) (C) of the act, be considered conclusive evidence of the proper classification of the bearer.

§ 40.13 *Revocation or cancellation of diplomatic visa*—(a) *Revocation.* Diplomatic and consular officers are authorized to revoke ab initio a diplomatic visa in any case in which it is found that:

(1) The visa was procured by fraud or misrepresentation, or by other illegal means; or

(2) The alien was ineligible ab initio to receive the diplomatic visa under the immigration laws and regulations in effect at the time it was issued.

(b) *Notice of revocation.* Notice of the revocation of a diplomatic visa shall, if practicable, be given to the alien at his last known address prior to his departure for the United States, and to the master, commanding officer, agent, owner, charterer, or consignee, of the carrier or transportation line on which the alien is known or believed to intend to travel to the United States. Such notice shall also be communicated to the Department for transmission to the Attorney General, and to the diplomatic or consular office which issued the visa if the revocation was effected by any other diplomatic or consular office upon instruction from the issuing office or the Department. Upon receiving notice of revocation of his diplomatic visa, the alien shall be required to present his passport at the office indicated in the notice for appropriate notation on the visa stamped therein. The word "Revoked" shall be written plainly on the face of the visa stamp by the revoking officer who shall sign and date such notation, but the revocation shall be effective and shall invalidate the visa from the date of issuance even in the absence of such notation. If it is not practicable to give the alien notice of revocation prior to his departure for the United States, a full report of the facts in the case shall be submitted promptly to the Department.

(c) *Cancellation.* Diplomatic and consular officers are authorized to cancel in futuro a diplomatic visa in any case in which it is found that the alien to whom the visa was issued is no longer eligible for such visa. An alien shall be considered as no longer eligible for a diplomatic visa if he ceases, by reason of circumstances arising after the visa was issued, to have the qualifications necessary to obtain such a visa, or if another visa of any kind is issued to him. In any such case the alien shall be required to present his passport to the diplomatic or consular officer for cancellation of the diplomatic visa stamped therein. Such cancellation shall be effected by writing the word "Canceled" plainly on the face of the visa stamp. The cancelling officer shall sign and date his notation of cancellation. A report regarding each cancellation of a diplomatic visa shall be forwarded promptly to the Department by the cancelling officer.

(d) *Record of revocation or cancellation.* Upon the revocation or cancellation of a diplomatic visa, appropriate notation of the action taken, including a statement of the reason therefor, shall be made on Form FS–257 or on an appended memorandum, and if the revocation or cancellation of the visa is effected at other than the issuing office, a report of the action taken shall be transmitted to the issuing office.

PART 41—DOCUMENTATION OF NONIMMIGRANT ALIENS UNDER THE IMMIGRATION AND NATIONALITY ACT

CROSS REFERENCE: For regulations of the Immigration and Naturalization Service, see 8 CFR Chapter I.

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AUTHORITY: §§ 41.1 to 41.150 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 41.1 *Definitions.* The following definitions, in addition to the pertinent definitions contained in the Immigration and Nationality Act, shall be applicable to this part:

(a) "Act" means the Immigration and Nationality Act.

(b) "Affirmation" means a verification in confirmation of truth, in lieu of a sworn statement, by a person who has conscientious scruples against taking an oath.

(c) "Consular officer", as defined in section 101 (a) (9) of the act, shall include the District Administrators of the Trust Territory of the Pacific Islands, and the Naval Administrator, United States Naval Administration Unit Saipan District, hereby designated as consular officers for the purpose of issuing nonimmigrant visas.

(d) "Department" means the Department of State of the United States of America.

(e) "Passport" as defined in section 101 (a) (30) of the act shall not be considered as limited to a national passport, but shall be considered as including any other document issued by a competent authority, which shows the bearer's origin, identity, and nationality if any, and which is valid for the entry of the bearer into a foreign country. The term "passport" shall not be considered as limited to a single document but may consist of two or more documents which, when considered together, fulfill the requirements of a passport as defined in section 101 (a) (30) of the act: *Provided,* That written permission to enter a foreign country shall be considered as fulfilling one of such requirements if it is clearly valid for such purpose and specifies no conditions to such validity for the alien's entry into a foreign country.

(f) "Port of entry" means a port or place designated by the Attorney General or the Commissioner of Immigration and Naturalization at which an alien may apply for admission into the United States.

DOCUMENTATION OF NATIONALS, CLAIMANT NATIONALS AND FORMER NATIONALS

§ 41.2 *National of the United States.* A national of the United States shall not be issued a visa or other documentation as an alien for entry into the United States.

§ 41.3 *Claimant to United States nationality.* A person whose case fulfills the conditions of section 360 (b) of the act and who continues to claim that he is a national of the United States may apply for a certificate of identity as provided in section 360 (b) of the act. (See §§ 50.24–50.40 of this chapter.)

§ 41.4 *Former national of the United States.* A former national of the United States who seeks to enter the United States shall be required to comply with the documentary requirements applicable to aliens under the act.

CLASSIFICATION OF NONIMMIGRANTS FOR PURPOSES OF DOCUMENTATION

§ 41.5 *Classification symbols.* A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate symbol to be inserted by the consular officer in the space provided in the visa stamp to show the classification of the alien as a nonimmigrant under the provisions of section 101 (a) (15) of the act. The following symbols shall be used:

Class	Citation	Symbol to be inserted in visa
Ambassador, public minister, career diplomatic or consular officer, and members of immediate family.	101 (a) (15) (A) (i)	A-1
Other foreign-government official or employee, and members of immediate family.	101 (a) (15) (A) (ii)	A-2
Attendant, servant, or personal employee of A-1 and A-2 classes, and members of immediate family.	101 (a) (15) (A) (iii)	A-3
Temporary visitor for business	101 (a) (15) (B)	B-1
Temporary visitor for pleasure	101 (a) (15) (B)	B-2
Alien in transit	101 (a) (15) (C)	C-1
Alien in transit to United Nations headquarters district under § 11 (3), (4), or (5) of the Headquarters Agreement.	101 (a) (15) (C)	C-2
Foreign-government official, members of immediate family, attendant, servant, or personal employee, in transit.	212 (d) (8)	C-3
Crewman (seaman or airman)	101 (a) (15) (D)	D
Treaty merchant, spouse and children	101 (a) (15) (E) (i)	E-1
Treaty investor, spouse and children	101 (a) (15) (E) (ii)	E-2
Exchange visitor	101 (a) (15) and 402 (f)	EX
Student	101 (a) (15) (F)	F
Principal resident representative of recognized foreign member government to international organization, his staff, and members of immediate family.	101 (a) (15) (G) (i)	G-1
Other representative of recognized foreign member government to international organization, and members of immediate family.	101 (a) (15) (G) (ii)	G-2
Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family.	101 (a) (15) (G) (iii)	G-3
International organization officer or employee, and members of immediate family.	101 (a) (15) (G) (iv)	G-4
Attendant, servant, or personal employee of G-1, G-2, G-3, and G-4 classes, and members of immediate family.	101 (a) (15) (G) (v)	G-5
Temporary worker of distinguished merit and ability	101 (a) (15) (H) (i)	H-1
Other temporary worker, skilled or unskilled	101 (a) (15) (H) (ii)	H-2
Industrial trainee	101 (a) (15) (H) (iii)	H-3
Representative of foreign information media, spouse and children	101 (a) (15) (I)	I
Principal permanent representative of Member State to NATO and resident members of his official staff; Secretary General, Deputy Secretary General, and Executive Secretary of NATO; Co-ordinator of North Atlantic Defense Production; other permanent NATO officials of similar rank; and members of immediate family.	Art. 12, 5 UST 1094 Art. 20, 5 UST 1098	NATO-1
Other representative of Member State to NATO Council or any of its subsidiary bodies, including representatives, advisers, and technical experts of delegations, and members of immediate family.	Art. 13, 5 UST 1094	NATO-2
Official clerical staff accompanying a representative of Member State to NATO, its Council or subsidiary bodies, and members of immediate family.	Art. 14, 5 UST 1096	NATO-3
Officials of NATO, and members of immediate family	Art. 18, 5 UST 1098	NATO-4
Experts, other than officials classifiable under the symbol NATO-4, employed on missions on behalf of NATO.	Art. 21, 5 UST 1100	NATO-5
Members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the status of International Military Headquarters set up pursuant to the North Atlantic Treaty, and their dependents.	Art. 3, 5 UST 877	NATO-6

(Sec. 221, 66 Stat. 191; 8 U. S. C. 1201)

DOCUMENTATION NOT REQUIRED FOR CERTAIN NONIMMIGRANTS

§ 41.6 *Nonimmigrants not required to present passports, visas, or border-crossing identification cards.* (a) The provisions of section 212 (a) (26) of the act relating to the requirement of passports, visas, and border-crossing identification cards for nonimmigrants are waived on a reciprocal basis by the Secretary of State and the Attorney General, acting jointly, in pursuance of the authority contained in section 212 (d) (4) (B) of the act in the cases of aliens (including alien crewmen) who fall within any of the following-described categories:

(1) A Canadian citizen who has his residence in Canada and who makes ap-

plication for admission into the United States (i) from Canada; or (ii) from, and after a visit solely to, some place in foreign contiguous territory or adjacent islands; or (iii) from, and after a visit solely to, some place in the Western Hemisphere if such citizen departed on a round-trip cruise from a port of the United States or Canada and has not transshipped from the original vessel or aircraft.

(2) A British subject who has his residence in Canada and who makes application for admission into the United States (i) from Canada; or (ii) from, and after a visit solely to, some place in foreign contiguous territory or adjacent islands; or (iii) from, and after a visit solely to, some place in the Western Hemisphere if such subject departed on a round-trip cruise from a port of the United States or Canada and has not transshipped from the original vessel or aircraft.

(3) A national of Mexico who:

(i) Is a military or civilian official or employee of the Mexican national government, or of a Mexican state or municipal government, or a member of the family of any such official or employee, and who makes application for admission into the continental United States from Mexico on personal or official business or for pleasure; or

(ii) Makes application to pass in immediate and continuous transit through the continental United States from one place in Mexico to another by means of a transportation line which crosses the border between United States and Mexico; or

(iii) Is a member of a fire-fighting group entering the United States in connection with fire-fighting activities.

(4) International Boundary and Water Commission officers, employees, and other personnel entering the United States in the performance of their official duties, and Mexican nationals employed directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico, and entering the United States temporarily in connection with such employment. (59 Stat. 1252.)

(5) A national of Cuba who is an official of the Cuban Immigration Service, who makes continuous round trips on regularly scheduled steamships between Havana, Cuba and Miami, Florida, for the purpose of inspecting passengers, and who makes application for admission into the United States in connection with such employment.

(6) A national of Cuba who is a crewman serving on board a Cuban military or naval aircraft, and who makes application for admission into the United States in connection with his official duties.

(7) A British subject who has his residence in Bermuda and who makes application for admission into the United States as a visitor for business or pleasure under the provisions of section 101 (a) (15) (B) of the act (i) from Bermuda; or (ii) from, and after a visit solely to, some place in foreign contiguous territory or adjacent islands; or (iii) from, and after a visit solely to, some place in the Western Hemisphere if such subject departed on a round-trip cruise from a port of the United States or Bermuda and has not transshipped from the original vessel or aircraft.

(b) The provisions of section 212 (a) (26) of the act relating to the requirement of passports, visas, and border crossing identification cards for nonimmigrants are waived by the Secretary of State and the Attorney General, acting jointly, in pursuance of the authority contained in section 212 (d) (4) (C) of the act in the cases of aliens (including alien crewmen) who fall within the following described category:

(1) An alien, other than an alien who is a citizen of Albania, Bulgaria, Czechoslovakia, Estonia, the German Democratic Republic, Hungary, Latvia, Lithuania, North Vietnam (Viet Minh), the Peoples Democratic Republic of Korea (North Korea Regime), the Peoples Republic of China, Poland, Rumania, or the Union of Soviet Socialist Republics, and resident of one of said countries, who is being transported in immediate and continuous transit through the United States in accordance with the terms of a contract, including a bonding agreement, entered into between the transportation line and the Attorney General under the provisions of section 238 (d) of the act, to insure such immediate and continuous transit through, and departure from, the United States en route to a specifically designated foreign country: *Provided*, That at all times such alien is not aboard an aircraft which is in flight through the United States he shall be in the custody of an officer of the United States or, if the Attorney General finds that such custody is not practicable, in such other custody as may be approved by the Attorney General.

(c) The provisions of section 212 (a) (26) of the act relating to the requirement of passports, visas, and border crossing identification cards for nonimmigrants are waived by the Secretary of State and the Attorney General, acting jointly, in pursuance of the authority contained in section 212 (d) (4) (A) of the act, in the individual cases of aliens who fall within the following-described category, which is hereby declared to be an unforeseen emergency within the purview of that section:

(1) An alien who is a pilot of vessels and who is compelled to travel to the United States because weather conditions made it impossible for him to disembark from a vessel after he had guided it out of a foreign port.

§ 41.7 *Nonimmigrants required to present passports but not visas or border-crossing identification cards.* (a) The provisions of section 212 (a) (26) (B) of the act relating to the requirement of visas and border-crossing identification cards for nonimmigrants are waived on a reciprocal basis by the Secretary of State and the Attorney General, acting jointly, in pursuance of the authority contained in section 212 (d) (4) (B) of the act in the cases of aliens (including alien crewmen) who fall within any of the following-described categories:

(1) A Canadian citizen who has his residence in Canada, who is not within the purview of § 41.6 (a) (1), and who makes application for admission into the United States.

(2) A British subject who has his residence in British territory in the West Indies and who makes application for admission to Puerto Rico or the Virgin Islands of the United States.

(3) A French national who has his residence in French territory in the West Indies and who makes application for admission to Puerto Rico or the Virgin Islands of the United States.

(4) A Netherlands subject who has his residence in Netherlands territory in the West Indies and who makes application for admission to Puerto Rico or the Virgin Islands of the United States.

(5) Nationals of foreign contiguous territory or adjacent islands who make application for admission into the United States as seasonal or temporary workers under specific legislation enacted by the Congress and, if required, in accordance with international arrangements concluded upon the basis of such legislation.

(6) Nationals of adjacent islands in the British West Indies who are being imported as agricultural workers from the British West Indies, and who make application for admission into the United States.

(7) A Mexican national who makes application for admission into the United States as a crewman of an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States, who is employed in any capacity required for normal operation and service on board, including a crewman employed as a steward or hostess, and who is in possession of a valid Mexican passport or a valid air-crewman's certificate issued under the provisions of Annex 9 of the International Civil Aviation Convention.

(8) A Cuban national who makes application for admission into the United States as a crewman of an aircraft belonging to a Cuban company authorized to engage in commercial transportation into the United States, who is employed in any capacity required for normal operation and service on board, including a crewman employed as a steward or hostess, and who is in possession of a valid Cuban passport or a valid air-crewman's certificate issued under the provisions of Annex 9 of the International Civil Aviation Convention.

(9) A British subject who has his residence in, and arrives in the United States directly from the Cayman Islands and who, in making application for admission into the United States, presents a certificate from the Clerk of Court of

the Cayman Islands stating what, if anything, the Court's criminal records show concerning such subject, and a certificate from the Office of Commissioner of the Cayman Islands stating what, if anything, its records show with respect to such subject's political associations or affiliations.

(b) The provisions of section 212 (a) (26) (B) of the act relating to the requirement of visas and border-crossing identification cards for nonimmigrants are waived by the Secretary of State and the Attorney General, acting jointly, in pursuance of the authority contained in section 212 (d) (4) (A) of the act in the individual cases of aliens who fall within any of the following-described categories, which are hereby declared to be unforeseen emergencies within the purview of that section:

(1) A crewman serving on a vessel or aircraft proceeding directly to the United States from a port or place at which no American consular officer is stationed and no consular officer is stationed at a nearby port or place to whom the crew list may be submitted for visaing by mail or otherwise without delaying the departure of the vessel or aircraft.

(2) A crewman serving on a vessel or aircraft which is proceeding from a foreign port or place, not destined to the United States, and is diverted to a port of the United States.

(3) A crewman serving on a vessel or aircraft, who was necessarily signed on as a replacement after the crew-list visa was obtained, and there was no opportunity thereafter to have such crewman included in a supplemental crew-list visa, without delaying the departure of the vessel or aircraft.

(4) An alien in the United States in a lawful nonimmigrant status who proceeds from a port in the United States to another port of the United States via the Canal Zone and who upon arrival in the United States from the Canal Zone is in possession of an expired nonimmigrant visa.

(5) An alien who arrives at a United States port of entry from a remote Pacific island and who could not reasonably be expected to obtain a nonimmigrant visa because of the distance from his place of residence to the nearest United States consular office.

(6) An alien who is a resident of Greenland and who makes application for admission into the United States.

§ 41.8 *Nonimmigrants required to present visas or border crossing identification cards but not passports.* The provisions of section 212 (a) (26) (A) of the act relating to the requirement of valid passports for nonimmigrants are waived by the Secretary of State and the Attorney General, acting jointly, in pursuance of the authority contained in section 212 (d) (4) of the act, in cases of aliens who fall within the following-described categories:

(a) An alien who is described in section 212 (d) (8) of the act, and who is in possession of a travel document which is valid for at least thirty days from the date of his admission into the United States for his entry into a foreign country.

(b) A Mexican citizen who applies for admission as a border crosser at a port of entry on the land border between the United States and Mexico and who is in possession of a valid nonresident alien's border crossing identification card (Form I–186, revised November 1, 1956).

NONIMMIGRANT VISA APPLICATIONS

§ 41.9 *Application for nonimmigrant visas*—(a) *Application form.* Every alien applying at a diplomatic mission or a consular office for a nonimmigrant visa shall make application therefor on Form FS–257. In any case in which the consular officer believes that the information provided in Form FS–257 is inadequate to determine the alien's eligibility to receive a nonimmigrant visa, he may, in his discretion, require the submission of such additional information as may be necessary to a determination of the alien's eligibility to receive a nonimmigrant visa. The provisions of section 222 (c) of the act which require every alien applying for a nonimmigrant visa and alien registration to state his race and ethnic classification in the application shall not be construed as pertaining to the alien's religion.

(b) *Aliens required to make separate application.* Except as provided in § 41.11 relating to the issuance of visas to certain nonimmigrants in the United States, or as provided in § 41.65 relating to crew-list visas, every alien shall make a separate application for a nonimmigrant visa. In the case of an alien under 14 years of age, or one physically incapable of making an application, such application may be made by the alien's parent or guardian, and, if the alien has no parent or guardian, by any person having legal custody of, or a legitimate interest in, such alien.

(c) *Personal appearance.* Except as otherwise provided in this paragraph, every alien who makes application for a nonimmigrant visa shall be required to appear in person before a consular officer to execute Form 257. The requirement of personal appearance may be waived in the discretion of the consular officer in the case of any alien (1) who is within a class of nonimmigrants described in section 101 (a) (15) (A) or section 101 (a) (15) (G) of the act, (2) who is within a class of nonimmigrants classifiable under the visa symbol NATO–1, NATO–2, NATO–3, or NATO–4, or (3) who is a child under ten years of age. If a waiver of personal appearance is granted, the application form shall be completed by the consular officer from available information relating to the alien.

(d) *Photographs.* Except as otherwise provided in this paragraph, every alien who makes application for a nonimmigrant visa shall furnish with his application identical photographs of himself in such number as may be required in the discretion of the consular officer. A child under ten years of age shall not be required to furnish photographs unless he is the bearer of a separate passport. The photographs shall reflect a reasonable likeness of the alien as of the time they are furnished, and shall be two by two inches in size, unmounted, without head covering, have a light background, and clearly show a full front view of the facial features of the alien. Each copy of the photograph shall be signed by the person making the application with the full name of the alien in such a manner as not to obscure the alien's features. The photograph requirement may be waived in the discretion of the consular officer in the case of any alien (1) who is within a class of nonimmigrants described in section 101 (a) (15) (A) or section 101 (a) (15) (G) of the act, (2) who is within a class of nonimmigrants classifiable under the visa symbol NATO–1, NATO–2, NATO–3, or NATO–4, or (3) who is granted a diplomatic visa. A signed notation of any such waiver shall be made in the space provided in the application form for the alien's photograph.

(e) *Place of application.* With the exception of certain aliens who are in the United States and who may be issued nonimmigrant visas under the provisions of § 41.11, every alien applying for a nonimmigrant visa shall make application at a United States consular office in the consular district in which he has his residence: *Provided,* That a consular officer shall at the direction of the Secretary of State, or may in his discretion, accept an application for a nonimmigrant visa from an alien having no residence in the consular district if such alien is physically present therein.

(f) *Fee receipt notation.* The receipt of the prescribed fee, if any, for the furnishing and verification of application Form FS–257 shall be evidenced by inserting in the appropriate spaces on the reverse of the application form the (1) service number, (2) tariff item number, (3) fee paid in United States dollars, and (4) local currency equivalent. If no fee is prescribed for the rendering of such service, the word "gratis" shall be inserted in the space marked "Fee paid: U. S. $____".

(g) *Signature and seal.* Form 257 shall be signed by or on behalf of the applicant in the appropriate spaces provided therefor and in the presence of the consular officer. The application shall be sworn to or affirmed by the applicant before the consular officer who shall then sign such application and impress the seal of his office in the spaces provided in the application.

(Sec. 222, 66 Stat. 193; 8 U. S. C. 1202)

§ 41.10 *Documents required in connection with application for nonimmigrant visa; medical examination; police certificates*—(a) *Authority to require documents.* Every alien applying for a nonimmigrant visa shall furnish in duplicate if the consular officer in his discretion so requires, with his application a certified copy of each document pertaining to him which may be considered by the consular officer to be necessary

to a determination of the alien's eligibility to receive a nonimmigrant visa.

(b) *Unobtainable documents.* In the event an alien applying for a nonimmigrant visa establishes to the satisfaction of the consular officer that any document or record required under the authority of this section is unobtainable, the consular officer may permit the alien to submit, in lieu of such document or record, other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain. A document or other record shall be considered "unobtainable" if it cannot be procured without causing the applicant or a member of his family actual hardship other than normal delay and inconvenience.

(c) *Medical examination of nonimmigrants.* An alien applying for a nonimmigrant visa shall be required to present in duplicate a medical certificate from a reputable and competent physician selected by the alien from a panel of such physicians approved by the consular officer, or to be examined by a doctor of the United States Public Health Service, if he is coming from an area or in a status which indicates that a medical examination is advisable, or if the consular officer otherwise has reason to believe that such certificate or examination would disclose that the alien is ineligible to receive the visa.

(d) *Police certificates.* An alien applying for a nonimmigrant visa shall be required to present a police certificate if the consular officer has reason to believe that the alien has a police or criminal record. If required to present a police certificate, the alien shall furnish in duplicate with his application a certification by the appropriate police or other authorities stating what their records show concerning him: *Provided,* That the provisions of this paragraph shall not apply in the case of any alien (1) who is within a class of nonimmigrants described in section 101 (a) (15) (A) (i) or (ii), or section 101 (a) (15) (G) (i), (ii), (iii), or (iv), or section 212 (d) (8), of the act, or (2) who is within a class of nonimmigrants classifiable under the visa symbol NATO–1, NATO–2, NATO–3, or NATO–4.

(e) *Certificates as part of application.* If a medical examination or a police certificate is required of a nonimmigrant alien as provided in this section, the medical notification showing the results of the examination, or the police certificate, or both, shall be considered papers submitted with the alien's application within the meaning of section 221 (g) (1) of the act. The duplicate of such notification or certificate, or both, shall be enclosed in a sealed envelope and delivered to the alien for presentation at the port of entry.

(f) *Authority to elicit additional information.* A consular officer may, in his discretion, interrogate any alien applying for a nonimmigrant visa and require him to answer questions pertaining to his police or criminal record, or any other matter which is deemed material to a determination of the alien's eligibility to receive a nonimmigrant visa. Such additional statements shall become a part of the visa application and shall be covered by the oath of the applicant as administered by the consular officer.

(g) *Disposition of supporting documents.* (1) When issuing a nonimmigrant visa to any alien, the consular officer shall return to the alien for presentation to the immigration authorities at the port of entry the original of all supporting documents furnished by the alien with his application, except police and medical certificates which shall be disposed of as provided in paragraph (e) of this section. The duplicate of each such document shall be retained at the consular office for at least two years and filed with Form 257 during such period.

(2) When refusing a nonimmigrant visa to any alien, the consular officer may return to such alien the original of all supporting documents furnished by the alien with his application. The duplicate of each such document shall be retained at the consular office for at least one year and filed with the memorandum of refusal during such period, except in the case of a duplicate of a document which discloses a permanent ground of ineligibility, which shall be retained indefinitely in the files of the consular office subject to special instructions from the Department regarding its disposition.

(Secs. 221, 222, 66 Stat. 191, 193; 8 U. S. C. 1201, 1202)

ISSUANCE OF NONIMMIGRANT VISAS

§ 41.11 *Authority to issue nonimmigrant visas in the Department.* The Director of the Visa Office of the Department and such members of his staff as he may designate are authorized, in their discretion, to issue nonimmigrant visas to qualified aliens in the United States (a) who are within a class of nonimmigrants described in section 101 (a) (15) (A) or section 101 (a) (15) (G) of the act, or within a class of nonimmigrants classifiable under the visa symbol NATO–1, NATO–2, NATO–3, or NATO–4, (b) who have been duly notified to the Secretary of State in such nonimmigrant status, and (c) who, after a temporary absence, desire to reenter the United States in the nonimmigrant status specified in the visa.

§ 41.12 *Procedure in issuing nonimmigrant visa*—(a) *Visa evidenced by stamp in passport.* Except as hereinafter provided, the issuance of a nonimmigrant visa shall be evidenced by a stamp placed in the alien's passport and properly executed by the consular officer. The appropriate symbol, as prescribed in § 41.5, showing the classification of the nonimmigrant under section 101 (a) (15) of the act shall be inserted in the visa stamp. In the case of an alien whose passport was issued by a government not recognized de jure by the United States or in the case of an alien for whom the passport requirement has been waived, the visa stamp shall be impressed on a sheet of the issuing office's official stationery to which a photograph of the alien shall be securely attached. The impression seal of the issuing office shall be impressed on the stationery so as to partially cover the photograph. No seal, signature, stamp, or notation of any kind shall be placed in a passport issued by a foreign government not recognized de jure by the United States.

(b) *Form of nonimmigrant visa stamp.*

(Title of office)

(Location)

NONIMMIGRANT VISA

Nonimmigrant classification _____ pursuant 22 CFR 41.5; Imm. and Natlty. Act; Application No. V-_____

_____

Issued on _____

Valid through _____

for _____ application(s) for admission at United States ports of entry.

[SEAL]

[FEE NOTATION]

_____

(Consul)

(c) *Notations on visa.* The V-number of the application of each alien included in a nonimmigrant visa shall be inserted in the space provided therefor in the visa stamp. If the visa is being issued upon the basis of a petition filed with and approved by the Attorney General, in the case of a nonimmigrant under the provisions of section 101 (a) (15) (H) of the act, the number and date of approval of the petition shall be noted in the visa stamp, and the period for which the alien's admission has been authorized shall be noted immediately below the visa stamp.

(d) *Period of validity.* If a nonimmigrant visa is issued for an unlimited number of applications for admission within the period of validity, the word "Unlimited" shall be inserted in the space provided in the visa stamp. Otherwise a specific number shall be inserted. The date of issuance and the date of expiration of the visa shall be inserted at the proper places in the visa stamp and shall show the day, month, and year in that order, the name of the month being spelled out, as "24 December 1952."

(e) *Fee receipt notation.* The receipt of the prescribed fee, if any, for the issuance of a nonimmigrant visa shall be evidenced by a rubber-stamped or typed notation properly completed in the same form as provided in § 41.9 (f), and placed within the visa stamp in the blank space above the line provided for the consular officer's signature. If no fee is prescribed for the issuance of a nonimmigrant visa in the particular case, the word "gratis" shall be inserted in the space marked "Fee Paid: U. S. $_____."

(f) *Signature and seal.* The consular officer who issues a nonimmigrant visa shall affix his signature, indicate his title, and impress the seal of his office in the spaces provided in the visa stamp.

(g) *Disposition of Form FS–257.* In issuing a nonimmigrant visa the consular officer shall deliver the visaed passport or, where applicable, the visaed sheet of official stationery to the alien together with any other documents required in connection with the alien's examination at a port of entry in the United States. The executed Form FS–257 and any ad-

ditional statements furnished by the alien in accordance with § 41.10 (f) shall be retained in the consular files.

§ 41.13 *More than one person included in nonimmigrant visa.* A single nonimmigrant visa may be issued to include more than one eligible alien, provided each alien executes a separate application and the V-number of each application is inserted in the space provided in the visa stamp. In such a case, the visa fee to be collected shall be equal to the total of the fees prescribed by the Secretary of State in accordance with the provisions of section 281 of the act and § 41.14.

§ 41.14 *Fees for nonimmigrant visas.* (a) The fees for the furnishing and verification of applications for visas made by nonimmigrant nationals or stateless residents of each foreign country and for the issuance of visas to such nationals or residents shall be collected in the same amounts as are prescribed by the Secretary of State and shall correspond, as nearly as practicable, to the total of all similar visa, entry, residence, or other fees, taxes or charges assessed or levied against nationals of the United States, in connection with their entry or sojourn, by the foreign countries of which such nonimmigrants are nationals or stateless residents.

(b) *Aliens exempted from nonimmigrant visa fees.* Upon a basis of reciprocity, or as provided in section 13 (a) of the Headquarters Agreement with the United Nations (61 Stat. 716), no fee shall be collected for the application for, or the issuance of, a nonimmigrant visa to an alien of any of the following classes:

(1) Nonimmigrants described in section 101 (a) (15) (A) of the act;

(2) Nonimmigrants described in section 101 (a) (15) (G) of the act;

(3) Nonimmigrants who are issued diplomatic visas under the provisions of Part 40 of this chapter;

(4) Persons entitled to pass in transit to the United Nations Headquarters District under the provisions of section 11 (3), 11 (4), or 11 (5) of the Headquarters Agreement and who are issued C–2 visas as nonimmigrants under the provisions of section 101 (a) (15) (C) of the act. An alien in this category, if issued a visa as a B–1 or B–2 nonimmigrant, for example, under the provisions of section 101 (a) (15) (B) of the act when he is qualified to receive such a visa, shall pay the fee, if any, prescribed for aliens of the same nationality or stateless resident status.

(c) A fee collected for an application for, or the issuance of, a nonimmigrant visa, shall not be refunded without specific authorization from the Department.

(Sec. 281, 66 Stat. 231; 8 U. S. C. 1351)

§ 41.15 *Validity of nonimmigrant visa.* (a) The period of validity of a nonimmigrant visa shall date from the time of issuance and shall relate only to the period during which the alien to whom the visa was issued may use it in making application for admission into the United States and shall have no relation to the period of time he may be authorized to stay or remain in the United States, if, upon his arrival at a port of entry, he is admitted into the United States by the immigration authorities. Except as provided in paragraphs (c) and (d) of this section, the bearer of a nonimmigrant visa may, within the period of its validity, make any number of applications for admission into the United States: *Provided,* That the passport of the bearer continues to be valid for the necessary period, and his nonimmirant status shall not have changed.

(b) Except as is provided in paragraphs (c) and (d) of this section, every nonimmigrant visa shall be valid for a period of twelve months, or for a period not exceeding forty-eight months in the case of an alien who is a national of a foreign country whose government issues visas to United States nationals of a similar class valid for an equivalent period or whose government does not require visas of United States nationals of a similar class visiting such country.

(c) A nonimmigrant visa may, in consideration of reciprocal treatment accorded nationals of the United States within a similar class by the government of the country of which the alien is a national, or in consideration of the alien's purpose in traveling to, or through, the United States, or for other valid reasons, be issued valid for (1) a period of validity which is less than the time specified in paragraph (b) of this section, (2) a limited number of applications for admission within the period of the validity of the visa, or (3) application for admission at a specified port or specified ports of entry in the United States.

(d) The validity of a nonimmigrant visa issued to an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District under the provisions of section 11 (3), 11 (4), or 11 (5) of the United Nations Headquarters Agreement (61 Stat. 758), and whose admission is authorized by the Attorney General under the provisions of section 212 (d) (3) of the act despite the alien's inadmissibility under the provisions of section 212 (a) (28) of the act, shall be limited to a single application for admission within such period as, in the opinion of the consular officer, is reasonable to permit the bearer to travel to the United States.

(Sec. 221, 66 Stat. 191; 8 U. S. C. 1201)

§ 41.16 *Revalidation of nonimmigrant visa.* (a) A nonimmigrant visa issued to a nonimmigrant under the provisions of section 101 (a) (15) of the act may be revalidated in the same classification at the original visa-issuing office or other consular office: *Provided,* That (1) such visa was originally issued for less than the maximum period of forty-eight months validity or for less than multiple applications for admission, or both; (2) such visa is about to expire, or expired less than twelve months prior to the application for revalidation, or has become invalid by reason of having been used for the number of applications for admission specified therein; and (3) the consular officer is satisfied that the alien is a bona fide nonimmigrant and is otherwise eligible to receive such a nonimmigrant visa, including the possession of a valid passport, if required.

(b) A formal application for the revalidation of a nonimmigrant visa need not be required. The consular officer may, in his discretion, waive the personal appearance of the alien concerned if satisfied that the alien is physically present in the consular district. A nonimmigrant visa may be revalidated any number of times but not to exceed a total of forty-eight months from the date of its original issuance.

(c) In revalidating a nonimmigrant visa, the consular officer shall follow the procedure prescribed in § 41.12, except that a new Form 257 need not be executed. The visa stamp shall be impressed in the alien's passport and all pertinent data, including the V-number, contained in the original visa shall be transferred to the revalidated visa. The word "Revalidated" shall be inserted above the words "Nonimmigrant Visa" in the visa stamp or inserted diagonally across the face of the visa. Following the revalidation of a nonimmigrant visa, an appropriate notation thereof, regardless of where the revalidation occurs, shall be made on the pertinent index card on file at the original visa-issuing office.

(d) The period of validity for which a visa may be revalidated shall be determined in accordance with the pertinent provisions of § 41.15.

(e) The prescribed fee, if any, for the issuance of a nonimmigrant visa shall be collected for any revalidation of such visa.

REFUSAL AND REVOCATION

§ 41.17 *Refusal of nonimmigrant documentation.* (a) Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer that he is properly classifiable within a nonimmigrant class specifically described in § 41.5.

(b) Except as otherwise provided in paragraphs (c), (d), (e), and (f) of this section, the provisions of section 212 (a) of the act specifying the grounds of ineligibility to receive visas, as implemented by § 42.42 of this chapter, shall apply to all nonimmigrants.

(c) Aliens who are properly classified as nonimmigrants under the provisions of section 101 (a) (15) of the act, as implemented by § 41.5, including aliens classifiable under the visa symbol EX, NATO–5, or NATO–6, shall not be refused nonimmigrant visas or other nonimmigrant documentation on the ground that they are:

(1) Polygamists, or persons who practice, or advocate the practice of, polygamy, as referred to in section 212 (a) (11) of the act;

(2) Aliens who seek to enter the United States for the purpose of performing skilled or unskilled labor, as referred to in section 212 (a) (14) of the act;

(3) Aliens ineligible to United States citizenship, and aliens who, in departing from the United States to avoid or evade training or service in the United States Armed Forces, were nonimmigrants at the time of such departure, as referred to in section 212 (a) (22) of the act;

(4) Illiterates, as referred to in section 212 (a) (25) of the act.

(d) The grounds for refusing visas to aliens as specified in section 212 (a) of the act shall not apply to nonimmigrant aliens within Class A–1, unless the President so directs and specific instructions are issued by the Department.

(e) Aliens within any of the following classes of nonimmigrants shall be refused visas or other documentation only under those provisions of section 212 (a) of the act which are stated specifically with reference to each class:

(1) Class A–2: Section 212 (a) (27) and (29);

(2) Class C–2: Section 212 (a) (26) (A), (27), (28), and (29);

(3) Class C–3: Section 212 (a) (26) (A), (27), and (29);

(4) Class G–1: Section 212 (a) (27);

(5) Classes G–2, G–3, and G–4: Section 212 (a) (27) and (29);

(6) Classes A–3 and G–5: Section 212 (a), except paragraphs (11), (14), (25), and (28), and except as provided in section 212 (a) (22);

(7) Class NATO–1: Section 212 (a) (27);

(8) Classes NATO–2, NATO–3, and NATO–4: Section 212 (a) (27) and (29).

(f) A nonimmigrant alien in whose case the passport requirement has not been waived and (1) who is within one of the classes of nonimmigrants described in section 101 (a) (15) (A) (i) and (ii) of the act, or (2) who is within one of the classes of nonimmigrants described in section 101 (a) (15) (G) (i), (ii), (iii), and (iv) of the act, or (3) who is within a class of nonimmigrants classifiable under the visa symbol NATO–1, NATO–2, NATO–3, or NATO–4, shall present a passport which is valid and unexpired on the date such alien is issued a nonimmigrant visa.

(g) A passport which is valid indefinitely for the return of the bearer to the country whose government issued such passport shall be deemed to have the required minimum period of validity as specified in section 212 (a) (26) of the act.

§ 41.18 *Revocation and invalidation of nonimmigrant visa and other nonimmigrant documentation.* (a) A consular officer is authorized to revoke a nonimmigrant visa or other nonimmigrant documentation under the following circumstances:

(1) The consular officer knows, or after investigation is satisfied, that the visa or other documentation was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means; or

(2) The consular officer obtains information establishing that the alien was otherwise ineligible to receive the visa or other documentation at the time of issuance.

(b) A consular officer is authorized to invalidate at any time a nonimmigrant visa or other nonimmigrant documentation in any case in which he finds that the alien has become ineligible for such visa or other documentation. The invalidation shall terminate the validity of the visa or other documentation on the date of such invalidation.

(c) The bearer of a nonimmigrant visa or other documentation which is being considered for revocation or invalidation shall, if practicable, be notified of the proposed action and given an opportunity to show cause why his visa or other documentation should not be revoked or invalidated. In connection therewith, the alien shall be required to present his travel document containing the visa stamp. A nonimmigrant visa or other documentation which is revoked or invalidated shall be cancelled by writing the word "revoked" or "invalidated," whichever is applicable, plainly across the face of the visa or other documentation. The cancellation shall be dated and signed by the consular officer taking the action. The failure of an alien to present his visa or other documentation for cancellation shall not affect the validity of any action taken to revoke or invalidate such visa or documentation.

(d) Notice of revocation or invalidation shall be given to the master, commanding officer, agent, owner, charterer, or consignee, of the carrier or transportation line on which it is believed the alien intends to travel to the United States, unless the consular officer finds that the visa or other documentation has been cancelled as provided in paragraph (c) of this section. Notice of revocation or invalidation, including a full report of the facts in the case, shall be submitted promptly to the Department for transmission to the Attorney General: *Provided,* That no such notice and report shall be required in the case of an invalidation if the visa or other documentation has been cancelled prior to the alien's departure for the United States. The consular office which issued the visa or other documentation shall be notified of the revocation or invalidation thereof if such action was effected by any other consular office or by the Department.

(Sec. 221, 66 Stat. 191; 8 U. S. C. 1201)

REGISTRATION AND FINGERPRINTING

§ 41.19 *Registration and fingerprinting of nonimmigrants.* The provisions of section 221 (b) of the Immigration and Nationality Act which require the fingerprinting of aliens in connection with their applications for visas are waived in pursuance of the authority contained in section 221 (b) of that act for the nonimmigrant classes specified in paragraph (a) of this section, and in pursuance of the authority contained in section 8 of the act of September 11, 1957 (71 Stat. 641) for the nonimmigrant classes specified in paragraph (b) of this section:

(a) An alien who is within a class of nonimmigrants enumerated in section 101 (a) (15) (A) and section 101 (a) (15) (G) of the Immigration and Nationality Act, or an alien who is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof. (See § 40.7 (e)).

(b) An alien who is a national of a country whose government does not require fingerprinting in connection with an application for, or the issuance of, a visa to a national of the United States who intends to proceed to such country for a similar purpose, and who is classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (B), (C), (D), (E), (F), (H), or (I) of the Immigration and Nationality Act, including a nonimmigrant alien who is classifiable under the visa symbol EX, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6.

(c) In the case of any nonimmigrant alien who is not exempted from the fingerprinting requirement under the provisions of this section, the fingerprints of such alien shall be taken in connection with his application for a nonimmigrant visa on Form AR–4 or in such other manner as may be authorized by the Department.

(d) Form FS–257, when duly executed, shall constitute the alien's registration record for the purposes of section 221 (b) of the act.

BORDER-CROSSING IDENTIFICATION CARDS

§ 41.20 *Nonresident aliens' border-crossing identification cards*—(a) *Aliens eligible to receive.* A nonresident alien's border-crossing identification card, as defined in section 101 (a) (6) of the act, and as required by section 212 (a) (26) of the act, may be issued to an alien who, upon proper application therefor, establishes to the satisfaction of the consular officer that he:

(1) Is a citizen of Canada or other British subject, having a residence in Canada, or a citizen of Mexico having a residence in Mexico;

(2) Is seeking, and has frequent occasion, to enter the continental United States or Alaska from Canada or the continental United States from Mexico, as a nonimmigrant;

(3) Is a bona fide nonimmigrant and is otherwise eligible to receive such a card under the provisions of the act;

(4) Is in possession of a valid passport or other travel document in the nature thereof duly issued to the holder by the appropriate authorities of Canada, Great Britain, or Mexico, and valid for re-entry to Canada or Mexico, if such a passport or other travel document is required for entry into such country.

(5) Can not reasonably be expected, because of remote residence from the border or some other exceptional reason, to make application for such card at an office of the Immigration and Naturalization Service.

(b) *Application procedure.* An application for a nonresident alien's border-crossing identification card shall be made on Form I–190 at a United States consular office in Canada or Mexico. The applicant shall appear in person, shall execute the application in triplicate under oath or by affirmation before the consular officer, and shall be fingerprinted in accordance with the provisions of § 41.19. Four identical photographs of the alien, as described in § 41.9 (d) shall be submitted with the application. One of such photographs shall be attached to each copy of the application form and to the identification card which is issued to the applicant. The photograph requirement may, in the discretion of the consular officer, be waived in the case of an alien under

fourteen years of age at the time of issuance of the card. The original of application Form I–190, duly executed, shall be attached to the identification card issued to the alien for delivery to the immigration officer at the time of application for admission into the United States.

(c) *Alien under fourteen years of age or incapable of executing application.* Applicants for nonresident aliens' border-crossing identification cards shall appear in person and make separate applications therefor. In the case of an alien under fourteen years of age, or one physically incapable of making an application, the application for a nonresident alien's border-crossing identification card may be made by the alien's parent or guardian, or, if the alien has no parent or guardian, by any person having lawful custody of, or a legitimate interest in, such alien. An alien under fourteen years of age, or one physically incapable of executing an application, shall be required to appear in person at the time application is made in his behalf.

(d) *Evidence of border-crosser status.* Whenever any alien makes application for a nonresident alien's border-crossing identification card, the burden of proof shall be upon such alien to establish that he is entitled to classification as a nonimmigrant border-crosser and that he is otherwise eligible to receive such card under the provisions of the act. The consular officer may require the alien to furnish any evidence deemed necessary to sustain such burden of proof, including evidence of the alien's intention and ability to depart from the United States at the expiration of his temporary stay. The applicant shall furnish evidence of residence in the border area within the consular district in which application is made, except that a nonresident alien's border-crossing identification card may be issued at a consular office in the interior of Canada or Mexico to an alien who resides in the consular district of such office and who has good and sufficient reason frequently and habitually to cross the land border between the United States and Canada, or the United States and Mexico.

(e) *Procedure in issuing nonresident alien's border-crossing identification card.* If an applicant is found to have the qualifications specified in this section, a nonresident alien's border-crossing identification card may be issued to such applicant on Form I–186. The identification card shall show the date of issuance, the signature of the issuing consular officer, and a brief description of the applicant, and shall be valid for such period as is specified on the card. In the event the photograph requirement has been waived, the right index fingerprint of the applicant shall be placed on the card in lieu of his photograph. The applicant shall sign the card with his full name, or by witnessed mark after proper identification. The seal of the issuing consular office shall be impressed on the card. The applicant shall appear at the consular office in person to receive his nonresident alien's border-crossing identification card, unless the consular officer is satisfied that such card may be safely mailed to the applicant in exceptional cases in which personal appearance would entail undue hardship. No fee shall be charged for the issuance of a nonresident alien's border-crossing identification card or for the application.

(f) *Supporting documents not presented in duplicate.* The contents of all pertinent documents not presented with a duplicate copy for the consular files in support of the alien's application for a nonresident alien's border-crossing identification card shall be noted on the copy of the application which is retained for the consular files or in a separate memorandum attached thereto. Original documents shall be returned to the applicant.

(g) *Invalidation of nonresident alien's border-crossing identification card.* Consular officers are authorized to terminate the validity of a nonresident alien's border-crossing identification card issued by a consular officer:

(1) If the consular officer knows, or after investigation is satisfied, that such card was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means; or

(2) If such a card is found in the possession of an alien other than the rightful holder; or

(3) If improper use is being made of such card; or

(4) If the consular officer receives information establishing the alien's ineligibility to receive a nonresident alien's border-crossing identification card.

(h) *Surrender of invalidated card.* An alien whose border-crossing identification card has been invalidated shall be required to surrender such card upon request of the consular officer, and such officer shall submit a report of the reasons for the invalidation to the Secretary of State for transmission to the Attorney General.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 41.21 *Transfer of visa to new passport.* (a) A valid nonimmigrant visa, including the V-number and other pertinent data contained therein, may be transferred from a passport which has expired or is about to expire to a new passport where (1) the alien is required to surrender the visaed passport to the foreign-issuing authority in exchange for a new passport, or (2) the alien is permitted to retain the expired or expiring passport containing a valid nonimmigrant visa but, nevertheless, requests a consular officer to transfer such visa to a new valid passport, and (3) the alien is found otherwise eligible to receive such a nonimmigrant visa.

(b) A formal application for the transfer of a nonimmigrant visa from one passport to another need not be required, and the consular officer may, in his discretion, waive the personal appearance of the alien if satisfied that the alien is physically present in the consular district. The issuance of a transferred visa shall, except as provided in § 41.12, be evidenced by placing the regular visa stamp in the alien's passport. The words "Transferred Visa" shall be inserted on the upper margin of the visa stamp.

(c) A transferred visa shall be validated with the same expiration date as the original visa and for the number of unused applications for admission remaining as of the date of the transfer. No visa fee shall be charged for the transfer of a valid nonimmigrant visa to a new passport. The visa in the expired or expiring passport shall be cancelled, if practicable.

§ 41.22 *Nonimmigrants exempted by law or treaty from the requirement of passports, visas, and border-crossing identification cards.* The provisions of section 212 (a) (26) of the act relating to the requirement of passports, visas, and border-crossing identification cards for nonimmigrants do not apply in the cases of aliens who fall within any of the following-described categories:

(a) An alien member of the armed forces of the United States who (1) is in the uniform of, or who bears documents identifying him as a member of, such armed forces; (2) has not been lawfully admitted for permanent residence; and (3) is making application for admission to the United States under official orders or permit of such armed forces.

(b) An American Indian born in Canada, having at least fifty per centum of blood of the American Indian race, and passing the border of the United States.

(c) An alien who shall leave Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States.

(d) Personnel belonging to the land, sea or air armed services of a government which is a Party to the North Atlantic Treaty and which has ratified the Agreement between the Parties to the North Atlantic Treaty regarding the status of their forces, signed at London on June 19, 1951, and entering the United States in connection with their official duties under the provisions of Article III of such Agreement. (TIAS 2846.)

(e) Personnel attached to an Allied Headquarters in the United States set up pursuant to the North Atlantic Treaty signed in Washington, D. C., on April 4, 1949, who belong to the land, sea or air armed services of a government which is a Party to the North Atlantic Treaty, and who are entering the United States in connection with their official duties under the provisions of the Protocol on the status of International Military Headquarters set up pursuant to the North Atlantic Treaty. (S. Ex. B, 83d Cong., 1st Sess.).

(Secs. 212, 284, 289, 66 Stat. 188, 232, 234; 8 U. S. C. 1182, 1354, 1359)

ACCREDITED FOREIGN-GOVERNMENT OFFICIALS

§ 41.30 *Officials of foreign governments.* (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (A) (i) or (ii) of the act shall be required to establish to the satisfaction of the consular officer that he is an accredited official or employee of

a foreign government recognized de jure by the Government of the United States and that he is acceptable to the President or the Secretary of State, or that he is a member of the immediate family of such official or employee.

(b) The term "accredited" as used in sections 101 (a) (15) (A) and 212 (d) (8) of the act refers to an alien holding an official position, other than an honorary official position, who is in possession of a travel document or other evidence showing that he seeks to enter, or pass in transit through, the United States for the purpose of transacting official business for his government, and that he is a national of the country whose government he serves: *Provided,* That an alien who is not a national of the country whose government he serves in an advisory, consultative, or other capacity not contemplated by section 101 (a) (15) (A) (iii) of the act shall, if otherwise qualified, be classified under section 101 (a) (15) (B) of the act, or, if in transit, under section 101 (a) (15) (C) of the act.

(c) The term "immediate family", as used in section 101 (a) (15) (A) of the act, means close relatives who are members of the immediate family by blood, marriage, or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien in the United States from whom they derive their subsidiary status.

(d) The term "attendants", as used in section 101 (a) (15) (A) (iii) of the act, includes an alien who is paid from the public funds of the foreign government employing him and to which he owes allegiance, and who is accompanying, preceding, or following to join a foreign-government official or employee to whom he owes a duty or service, regardless of its nature. The term includes an attendant who is a member of the armed forces of the foreign government to which the foreign-government official or employee, as well as the attendant, owe allegiance.

(e) The terms "servants" and "personal employees", as used in section 101 (a) (15) (A) (iii) of the act, include an alien who is employed in a domestic or personal capacity by a foreign-government official or employee, who is paid from the private funds of such official or employee, and who seeks to enter the United States solely for the purpose of such employment.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 41.31 *Official or representative of foreign government not recognized by the United States.* (a) An official of a foreign government which is not recognized de jure by the United States, or a member of his immediate family, or the attendant, servant, or personal employee of such official, shall not be classified as a nonimmigrant under the provisions of section 101 (a) (15) (A) of the act.

(b) Any alien referred to in paragraph (a) of this section may, if otherwise qualified, be classified as a nonimmigrant under the provisions of section 101 (a) (15) (B) or (C), or, if he is a representative of such government to an international organization, under the provisions of section 101 (a) (15) (G) (iii) of the act.

§ 41.32 *Procedure in issuing visa to foreign-government official or employee*—(a) *Derivative status cases.* In the case of a person who is a member of the immediate family, or an attendant, servant, or personal employee of a foreign-government official or employee, or who otherwise derives status from a principal alien who is not accompanying him, the name and position of the principal alien from whom such person derives his status shall be written below the lower margin of the visa stamp in the foreign passport.

(b) *Official on personal business.* A foreign-government official or employee, or a member of the immediate family, attendant, servant, or employee of such official or employee, who seeks to enter the United States temporarily for personal business or pleasure, shall, if otherwise qualified, be classified as a nonimmigrant under the provisions of section 101 (a) (15) (B) of the act. (See Sen. Rep. 1137, 82d Cong., 2d Sess., p. 19.)

(c) *Courier and acting courier on official business*—(1) *Courier of career.* An alien who is regularly and professionally employed as a courier by the government to which he owes allegiance, who is proceeding to the United States as a courier on official business for his government, and who is in possession of a diplomatic passport or the equivalent thereof may apply for a diplomatic visa at a United States mission or United States consulate authorized to issue diplomatic visas, and shall be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (A) (i) of the act.

(2) *Official acting in capacity of courier.* An alien who is not regularly and professionally employed as a courier by the government to which he owes allegiance, who holds an official position with, and is proceeding to the United States as a courier on official business for, his government shall be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (A) (ii) of the act.

(3) *Nonofficial acting in capacity of courier.* An alien who is not regularly and professionally employed as a courier, who holds no official position with the government for which he is acting in the capacity of courier, or who is not a national of the country for whose government he is acting in the capacity of courier shall be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (B) of the act.

§ 41.33 *Evidence of official status.* An alien applying for a nonimmigrant visa as a foreign-government official or employee, or as an attendant, servant, or personal employee of such an official or employee, or as a member of the immediate family of any such alien, may be required to present evidence of his status and of the means and destination of his travel to, or through, the United States, and any other evidence considered necessary to establish eligibility to receive a visa as a nonimmigrant under the provisions of section 101 (a) (15) (A) or (101) (a) (15) (C), and other applicable provisions of the act.

§ 41.34 *Significance of nonimmigrant visa in official cases.* A visa properly issued to an accredited official of a foreign government as a nonimmigrant under the provisions of section 101 (a) (15) (A) or (C) of the act shall entitle such official to apply at a port of entry in the United States within the period of its validity for admission as a nonimmigrant, and such visa, when presented to the immigration authorities by such official shall be conclusive evidence of his proper classification.

OFFICIAL VISAS

§ 41.35 *Classes of aliens eligible to apply for official visas.* (a) The term "Official Visa" means a nonimmigrant visa which bears the title "Official Visa" or the designation "Official" and which is issued to a nonimmigrant within a class described or referred to in paragraph (b) of this section.

(b) Aliens within any of the following classes who seek to enter the United States as nonimmigrants may make application for an official visa in accordance with § 41.9:

(1) Aliens within a class described in § 40.4 of this chapter, other than paragraph (a) (14) thereof, who are otherwise ineligible to apply for a diplomatic visa by reason of the provisions of § 40.8 (a) of this chapter;

(2) Aliens classifiable under section 101 (a) (15) (A) (i) or (ii) of the act;

(3) Aliens classifiable under section 101 (a) (15) (G) (i), (ii) or (iv) of the act, or under section 101 (a) (15) (G) (iii) of the act if the government of which the alien is an accredited representative is recognized de jure by the United States but is not a member of the international organization to which the alien is destined;

(4) Aliens classifiable under section 101 (a) (15) (C) of the act as nonimmigrants described in section 212 (d) (8) of the act;

(5) Justices of the federal and the highest state tribunals of a foreign country;

(6) Members and members-elect of the national legislature of a foreign country;

(7) Officers of the national legislature of a foreign country;

(8) Members of the immediate family of a principal alien who is within one of the classes referred to or described in subparagraphs (1) to (7), inclusive, of this paragraph;

(9) Any other class of aliens or individual alien in whose cases or case the Department may specifically authorize the consular officer to accept an application for an official visa.

(c) The issuance of an official visa shall be evidenced by placing the regular nonimmigrant visa stamp or an official visa stamp in the alien's passport in accordance with the provisions of § 41.12. The visa shall bear the title "Official Visa" or the word "Official" shall be stamped diagonally across the lower left-hand margin of the visa stamp in such manner as to be partially covered by the impression seal of the issuing diplomatic or consular office. The fee to be charged for an official visa and the validity thereof shall be determined in accord-

ance with the provisions of §§ 41.14 and 41.15.

(d) No alien shall be considered to have acquired, by reason of the provisions of this section, any exemption under the immigration laws or regulations not otherwise specifically granted by such laws or regulations.

TEMPORARY VISITORS

§ 41.40 *Temporary visitors.* (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (B) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to visit the United States temporarily for business or temporarily for pleasure.

(b) The term "business," as used in section 101 (a) (15) (B) of the act, refers to legitimate activities of a commercial or professional character. It does not include purely local employment or labor for hire. An alien seeking to enter for employment or labor pursuant to a contract or other pre-arrangement shall be required to qualify under the provisions of § 41.100. An alien of distinguished merit and ability seeking to enter the United States temporarily with the idea of performing temporary services of an exceptional nature, requiring such merit and ability, but having no contract or other pre-arranged employment, may be classified as a nonimmigrant temporary visitor for business.

(c) The term "pleasure," as used in section 101 (a) (15) (B) of the act, refers to the purpose of an alien who seeks to enter the United States temporarily as a tourist or for some other legitimate purpose, including amusement, education (other than some activity which would make him classifiable as a student or teacher), health, rest, or visits with relatives or friends. Under no circumstances shall an alien who seeks to enter the United States as a student or for prearranged employment of any kind be classified as a temporary visitor for business or pleasure, unless such classification shall have been authorized by the Secretary of State after consultation with the Attorney General.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 41.41 *Exchange visitors.* (a) The term "exchange visitor" means an alien who falls within one of the classes described in section 201 of the United States Information and Educational Exchange Act of 1948, as amended (62 Stat. 7; 66 Stat. 276; 70 Stat. 241; 22 U. S. C. 1446), who seeks to enter the United States temporarily, and who has been selected to participate in an exchange-visitor program designated by the Secretary of State. Exchange visitors shall be classifiable as nonimmigrants under the provisions of section 101 (a) (15) of the act and shall have the burden of establishing that they are not ineligible to receive a nonimmigrant visa under those provisions of section 212 (a) of the act and § 41.17 which apply to nonimmigrants who are classifiable under the provisions of section 101 (a) (15) (B) of the act. In issuing a nonimmigrant visa to an exchange visitor, the symbol "EX" shall be inserted in the space provided for classification in the visa stamp, and the number of the designated program shall be added to the symbol.

(b) The classification of any alien as an exchange visitor shall be contingent upon (1) the presentation by the alien of a written notification from the sponsor affirming the alien's selection to participate in a designated exchange-visitor program, and specifying the program number; and (2) a notification from the Department to the consular officer concerning the designation of the particular program in connection with which the exchange visitor is proceeding to the United States, and showing the title, serial number, sponsor, and the purpose of the designated program.

§ 41.42 *Burden of proof and evidence of temporary visitor status.* (a) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (B) of the act shall not only have the burden of establishing that he is entitled to classification as a temporary visitor within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the act and § 41.17.

(b) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (B) of the act shall establish specifically that:

(1) He has a residence in a foreign country which he has no intention of abandoning;

(2) He is not classifiable under any of the nonimmigrant categories defined in section 101 (a) (15) (F), (H), or (I) of the act;

(3) He is proceeding to the United States temporarily for one of the purposes specified in section 101 (a) (15) (B) of the act;

(4) He intends in good faith, and will be able, to depart from the United States at the expiration of a temporary stay;

(5) He is in possession of a valid foreign visa or other form of permission to enter some foreign country upon the termination of his temporary stay; and that

(6) He has made adequate financial provision to enable him to carry out the purpose of his travel to, sojourn in, and departure from the United States.

(Sec. 291, 66 Stat. 234; 8 U. S. C. 1361)

TRANSIT ALIENS

§ 41.50 *Transit aliens.* An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (C) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States temporarily as a nonimmigrant and solely for the purpose of proceeding in immediate and continuous transit through the United States to a foreign destination, or that he qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District under the provisions of section 11 (3), 11 (4), or 11 (5) of the Headquarters Agreement with the United Nations.

(Sec. 101, 68 Stat. 166; 8 U. S. C. 1101)

§ 41.51 *Burden of proof and evidence of transit status.* (a) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (C) of the act shall not only have the burden of establishing that he is entitled to classification as an alien in transit within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under the applicable provisions of section 212 of the act, or any other provision of law, and § 41.17.

(b) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (C) of the act shall establish specifically that:

(1) He is proceeding to the United States solely for the purpose of passing in immediate and continuous transit through the United States to a foreign destination or to the United Nations Headquarters District;

(2) He is in possession of a ticket for, or other assurance of, transportation to his destination;

(3) He is in possession of sufficient funds to enable him to carry out the purpose of his transit journey, or has sufficient funds otherwise available for that purpose;

(4) He is in possession of a valid foreign visa or other form of permission to enter some foreign country: *Provided*, That possession of such a visa or other form of permission shall not be required in the case of an alien proceeding through the United States for the purpose of applying for admission into Canada or some other country if under the laws or regulations of the country of destination the alien would not be required to present a visa, or other form of permission as a condition of entry; and that

(5) He intends in good faith, and will be able, to depart from the United States at the expiration of the period for which he may be admitted.

(Sec. 291, 66 Stat. 234; 8 U. S. C. 1361)

§ 41.52 *Certain aliens in transit to United Nations.* An alien within the provisions of sections 11 (3), 11 (4) or 11 (5) of the Headquarters Agreement with the United Nations, to whom a visa is to be issued for the purpose of applying for admission solely in transit to the United Nations Headquarters District shall be issued a nonimmigrant visa classified "C–2", and shall be informed by the consular officer that, if admitted, he may be subject to such restrictions in his travel within the United States as may be provided in regulations prescribed by the Attorney General.

§ 41.53 *Accredited officials in transit through the United States.* An accredited official of a foreign government who intends to proceed in immediate and continuous transit through the United States on official business for his government which grants similar privileges to officials of the United States shall be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (C) of the act. In issuing a nonimmigrant visa to such an official or to a member of his immediate family, or to his attendant, servant, or personal employee, the symbol C–3 shall be inserted in the space provided for classification in the visa stamp. (Sec. 212 (d) (8), 66 Stat. 188).

CREWMEN

§ 41.60 *Crewmen.* (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (D) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to proceed to, and land in, the United States temporarily and solely in pursuit of his calling as a nonimmigrant crewman serving in good faith as such in some capacity required for normal operation and service on board a vessel or aircraft proceeding to the United States. Aliens employed on board such vessel or aircraft in a capacity not ordinarily associated with, or required for, normal operation and service on board the vessel or aircraft, or persons employed or listed as regular members of the crew in excess of the number normally required, shall be considered as passengers and shall be documented as any other passenger not employed aboard the vessel or aircraft.

(b) An alien serving as a member of the crew on board a fishing vessel having its home port or an operating base in the United States is not comprehended within the provisions of paragraph (a) of this section. Such an alien is classifiable as an immigrant.

(c) Except as provided in § 41.64, a nonimmigrant crewman who seeks to proceed to and land in the United States temporarily in pursuit of his calling shall apply on Form FS–257 for an individual nonimmigrant visa in accordance with the provisions of § 41.9, and shall be classifiable under the provisions of section 101 (a) (15) (D) of the act.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 41.61 *Burden of proof and evidence of crewman status.* (a) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (D) of the act shall not only have the burden of establishing that he is entitled to classification as a crewman within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the act, or any other provision of law, and § 41.17.

(b) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (D) of the act shall establish specifically that:

(1) He intends to proceed to, and land only temporarily in, the United States solely in pursuit of his calling as a crewman;

(2) He intends in good faith, and will be able, to depart from the United States with the vessel or aircraft on which he will arrive, or on some other vessel or aircraft; and that

(3) He is in possession of a national passport, or other travel document, crewman's identity certificate, or other papers, which establish his origin, identity and nationality if any, and which further establish unconditionally that he will be permitted to enter some foreign country after a possible temporary landing in the United States.

(Sec. 291, 66 Stat. 234; 8 U. S. C. 1361)

§ 41.62 *Foreign-government official crewmen.* (a) All alien crewmen serving as such on board any vessel or aircraft proceeding to the United States with a purpose of landing temporarily in the United States shall be subject to the provisions of § 41.60 (c) or § 41.64, except those serving on:

(1) Foreign warships or other vessels of war, or military, naval, or other aircraft of the armed forces of a foreign country, when making friendly calls at United States ports under advance arrangements made with the military, naval, or air force authorities of the United States; or

(2) Any other government vessel or aircraft.

(b) The term "government vessel or aircraft" means a vessel or aircraft owned and operated, or operated only, directly by the Government of the United States with government personnel in connection with public business of a non-commercial and non-profit character, or a foreign-flag vessel or aircraft owned and operated, or operated only, directly by a foreign government recognized de jure by the United States, with foreign government personnel in connection with public business of a non-commercial and non-profit character. The term "government vessel or aircraft" shall not include a vessel or aircraft which is merely controlled or subsidized by a government, or one which is engaged in what would ordinarily be regarded as commercial shipping or commercial transportation.

(c) Whenever any alien seeks to enter the United States in the circumstances described in subparagraph (1) or (2) of paragraph (a) of this section, advance arrangements shall be made with the Secretary of State and the Attorney General regarding the documentation and admission of such alien.

§ 41.63 *Procedure in issuing individual visas to crewmen.* The issuance of an individual nonimmigrant visa to an alien as a crewman under the provisions of section 101 (a) (15) (D) of the act shall be in accordance with the provisions of §§ 41.5 and 41.12. In any case in which the crewman's passport was issued by a government not recognized de jure by the United States, or in which the passport requirement has been waived, the visa stamp shall be impressed on a sheet of official stationery as provided in § 41.12 (a). Form FS–257 shall be retained in the consular files.

§ 41.64 *Visa requirement for nonimmigrant crewmen.* No crewman shall be considered as having complied with the provisions of section 212 (a) (26) (B) of the act relating to the requirement of valid nonimmigrant visas or border crossing identification cards unless (a) he is in possession of a valid individual nonimmigrant visa or a border crossing identification card, or (b) the requirement of a valid nonimmigrant visa or border crossing identification card has been waived in his case by the Secretary of State and the Attorney General pursuant to the authority contained in section 212 (d) (4) of the act, or (c) his name is included in a crew-list visa issued in accordance with § 41.65.

§ 41.65 *Procedures applicable to crew-list visas.* (a) Until such time as it becomes administratively practicable to act on the applications of all crewmen for individual nonimmigrant visas, there shall be submitted for visaing at the consular office nearest the foreign port or place from which a vessel or aircraft commences its voyage to the United States a crew list of all alien crewmen serving on board such vessel or aircraft who are not in possession of a valid individual entry document or who are not covered by a waiver of the visa requirement. The master of a vessel or commanding officer of an aircraft who applies for a crew-list visa shall present to the consular officer a manifest of all such crewmen on Form I–418 in duplicate. Where the master of a vessel or the commanding officer of an aircraft submits a single crew list to the consular officer for visaing and fails to set apart those alien crewmen who are to be considered for inclusion in the crew-list visa, the consular officer may, in order to facilitate the issuance of the crew-list visa and without unduly delaying the departure of the vessel or aircraft, require a separate alphabetical listing on the crew list of all such crewmen. In any case in which the consular officer has reason to believe that an individual crewman may be ineligible to receive a visa under section 212 of the act, the master of the vessel or the commanding officer of the aircraft who submits the crew list for visaing may be required to present additional information relevant to the eligibility of any such crewman to receive a visa. In lieu of a manifest on Form I–418, the manifest of alien crewmen serving on board an aircraft may be submitted on the International Civil Aviation Organization manifest, or on Customs Form 7507 whenever the number of crewmen does not exceed the number which can be properly listed on such form.

(b) If there is no consular officer stationed at the port or place from which the vessel or aircraft commences its voyage to the United States, but a consular officer is stationed at a nearby port or place to whom the crew list may be submitted for visaing by mail or otherwise without delaying the departure of the vessel or aircraft, the crew list shall be so submitted. If there is no such consular officer stationed nearby, the crew list shall be submitted for visaing at the first port or place of call at which a consular officer is stationed.

(c) A supplemental crew-list visa shall be obtained at the port of departure or at subsequent ports or places of call to cover any additional crewmen signed on since the previous crew-list visa was obtained, unless such crewman is in possession of a valid individual visa, or the visa requirement has been waived in his case.

(d) No formal application for a crew-list visa shall be required other than the presentation of the crew list together with such other information as the consular officer may deem necessary to determine the eligibility of an individual crewman to be included in the crew-list visa.

(e) In issuing a crew-list visa the regular nonimmigrant visa stamp shall be impressed on the last page of the crew list immediately below the listing of the crewmen. The crew-list visa shall be

validated for a period of six months from the date of issuance and for a single application by the visaed crewmen for admission into the United States. The visa shall, by insertion of the symbol "D" in the space provided therefor, show the classification of the crewmen as nonimmigrants under the provisions of section 101 (a) (15) (D) of the act. The consular officer shall sign the visa, indicate his title, and affix the seal of his office in the space provided for such purpose.

(f) A fee of $2 shall be charged for the visaing of any crew list (Tariff of Fees, Foreign Service of the United States of America), except that no fee shall be charged for a crew-list visa issued in the case of an American vessel, or for the issuance of a supplemental crew-list visa in the case of any vessel or aircraft. The receipt of the prescribed fee for the issuance of a crew-list visa shall be evidenced by a rubber-stamp or typed notation placed within the visa stamp in the place designated "Fee Notation" and properly completed in the following form:

Service No. _____
Tariff Item No. _____
Fee Paid: U. S. $_____
Local CY, equiv. _____

(g) In issuing or refusing a crew-list visa, the consular officer shall deliver the original of the crew list to the master of the vessel or commanding officer of the aircraft for presentation to the immigration officer at the first port of arrival in the United States. The duplicate copy of the crew list shall be retained for the consular files and shall be appropriately noted to show the date of issuance or refusal of the crew-list visa, the service number, the tariff item number, and the fee paid (United States dollars and local currency equivalent).

§ 41.66 *Preparation of crew list for visa purposes.* (a) The entries made on any crew list presented to a consular officer for visaing shall be in the English language and shall conform with the instructions printed on the Form I-418 or other form of manifest used. The person preparing the crew list shall insert the word "first" before the name of any crewman who was not employed on board the vessel or aircraft on its last preceding trip to the United States, and the letters "PE" (signifying "Previous Experience") immediately after the word "first" in the case of any crewman who is proceeding to the United States on his first trip on a vessel or aircraft to which he transferred from another vessel or aircraft of the same transportation line.

(b) If a crew list to be presented for visaing is prepared on more than one page, the pages shall be numbered consecutively and shall be securely fastened together with ribbon inserted through eyelets in the upper left corner of the crew lists. The ends of the ribbon shall be brought through a slit made in the last page and fastened thereto opposite the visa stamp by a wafer seal on which the impression seal of the consular office shall be placed. The consular impression seal shall be placed in the lower right corner of all other pages of the crew list.

(c) The entries for any additional crewmen signed on a vessel or aircraft after the issuance of a crew-list visa shall be contained in a supplemental crew list for visa purposes. If the name of any such crewman is in substitution for that of another crewman previously included in the crew-list visa, the substitution shall be clearly indicated in the supplemental crew list presented for visaing. In the event additional crewmen are signed on under emergency conditions which make it impossible to include their names in the crew list or a supplemental crew list before the sailing of the vessel or flight of the aircraft, a supplemental crew list of such additional crewmen may be presented to a consular officer for visaing at the first port of call at which a consular officer is stationed.

§ 41.67 *Refusal of crew-list visas.* (a) A consular officer who knows or has reason to believe that a crew list submitted for a visa contains the name of an alien who is not a bona fide crewman, or who is otherwise ineligible to receive an individual visa as a crewman, shall either withhold the crew-list visa until the name of such alien shall have been removed from the crew list by the master of the vessel or the commanding officer of the aircraft, or he shall issue the crew-list visa, excluding therefrom the name of any such alien listed as a member of the crew. In excluding an alien's name from a crew-list visa, the consular officer shall place a notation below the visa stamp indicating the name of each crewman so excluded. In no event shall a consular officer strike an alien's name from a crew list.

(b) When a crew-list visa is refused in any case, a full report shall be forwarded by the consular officer to the Department in sufficient time to be received before the arrival of the vessel or aircraft at a port of entry. In such a case the original of the crew list shall be returned to the master or commanding officer, and the duplicate shall be filed in the consular office.

(Sec. 221, 66 Stat. 191; 8 U. S. C. 1201)

TREATY ALIENS

§ 41.70 *Treaty traders.* (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (E) (i) of the act shall be required to establish to the satisfaction of the consular officer that (1) he is entitled to enter the United States solely to carry on substantial trade principally between the United States and the foreign state of which he is a national, under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and such foreign state, or that (2) he is the spouse or child of any such alien and is accompanying or following to join him.

(b) The term "national", as used in this section, means a citizen or subject of a foreign country with which there is existing, at the time of application for a visa, a treaty of commerce and navigation as provided in paragraph (a) of this section.

(c) The term "trade", as used in this section, means trade of a substantial nature which is international in scope, carried on by the alien in his own behalf or as an agent of a foreign person or organization engaged in trade, and is principally between the United States and the foreign state of which such alien is a citizen or subject. Consideration shall be given to any conditions in the country of which the alien is a national which may affect the alien's ability to carry on substantial trade principally between the United States and such country.

(d) The nationality of a spouse or child of a treaty trader shall not be material to the classification of such spouse or child under the provisions of section 101 (a) (15) (E) (i) of the act.

(e) Representative of foreign information media shall first be considered for possible classification as nonimmigrants under the provisions of section 101 (a) (15) (I) of the act and § 41.110, before consideration is given to their possible classification as nonimmigrants under the provisions of section 101 (a) (15) (E) of the act and of this section.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 41.71 *Burden of proof and evidence of treaty-trader status.* (a) An alien applying for a nonimmigrant visa as a treaty trader under the provisions of section 101 (a) (15) (E) (i) of the act shall not only have the burden of establishing that he is entitled to classification as a treaty trader within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under provisions of section 212 of the act or any other provision of law, and § 41.17.

(b) An alien applying for a visa as a nonimmigrant treaty trader under the provisions of section 101 (a) (15) (E) (i) of the act shall be required to present any evidence deemed necessary by the consular officer to establish that he is entitled to nonimmigrant classification under that section. Such alien shall establish specifically that:

(1) He is proceeding to the United States solely for the purpose of carrying on substantial trade principally between the United States and the foreign state of which he is a national, under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and such foreign state. In this connection, bank statements, invoices, and correspondence from persons or organizations with whom or with which he has, and will have, commercial relations, may be required;

(2) He intends in good faith, and will be able, to depart from the United States upon the termination of his status; and that

(3) He is employed or will be employed by a foreign person or organization of the same nationality as the alien, and will be engaged in duties of a supervisory or executive character, or if he is or will be employed in a minor capacity, he has special qualifications which make his services essential to the efficient operations of the employer's enterprise. An alien employed solely in a manual capacity shall not be entitled to classification as a treaty trader.

(Sec. 291, 66 Stat. 234; 8 U. S. C. 1361)

§ 41.75 *Treaty investors.* (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (E) (ii) of the act shall be required to establish to the satisfaction of the consular officer that (1) he is entitled to enter the United States solely to develop and direct the operations of an enterprise in which he has invested, or in which he is actively in the process of investing, a substantial amount of capital, under and in pursuance of the specific provisions relating to treaty investors, negotiated after June 27, 1952 in a treaty of commerce and navigation between the United States and the foreign state of which the alien is a national, or that (2) he is the spouse or child of such an alien, and is accompanying or following to join him.

(b) The term "national", as used in this section, means a citizen or subject of a foreign country with which there is existing at the time of application for a visa a treaty of commerce and navigation as provided in paragraph (a) of this section.

(c) The nationality of a spouse or child of a treaty investor shall not be material to the classification of such spouse or child under the provisions of section 101 (a) (15) (E) (ii) of the act.

§ 41.76 *Burden of proof and evidence of treaty-investor status.* (a) An alien applying for a nonimmigrant visa as a treaty investor under the provisions of section 101 (a) (15) (E) (ii) of the act shall not only have the burden of establishing that he is entitled to classification as a treaty investor within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the act or any other provision of law, and § 41.17.

(b) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (E) (ii) of the act shall be required to present any evidence deemed necessary by the consular officer to establish that he is entitled to nonimmigrant classification under that section. Such alien shall establish specifically that:

(1) He seeks to enter the United States solely for the purpose of developing and directing the operations of an enterprise in the United States: (i) In which he has invested, or is actively in the process of investing, a substantial amount of capital; or (ii) in which his employer has invested, or is actively in the process of investing, a substantial amount of capital: *Provided,* That such employer is a foreign person or organization of the same nationality as the applicant and that the applicant is employed by such person or organization in a responsible capacity; or

(2) He seeks to enter the United States as the spouse or child of an alien described in subparagraph (1) of this paragraph; and

(3) He is not applying for a nonimmigrant visa in an effort to evade the quota or other restrictions which are applicable to immigrants;

(4) He intends in good faith, and will be able, to depart from the United States upon the termination of his status; and

(5) The enterprise is one which actually exists or is in active process of formation, and is not a fictitious paper operation.

STUDENTS

§ 41.80 *Students.* (a) An alien applying for a nonimmigrant visa as a student under the provisions of section 101 (a) (15) (F) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien, and approved by the Attorney General, and that he is otherwise eligible to receive a nonimmigrant visa as provided in § 41.81.

(b) *Official students.* An alien who has been selected by his government to study at an institution of learning or other place of study in the United States shall, if otherwise qualified, be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (F) of the act, regardless of whether the alien's expenses for his study in the United States will be borne by his government: *Provided,* That if such alien qualifies as an exchange visitor, he shall be classifiable under the symbol EX, or if such alien is accredited and accepted as a foreign-government official or employee under the provisions of section 101 (a) (15) (A) (ii) of the act, he shall be classifiable under the symbol A–2.

(c) *Official trainees.* An alien who has been selected by his government for training in the United States with an agricultural, commercial, financial, governmental, or other industrial establishment shall, if otherwise qualified, be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (H) (iii) of the act, regardless of whether the alien's expenses for his training in the United States will be borne by his government: *Provided,* That if such alien qualifies as an exchange visitor, he shall be classifiable under the symbol EX, or if such alien is accredited and accepted as a foreign-government official or employee under the provisions of section 101 (a) (15) (A) (ii) of the act, he shall be classifiable under the symbol A–2.

§ 41.81 *Burden of proof and evidence of student status.* (a) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (F) of the act shall not only have the burden of establishing that he is entitled to classification as a student within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the act or any other pertinent provision of law, and § 41.17. Such alien shall establish specifically that:

(1) He has a residence in a foreign country which he has no intention of abandoning;

(2) He is a bona fide student qualified to pursue, and is seeking to enter the United States temporarily and solely for the purpose of pursuing, a full course of study as prescribed by the established institution of learning or other recognized place of study to which he is destined;

(3) He will attend, and has been accepted for attendance by, an established institution of learning or other recognized place of study in the United States which has been approved by the Attorney General for the purposes of section 101 (a) (15) (F) of the act, as evidenced by the presentation of Form I-20 properly executed by the accepting school, signed by the alien, and notarized by the consular officer. The Form I-20, when properly executed and presented by an alien in support of application for a student visa, shall be accepted by the consular officer as prima facie evidence that the designated institution of learning or other place of study has been approved by the Attorney General for the attendance of nonimmigrant students, and that the visa applicant has been accepted for attendance at such institution or place of study;

(4) He is in possession of sufficient funds to cover his expenses or other arrangements have been made to provide for his expenses;

(5) He has sufficient scholastic preparation and knowledge of the English language to enable him to undertake a full course of study in the institution of learning or other place of study by which he has been accepted, or if his knowledge of the English language is inadequate to enable him to pursue a full course of study in such language, the approved school or other recognized place of study is equipped to offer, and has accepted him expressly for, a full course of study in a language with which he is sufficiently familiar, or special arrangements have been made by the accepting institution or other place of study for tutoring the applicant in the English language and the consular officer is satisfied that the applicant will be able, with the assistance of such tutoring, to undertake a full course of study in the United States; and that

(6) He intends in good faith, and will be able, to depart from the United States upon the termination of his status.

(b) An alien who intends to study the English language exclusively while in the United States may be classified as a nonimmigrant student under the provisions of section 101 (a) (15) (F) of the act, if otherwise qualified, and if the approved school is equipped to offer, and has accepted him expressly for, a full course of study in the English language, even though no credits are given by the institution for such study. In all cases in which special arrangements have been made with the approved school for the acceptance of a student who lacks an adequate knowledge of the English language, or who intends to enter the United States solely for the purpose of studying the English language, a copy of the letter from the school setting forth such arrangements shall be given to the alien for presentation to the immigration officer at the port of entry in the United States.

(Sec. 291, 66 Stat. 234; 8 U. S. C. 1361)

INTERNATIONAL ORGANIZATION ALIENS

§ 41.90 *Aliens coming to international organizations.* (a) An alien applying for

a nonimmigrant visa under the provisions of section 101 (a) (15) (G) (i) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States as:

(1) A designated principal resident representative of a foreign government recognized de jure by the United States, to an international organization of which the government he represents is a member; or

(2) An accredited resident member of the staff of such representative; or

(3) A member of the immediate family of such a representative, or of an accredited resident member of his staff.

(b) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (G) (ii) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States as:

(1) An accredited representative, other than a designated principal resident representative described in paragraph (a) of this section, of a foreign government recognized de jure by the United States, to an international organization of which the government he represents is a member; or

(2) A member of the immediate family of such representative.

(c) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (G) (iii) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States as:

(1) An accredited representative of a foreign government not recognized de jure by the United States, to an international organization of which the government he represents is a member; or

(2) An accredited representative of a foreign government recognized de jure by the United States, to an international organization of which the government he represents is not a member; or

(3) An accredited representative of a foreign government not recognized de jure by the United States, to an international organization of which the government he represents is not a member; or

(4) A member of the immediate family of a representative as described in subparagraph (1), (2) or (3) of this paragraph.

(d) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (G) (iv) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States as:

(1) An officer or employee of an international organization; or

(2) A member of the immediate family of such officer or employee.

(e) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (G) (v) of the act shall be required to establish to the satisfaction of the consular officer that he seeks to enter the United States as:

(1) An attendant, servant, or personal employee of a representative, officer, or employee referred to in paragraphs (a), (b), (c), and (d) of this section; or as

(2) A member of the immediate family of such attendant, servant, or personal employee.

(f) Aliens referred to in paragraphs (a), (b), (c), (d), and (e) of this section may be accorded a nonimmigrant classification under the provisions of section 101 (a) (15) (G) of the act only if they seek to enter, or pass in transit through, the United States in pursuance of their official duties directly related to such status, as distinct from personal or other private business or pleasure in which case they shall be classified, if otherwise qualified as nonimmigrants, under some other appropriate category defined in section 101 (a) (15) of the act.

(g) No alien shall be accorded nonimmigrant status under section 101 (a) (15) (G) of the act if the facts in his case clearly bring him within any other specific nonimmigrant category defined in section 101 (a) (15) of the act.

(h) The term "international organization" means any public international organization which has been designated by the President by Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act (59 Stat. 669).

(i) The term "principal alien" means one from whom an alien who is a member of his staff, a member of his immediate family, or his attendant, servant, or personal employee, derives such subsidiary or subordinate status, provided such status is comprehended within the specific provisions of section 101 (a) (15) (G) of the act.

(j) The term "immediate family", as used in section 101 (a) (15) (G) of the act, means close relatives who are members of the immediate family by blood, marriage, or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien in the United States from whom they derive their subsidiary status.

(k) The term "attendants", as used in section 101 (a) (15) (G) (v) of the act, includes an alien who is paid from the public funds of the foreign government to which he owes allegiance, or from the funds of the international organization, and who is accompanying or following to join the principal alien to whom he owes a duty or service.

(l) The term "servants" and "personal employees", as used in section 101 (a) (15) (G) (v) of the act, include an alien who is employed in a domestic or personal capacity by a principal alien, who is paid from the private funds of such alien, and who seeks to enter the United States solely for the purpose of such employment.

(m) An alien who applies for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (G) of the act shall not be refused such visa solely on the ground that he is not a national of the country whose government he represents.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 41.91 *Evidence of status as representative to, or officer or employee of, international organization.* (a) An alien applying for a visa as a nonimmigrant representative to, or as an officer or employee of, an international organization shall be required to present evidence of his status and of the means and destination of his travel to, or through, the United States. The consular officer to whom such alien applies for a visa may, if in doubt, require a confirmation of the status of such representative, officer, or employee from the appropriate foreign office or from the international organization concerned, and any other evidence considered necessary to establish the applicant's eligibility to receive a visa as a nonimmigrant under the provisions of section 101 (a) (15) (G), and other applicable provisions, of the act.

(b) An alien who applies for a visa as a resident member of the staff, a member of the immediate family, or an attendant, servant, or personal employee, of a principal alien may be required to present satisfactory evidence of such status.

§ 41.92 *Procedure in issuing visa to representative to, or officer or employee of, international organization.* (a) The provisions of §§ 41.5 and 41.12 shall be followed in issuing a visa to an alien as a nonimmigrant under the provisions of section 101 (a) (15) (G) of the act.

(b) In the case of an alien who is a resident member of the staff, a member of the immediate family, or an attendant, servant, or personal employee of a principal alien, the name and title of the principal alien from whom such status is derived shall be written below the lower margin of the visa stamp or on the same page of the passport or other document bearing the visa stamp.

(c) An alien who seeks to enter the United States as a foreign-government representative to an international organization and who, at the same time, is proceeding to the United States on official business as a foreign-government official within the meaning of section 101 (a) (15) (A) of the act, shall, if otherwise qualified, be issued a visa as a nonimmigrant under the provisions of section 101 (a) (15) (A) of the act.

TEMPORARY WORKERS

§ 41.100 *Temporary workers and trainees.* (a) No alien shall be accorded consideration as a nonimmigrant under the provisions of section 101 (a) (15) (H) of the act unless the consular officer shall have received from the Immigration and Naturalization Service a petition filed by the alien's prospective employer and approved in accordance with the provisions of section 214 (c) of the act. Subject to the provisions of § 42.28 of this chapter, consular officers shall, upon receipt of such a petition, grant the nonimmigrant status indicated in the petition: *Provided*, That the approval of such a petition shall not, of itself, establish that the alien is a bona fide nonimmigrant or that he is otherwise eligible to receive a nonimmigrant visa.

(b) Aliens who are entitled to classification as nonimmigrants under the provisions of section 101 (a) (15) (A) or (G) of the act shall not be subject to

the petition requirements of section 101 (a) (15) (H) and section 214 (c) of the act, unless they are coming to the United States under contract or other pre-arrangement to perform service or labor for hire, or for training, which is outside the scope of the official duties inherently involved in their status, in which case they shall be classified as nonimmigrants under the provisions of section 101 (a) (15) (H) of the act and approved petitions shall be required before the visas are issued.

(c) No consular officer shall refuse to grant nonimmigrant status to an alien under the provisions of section 101 (a) (15) (H) of the act on the ground that the alien is not qualified to perform the service or labor, or to undertake the training, specified in the employer's petition approved by the Attorney General: *Provided,* That a consular officer who knows or has reason to believe that such alien is not so qualified shall suspend action on the alien's application for a nonimmigrant visa under section 101 (a) (15) (H) of the act and submit a full report to the Secretary of State for possible reference to the Attorney General of the question whether the Attorney General desires to reconsider his approval of the employer's petition.

(d) If the consular officer knows or has reason to believe that an alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (H) of the act is ineligible to receive such visa under the provisions of section 212 of the act or any other provision of law, and § 41.17, he shall refuse to issue such visa and shall submit a full report to the Secretary of State for possible reference to the Attorney General to complete the file of the Immigration and Naturalization Service in the case.

(e) Aliens coming to the United States as temporary workers or trainees under the exchange visitor program provided for in the United States Information and Educational Exchange Act of 1948, as amended (62 Stat. 6, 66 Stat. 276; 22 U. S. C. 1446), shall be classified as nonimmigrants under the symbol "EX" and the provisions of section 101 (a) (15) of the act, and § 41.5. Such cases shall not be subject to the petition procedure provided for in section 214 (c) of the act. (See § 41.41.)

(f) An alien who is of distinguished merit and ability and who seeks to enter the United States temporarily with the general intention of performing temporary service of an exceptional nature requiring such merit and ability, but having no contract or prearranged employment, may be classified as a temporary visitor for business under the provisions of section 101 (a) (15) (B) of the act.

(g) The terms "industrial trainee", as used in section 101 (a) (15) (H) (iii) of the act, means a nonimmigrant alien who seeks to enter the United States at the invitation of an individual, organization, firm, or other trainer for the purpose of receiving instruction in any field of endeavor, including agriculture, commerce, communication, finance, government, transportation, and the professions, as well as in a purely industrial establishment, regardless of whether any benefit, direct or indirect, accrues to the United States employer or trainer, and regardless of the source of any remuneration received by the alien.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 41.101 *Alien servant or personal employee of member of the Foreign Service of the United States, or of other citizen or resident of the United States.* (a) Except as provided in paragraphs (b) and (c) of this section, an alien seeking to enter the United States temporarily for employment as the personal servant or personal employee of a member of the Foreign Service of the United States, or of any other citizen or lawful resident of the United States, shall, if otherwise qualified, be classified as a nonimmigrant under the provisions of section 101 (a) (15) (H) (ii) of the act. The petition procedure provided for in section 214 (c) of the act and referred to in § 41.100 (a) shall apply in the case of any such alien servant or employee.

(b) An alien personal servant or personal employee accompanying or following to join an employer who is classifiable as a nonimmigrant or who is in the United States as a nonimmigrant, other than a nonimmigrant under section 101 (a) (15) (A) or (G) of the act, or an alien personal servant or personal employee accompanying or following to join a United States citizen employer who resides or is stationed abroad, including a member of the Foreign Service of the United States, and who will visit or is visiting the United States temporarily, may be classified as a nonimmigrant visitor for business under the provisions of section 101 (a) (15) (B) of the act: *Provided,* That no such alien shall be so classified unless the consular officer is satisfied that he is a bona fide personal servant or personal employee, and is able and willing to leave the United States not later than the departure of his employer.

(c) An alien personal servant or personal employee who is accompanying his alien employer in immediate and continuous transit through the United States, if otherwise qualified for transit status, shall be classified as a nonimmigrant under the provisions of section 101 (a) (15) (C) of the act.

§ 41.102 *Former exchange visitors.* (a) No alien who was admitted into the United States subsequent to June 4, 1956, as an exchange visitor, or who otherwise acquired the status of an exchange visitor subsequent to June 4, 1956, including any alien granted an extension of the period of his temporary admission subsequent to the effective date of this regulation, shall be eligible to apply for and receive a visa as a nonimmigrant under the provisions of section 101 (a) (15) (H) of the act notwithstanding the approval of a petition as provided in section 214 (c) of the act unless (1) the consular officer is satisfied that such alien has resided and been physically present abroad for an aggregate of at least two years since his departure from the United States following the termination of his exchange-visitor status in a country or countries cooperating in the exchange-visitor program, or (2) the requirements of this paragraph are waived as provided in section 201 (b) of the United States Information and Educational Exchange Act of 1948, as amended. (See paragraph (c) of § 42.42 of this chapter in cases of former exchange visitors who apply for immigrant visas.)

(b) Notwithstanding the provisions of paragraph (a) of this section, the requirement of a two-year residence and physical presence abroad shall not apply in the case of an alien who was in the United States as an exchange visitor on or before June 4, 1956, who proceeded abroad temporarily on a personal visit or for reasons related to his exchange-visitor program, and who was readmitted into the United States subsequent to June 4, 1956, for the remainder of the period of authorized stay granted prior to the effective date of this regulation to continue his participation in the exchange-visitor program with which he was connected at the time of his departure from the United States.

NEWS REPORTERS

§ 41.110 *Representatives of foreign press, radio, film, or other information media.* (a) An alien applying for a nonimmigrant visa under the provisions of section 101 (a) (15) (I) of the act shall not be accorded such status unless he establishes to the satisfaction of the consular officer that he seeks to enter the United States as:

(1) A representative of a foreign press, radio, film, or other foreign information medium, solely to engage in such vocation; or as

(2) The spouse or child of such representative, and is accompanying or following to join him.

(b) An alien who will be engaged in the United States in news gathering activities between the United States and the country of which he is a national shall, if otherwise qualified, be classified as a nonimmigrant under the provisions of section 101 (a) (15) (I) of the act, notwithstanding the fact that such alien may also be classifiable as a nonimmigrant under the provisions of section 101 (a) (15) (E) of the act.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 41.111 *Burden of proof and evidence of status as representative of foreign information media.* (a) An alien applying for a visa as a nonimmigrant under the provisions of section 101 (a) (15) (I) of the act shall not only have the burden of establishing that he is entitled to classification as a representative of a foreign information medium within the meaning of that section of the act, but also that he is not ineligible to receive a visa as a nonimmigrant under the provisions of section 212 of the act or other provision of law, and § 41.17. Such alien shall establish specifically that:

(1) He seeks to enter the United States solely to represent in good faith a foreign press, radio, film, or other foreign information medium; and that

(2) He intends in good faith, and will be able, to depart from the United States upon the termination of his status.

(b) In order to qualify as the representative of a foreign press, radio, film, or other information medium within the

meaning of section 101 (a) (15) (I) of the act, an alien shall be accredited by such a foreign medium having its home office in a foreign country, the government of which grants upon a basis of reciprocity similar privileges to representatives of such a medium having home offices in the United States, except that when the information medium is owned, operated, subsidized, or controlled by a foreign government, directly or indirectly, the reciprocity required by the provisions of section 101 (a) (15) (I) of the act shall be accorded by such foreign government.

TEMPORARY ADMISSION OF EXCLUDABLE ALIENS

§ 41.150 *Procedure in recommending temporary admission of excludable aliens.* (a) In the case of an alien who is properly classifiable as a nonimmigrant under the provisions of section 101 (a) (15) of the act and who is known or believed by the consular officer to be ineligible to receive a visa as a nonimmigrant under the provisions of section 212 (a) of the act, other than paragraph (27) or (29) thereof, the consular officer to whom such alien makes application for a nonimmigrant visa may, upon his own initiative, and shall, upon the request of the Secretary of State or upon the request of the alien, submit a full report of the case to the Department for possible transmission to the Attorney General pursuant to the provisions of section 212 (d) (3) of the act. If the consular officer's report is accompanied by a recommendation as provided for in section 212 (d) (3) of the act, a statement of the reasons for the recommendation shall be included in the report. If the consular officer is unwilling to recommend the case for advance authorization of the alien's temporary admission and the Secretary of State or the alien requests that the case be forwarded to the Department for possible transmission to the Attorney General, such report shall include a statement of the reasons for the consular officer's unwillingness to make a favorable recommendation in the case.

(b) When the Attorney General authorizes the temporary admission of an excludable alien as a nonimmigrant and the consular officer is so informed by the Secretary of State, the consular officer may proceed with the issuance of a nonimmigrant visa to the alien, subject to the conditions imposed by the Attorney General upon the alien's temporary admission into the United States.

(c) In the case of an alien who is seeking to enter the United States for the purpose of proceeding in transit to the Headquarters District of the United Nations in the United States under the provisions of section 11 (3), (4), or (5) of the Headquarters Agreement with the United Nations, and who is known or believed to be ineligible to receive a visa under the provisions of section 212 (a) (28) of the act, but not mandatorily ineligible under the provisions of section 212 (a) (27) or (29) of the act, the consular officer shall submit promptly to the Secretary of State a full report with a request for an advisory opinion concerning the action to be taken in the case. The consular officer may include in such report a recommendation for possible transmission to the Attorney General concerning the alien's possible temporary admission into the United States under the provisions of section 212 (d) (3) of the act. Upon receipt of notification from the Secretary of State that the Attorney General has authorized the temporary admission of such an alien in transit, the consular officer may proceed with the issuance of a transit visa to the alien, subject to the conditions imposed by the Attorney General for the admission of the alien in transit to the United Nations Headquarters District.

(Sec. 212, 66 Stat. 182; 8 U. S. C. 1182)

PART 42—DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT

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AUTHORITY: §§ 42.1 to 42.49 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 42.1 *Definitions.* The following definitions, in addition to the pertinent definitions contained in the Immigration and Nationality Act, shall be applicable to this part:

(a) "Act" means the Immigration and Nationality Act.

(b) "Affirmation" means a verification in confirmation of truth in lieu of a sworn statement by a person who has conscientious scruples against taking an oath.

(c) "Chinese person" means an alien who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to China.

(d) "Consular officer", as defined in section 101 (a) (9) of the act, shall include the District Administrators of the Trust Territory of the Pacific Islands, and the Naval Administrator, United States Naval Administration Unit Saipan District, hereby designated as consular officers for the purpose of issuing immigrant visas.

(e) "Department" means the Department of State of the United States of America.

(f) "Passport" as defined in section 101 (a) (30) of the act shall not be considered as limited to a national passport, but shall be considered as including any other document issued by a competent authority, which shows the bearer's origin, identity, and nationality if any, and which is valid for the entry of the bearer into a foreign country. The term "passport" shall not be considered as limited to a single document but may consist of two or more documents which, when considered together, fulfill the requirements of a passport as defined in section 101 (a) (30) of the act: *Provided*, That written permission to enter a foreign country shall be considered as fulfilling one of such requirements if it is clearly valid for such purpose and speci-

fies no conditions to such validity for the alien's entry into a foreign country.

(g) "Port of entry" means a port or place designated by the Attorney General or the Commissioner of Immigration and Naturalization at which an alien may apply for admission into the United States.

CLASSIFICATION OF IMMIGRANTS

§ 42.2 *Presumption of immigrant status.* Every alien shall be presumed to be an immigrant until he furnishes information or presents evidence establishing nonimmigrant status under the provisions of Part 41 of this chapter. An immigrant shall be classified as a quota immigrant until he establishes that he is classifiable as a nonquota immigrant. In order to be classified as a nonquota immigrant, an alien shall be required to qualify for such classification within one of the nonquota immigrant categories specified in section 101 (a) (27) of the act and hereinafter more specifically described in this part.

§ 42.3 *Immigrant classification symbols.* (a) A visa issued to an alien as an immigrant within one of the nonquota immigrant classes defined in section 101 (a) (27) of the act, or to an alien as an immigrant within one of the quota immigrant classes described in section 203 (a) of the act, shall bear a symbol to show the classification of the immigrant, in conformity with section 221 (a) of the act. Such symbol shall be inserted by the consular officer in the designated space on the visa side of the immigrant visa application Form 256.

(b) The following symbols shall be used in the cases of nonquota immigrants:

Class	Section of the act	Symbol to be inserted in visa
Spouse of United States citizen	101 (a) (27) (A)	M–1
Child of United States citizen	101 (a) (27) (A)	M–2
Returning resident	101 (a) (27) (B)	N
Native of certain Western Hemisphere countries	101 (a) (27) (C)	O–1
Spouse of alien classified O–1	101 (a) (27) (C)	O–2
Child of alien classified O–1	101 (a) (27) (C)	O–3
Person who lost United States citizenship by marriage	101 (a) (27) (D) and 324 (a)	P–1
Person who lost United States citizenship by serving in foreign armed forces.	101 (a) (27) (D) and 327	P–2
Minister of religion	101 (a) (27) (F)	Q–1
Spouse of alien classified Q–1	101 (a) (27) (F)	Q–2
Child of alien classified Q–1	101 (a) (27) (F)	Q–3
Certain employees or former employees of United States Government abroad.	101 (a) (27) (G)	R–1
Spouse of alien classified R–1	101 (a) (27) (G)	R–2
Child of alien classified R–1	101 (a) (27) (G)	R–3

(c) The following symbols shall be used in the cases of quota immigrants:

Class	Section of the act	Symbol to be inserted in visa
First preference: Selected immigrant	203 (a) (1)	T–1
Spouse of alien classified T–1	203 (a) (1)	T–2
Child of alien classified T–1	203 (a) (1)	T–3
Second preference: Parent of United States citizen	203 (a) (2)	U
Third preference: Spouse of alien resident	203 (a) (3)	V–1
Third preference: Child of alien resident	203 (a) (3)	V–2
Fourth preference: Brother or sister of United States citizen	203 (a) (4)	W–1
Fourth preference: Son or daughter of United States citizen	203 (a) (4)	W–2
Nonpreference: Other quota immigrants	203 (a) (4)	X

(d) The following symbols shall be used in the cases of nonquota immigrants who qualify for the benefits of the act of September 11, 1957 (Public Law 85–316).

Class	Section of the act	Symbol to be inserted in visa
Eligible orphan adopted abroad	4 (b) (2) (A)	K–1
Eligible orphan to be adopted	4 (b) (2) (B)	K–2
Spouse or child of adjusted first preference immigrant	9	K–3
Beneficiary of first preference petition approved prior to July 1, 1957	12	K–4
Spouse or child of beneficiary of first preference petition approved prior to July 1, 1957.	12	K–5
Beneficiary of second preference petition approved prior to July 1, 1957	12	K–6
Beneficiary of third preference petition approved prior to July 1, 1957	12	K–7
German expellee	15 (a) (1)	K–8
Netherlands refugee or relative	15 (a) (2)	K–9
Refugee-escapee	15 (a) (3)	K–10

(Sec. 221, 66 Stat. 191; 8 U. S. C. 1201)

CLASSES OF NONQUOTA IMMIGRANTS

§ 42.4 *Nonquota relatives.* (a) An alien shall, regardless of ancestry, be accorded a nonquota immigrant status under the provisions of section 101 (a) (27) (A) of the act, only if such alien establishes by the presentation of appropriate evidence to the consular officer that he is the spouse or child of a citizen of the United States, and is the beneficiary of an approved petition filed in his behalf with the Attorney General by such citizen, upon the basis of which the consular officer shall have been authorized by the Secretary of State to grant the nonquota immigrant status. An approved petition for first-preference quota status for the husband of a United States citizen shall, if still valid on December 24, 1952, be deemed to be valid for nonquota status under section 101 (a) (27) (A) of the act until December 24, 1953, except as otherwise provided in § 42.28.

(b) In issuing an immigrant visa to an alien child as a nonquota immigrant under the provisions of section 101 (a) (27) (A) of the act, the consular officer shall warn such alien, if he is approaching the age of twenty-one years, that he will not be admissible as such a nonquota immigrant if he fails to apply for admission at a port of entry in the United States before reaching the age of twenty-one years.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 42.5 *Returning resident alien*—(a) *Burden of proof.* An alien shall, regardless of ancestry, be issued an immigrant visa as a nonquota immigrant under the provisions of section 101 (a) (27) (B) of the act only if he sustains the burden of establishing through the presentation of appropriate evidence that (1) he has the status of an alien lawfully admitted for permanent residence, (2) he is returning to the United States from a temporary visit abroad, and (3) he is otherwise eligible to receive an immigrant visa under the provisions of section 212 of the act and § 42.42.

(b) *Evidence of returning resident status.* An alien applying for a nonquota immigrant visa under the provisions of section 101 (a) (27) (B) of the act shall be required to present any evidence deemed necessary by the consular officer to establish eligibility to receive such visa. In this connection, the applicant may be required to furnish for inspection his alien registration receipt card (Form I–151) if such a card has been issued to him, or an expired reentry permit if such a reentry permit was issued to him. Such alien shall be required to establish specifically that:

(1) He had the status of an alien lawfully admitted for permanent residence at the time of his departure from the United States;

(2) He departed from the United States with the intention of returning thereto;

(3) He is returning to the United States from a temporary visit abroad: *Provided,* That when his stay abroad was protracted, he shall be required to establish whether the reasons therefor were beyond his control and whether he was not responsible therefor, in order that it may be determined whether the sojourn abroad was temporary.

(c) *Authority to require supporting documents.* The provisions of section 222 (b) of the act requiring an immigrant to furnish with his application for a visa certain records and documents shall be applicable, in the case of an alien who is classifiable as a nonquota immigrant under the provisions of section 101 (a) (27) (B) of the act, to the extent of requiring such alien to furnish those records and documents which relate to the period of his residence in the United States and the period of his temporary visit abroad, unless the consular officer has reason to question the legality of the alien's previous admission into the United States for permanent residence,

or his eligibility otherwise to receive an immigrant visa. If any such record or document is not obtainable within the meaning of § 42.35 (c), the consular officer may permit the alien to submit, in lieu thereof, other satisfactory evidence of the fact to which the record or document would, if obtainable, pertain.

(d) *Bearers of reentry permits.* An alien who is in possession of an unexpired reentry permit issued to him by the Immigration and Naturalization Service, and who makes application for an immigrant visa of any kind shall, prior to the issuance of the visa, relinquish such permit to the consular officer for attachment to the immigrant visa and for such disposition at the port of entry as the immigration officer deems appropriate.

(Sec. 291, 66 Stat. 234; 8 U. S. C. 1361)

§ 42.6 *Natives of Western Hemisphere countries.* (a) An alien shall be accorded a nonquota immigrant status under the provisions of section 101 (a) (27) (C) of the act only if such alien sustains the burden of presenting evidence which establishes to the satisfaction of the consular officer that:

(1) Such alien was born in Canada, the Republic of Mexico, the Republic of Cuba, the Republic of Haiti, the Dominican Republic, the Canal Zone, or an independent country of Central or South America, or that

(2) Such alien is the eligible spouse, or the child of an alien referred to in subparagraph (1) of this paragraph, and is accompanying or following to join him.

(b) The provisions of paragraph (a) of this section shall not apply to a Chinese person, or to any other person who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle, unless such person is the child of, and is accompanying or following to join, an alien referred to in subparagraph (1) of paragraph (a) of this section.

(c) Nonquota immigrant status under the provisions of section 101 (a) (27) (C) of the act, once acquired as provided in paragraphs (a) and (b) of this section, shall not be lost by the operation of the provisions of section 202 (a) (1) or (2) of the act.

(d) An alien born in a quota area and claiming nonquota immigrant status under the provisions of section 101 (a) (27) (C) of the act because of relationship to a spouse or parent born in a nonquota country shall be required to present the evidence necessary to establish such status.

(e) An alien referred to in subparagraph (2) of paragraph (a) of this section, who is following to join an alien parent in the United States, shall establish by satisfactory evidence that the parent was born in a nonquota country, and has the status of an alien lawfully admitted for permanent residence.

(f) An alien applying for a nonquota immigrant visa as the spouse of an alien classifiable as a nonquota immigrant under the provisions of section 101 (a) (27) (C) of the act shall be required to establish that the applicant's spouse from whom nonquota status is derived by the applicant under that section of the act was born in a nonquota country and is eligible to receive a nonquota immigrant visa under that section of the act, or that such applicant's spouse was born in a nonquota country and has the status of an alien lawfully admitted for permanent residence. Such an applicant shall not be eligible for nonquota status under section 101 (a) (27) (C) of the act if he or she is a Chinese person, or any other person who is attributable by as much as one-half of his or her ancestry to a people or peoples indigenous to the Asia-Pacific triangle.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 42.7 *Former United States citizens*—(a) *Women expatriates.* An alien applying for reacquisition of citizenship under the provisions of section 324 (a) of the act shall, regardless of ancestry, be accorded nonquota immigrant status under the provisions of section 101 (a) (27) (D) of the act only if such alien sustains the burden of presenting evidence which establishes to the satisfaction of the consular officer that she was a citizen of the United States and that she lost her citizenship by reason of marriage to an alien, or by reason of the loss of United States citizenship by her husband, or by reason of her marriage to an alien who was ineligible to citizenship, and that she has not acquired any other nationality by any affirmative act other than marriage. The provisions of this paragraph shall apply to aliens regardless of their marital status at the time of the issuance of a visa.

(b) *Military expatriates.* A person, regardless of ancestry, who, during World War II and while a citizen of the United States, lost his United States citizenship under the provisions of section 2 of the act of March 2, 1907 (34 Stat. 1228), or under the provisions of section 401 (b) or (c) of the Nationality Act of 1940 (54 Stat. 1169), by reason of entering, or serving in, the military, air, or naval forces of any country at war with a country with which the United States was at war after December 7, 1941 and before September 2, 1945, or by reason of taking an oath or obligation for the purpose of entering such forces, and who may apply for reacquisition of citizenship under the provisions of section 327 of the Immigration and Nationality Act, may be accorded the status of a nonquota immigrant under the provisions of section 101 (a) (27) (D) of that act. For the purposes of section 327 of the Immigration and Nationality Act, World War II shall be deemed to have begun on September 1, 1939, and to have terminated on September 2, 1945.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 42.8 *Ministers of religion.* (a) An alien shall, regardless of ancestry, be accorded a nonquota immigrant status under the provisions of section 101 (a) (27) (F) of the act only if such alien establishes that:

(1) He continuously for at least 2 years immediately preceding the time of his application for a visa has been, and seeks to enter the United States solely for the purpose of, carrying on the vocation of minister of a recognized religious denomination having a bona fide organization in the United States and needing the services of such minister, as evidenced by an authorization from the Secretary of State to grant such status upon the basis of a petition filed by a competent authority of the denomination with, and approved by, the Attorney General; or

(2) Is the spouse or child of such minister and is accompanying or following to join him.

(b) The term "minister", as used in section 101 (a) (27) (F) of the act, means a person duly authorized by a recognized religious denomination having a bona fide organization in the United States to conduct religious worship, and to perform other duties usually performed by a regularly ordained pastor or clergyman of such denomination. The term shall not include a lay preacher not authorized to perform the duties usually performed by a regularly ordained pastor or clergyman of the denomination of which he is a member, and shall not include a nun, lay brother, or cantor.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

§ 42.9 *United States Government employees.* An alien shall, regardless of ancestry, be accorded a nonquota immigrant status under the provisions of section 101 (a) (27) (G) of the act only if the consular officer is satisfied that such alien:

(a) Has served the Government of the United States faithfully as an employee for a total period of not less than 15 years;

(b) Performed such service abroad for one or more establishments of the United States Government, but not necessarily for the Foreign Service of the United States;

(c) If a former employee, was retired under honorable conditions; and

(d) Has been recommended for such nonquota status by the principal officer at the diplomatic or consular office where the alien is applying for a visa and such recommendation shall have been approved by the Secretary of State upon the basis of a finding that the granting of such status is in the national interest of the United States; or

(e) Is the spouse or child of an alien described in paragraphs (a) to (d), inclusive, of this section.

(Sec. 101, 66 Stat. 166; 8 U. S. C. 1101)

CLASSES OF QUOTA IMMIGRANTS

§ 42.10 *Quota immigrants*—(a) *Presumption of classification.* Every alien shall be presumed to be a nonpreference quota immigrant until such alien establishes that he is entitled to be classified as a preference quota immigrant, or as a nonquota immigrant, or as a nonimmigrant.

(b) *Burden of proof of classification.* Every alien who seeks to establish that he is classifiable as a preference quota immigrant shall have the burden of proving that he is entitled to be classified within one of the preference quota classes specified in the act and referred to more specifically in § 42.11.

(c) *Effect of approved petition.* The fact that a consular officer shall have

been authorized by the Secretary of State to grant a preference quota status to an alien upon the basis of a petition filed with, and approved by, the Attorney General in such alien's case shall not be considered as shifting from the alien to the consular officer the burden of proving eligibility to receive a visa. Such authorization by the Secretary of State shall have the effect of establishing prima facie that the alien is entitled to the classification approved in the petition.

(Sec. 291, 66 Stat. 234; 8 U. S. C. 1361)

§ 42.11 *Classes of quota immigrants*—(a) *First preference class.* The first preference class of quota immigrants shall consist of the selected immigrants referred to in section 203 (a) (1) of the act, including the accompanying spouses and children of such immigrants, who shall be entitled to preferential consideration under the first half of the quota to which they are chargeable and within any other portion of such quota not required for the issuance of visas to immigrants primarily entitled thereto.

(b) *Second preference class.* The second preference class of quota immigrants shall consist of the alien parents of citizens of the United States, such citizens being twenty-one years of age or over, as referred to in section 203 (a) (2) of the act, who shall be entitled to preferential consideration under the next 30 per centum of the quota to which they are chargeable and to second preference within any other portion of such quota not required for the issuance of visas to immigrants primarily entitled thereto.

(c) *Third preference class.* The third preference class of quota immigrants shall consist of the alien spouses and children of aliens lawfully admitted for permanent residence, referred to in section 203 (a) (3) of the act, who shall be entitled to preferential consideration under the remaining 20 per centum of the quota to which they are chargeable and to third preference within any other portion of such quota not required for the issuance of visas to immigrants primarily entitled thereto.

(d) *Fourth preference class.* The fourth preference class of quota immigrants shall consist of the alien brothers and sisters of United States citizens, and of the alien sons and daughters who are twenty-one years of age or over, or married, of United States citizens, as referred to in section 203 (a) (4) of the act, who shall be entitled to a preference of not exceeding 25 per centum of that portion of every quota which is not required for the issuance of immigrant visas to qualified immigrants within the first, second, and third preference classes.

(e) *Nonpreference class.* The nonpreference class of quota immigrants shall consist of all quota immigrants not entitled to preferential consideration as preference-quota immigrants under section 203 (a) (1), (2), (3), or (4) of the act: *Provided*, That prior to July 1, 1954, not more than 50 per centum of the quota numbers available for the issuance of visas to qualified nonpreference quota immigrants shall be available for the issuance of visas to qualified immigrants under the second proviso to section 3 (c) of the Displaced Persons Act of 1948, as amended (62 Stat. 1009, 64 Stat. 219).

(f) *Priority of access to unused portions of a quota.* In determining whether an alien shall have access to an unused preference portion of a quota after the preference portion of the quota to which he is primarily entitled has been exhausted, priority shall be given to aliens within each of the preference classes in the order of their preference as specified in the act, until the unused portion or portions of the quota shall have been exhausted. No quota number shall be made available for the issuance of an immigrant visa to a nonpreference quota immigrant if there is a sufficient demand on the part of qualified preference-quota immigrants to exhaust the quota.

(Sec. 203, 66 Stat. 178; 8 U. S. C. 1153)

§ 42.12 *Annual determination of quota numbers available under each quota.* For the purposes of section 203 (a) of the act and § 42.11, the full quota for each quota area for each quota year shall be considered to be the quota as proclaimed by the President under section 201 (b) or 202 (e) of the act, less the quota numbers authorized to be taken from, or otherwise previously used under such quota by authority of law before the beginning of each quota year, as provided in section 201 (e) of the act, or in any other provision of law.

§ 42.13 *Determination of quota to which an immigrant is chargeable.* (a) An immigrant who was born in a quota area shall be chargeable to the quota of such area, unless he is classifiable as a nonquota immigrant as defined in section 101 (a) (27) of the act, or unless he falls within one of the exceptions to the general rule of quota chargeability, as specified in section 202 of the act, or unless he is a Chinese person who is chargeable to the quota for Chinese as provided in § 42.15.

(b) A quota immigrant child accompanied by his alien parent may be charged to the quota of the accompanying parent, as provided in section 202 (a) (1) of the act, regardless of the ancestry of such child or of his accompanying alien parent, and regardless of whether the child was born in the Asia-Pacific triangle or in a subquota area inside or outside of such triangle. This rule shall apply in such manner as to permit a child born in a subquota area to be charged, as provided in section 202 (a) (1) of the act, to a governing country's quota with his accompanying parent who is chargeable to such governing country's quota, even if the child was born in a subquota area under the same governing country's quota and the subquota is exhausted.

(c) An alien born in a quota area in which neither of his parents was born and in which his parents were, at the time of such alien's birth, merely visiting temporarily, or in which one or both of his parents were stationed after having been sent there temporarily under orders or instructions of an employer, principal, or superior authority foreign to such country in connection with the business or profession of such employer, principal, or superior authority, may, except as otherwise provided in section 202 (a) (5) of the act, be charged to the quota of either parent, as provided in section 202 (a) (4) of the act.

(d) A quota immigrant spouse who is not attributable by as much as one half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle may, as provided in section 202 (a) (2) of the act, be charged to the quota of his accompanying spouse, including the Asia-Pacific quota, the quota for Chinese persons, or any other Asia-Pacific triangle quota.

(Sec. 202, 66 Stat. 176; 8 U. S. C. 1152)

ASIANS

§ 42.14 *Asia-Pacific triangle*—(a) *Persons born in a quota area in the triangle.* A quota immigrant, regardless of his ancestry, who was born in a quota area lying wholly within the geographically delimited area specified in section 202 (b) of the act and referred to as the Asia-Pacific triangle, shall be chargeable to the quota of the quota area of his birth, unless he falls within one of the exceptions to the general rule of quota chargeability, as specified in section 202 of the act, or unless he is chargeable to the quota for Chinese persons as provided in § 42.15.

(b) *Persons indigenous to, but born outside of, the Asia-Pacific triangle.* A quota immigrant who was born outside of the Asia-Pacific triangle and who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle shall be chargeable to a quota as specified in section 202 (b) of the act, unless he is chargeable to the quota for Chinese persons as provided in § 42.15.

(c) *Asia-Pacific quota.* Quota immigrants in the following categories, other than Chinese persons, and except as provided in § 42.13 (b), shall be chargeable to the Asia-Pacific quota of one hundred annually:

(1) A quota immigrant attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle, if born within a colony or other dependent area situate wholly within said triangle;

(2) A quota immigrant born outside the Asia-Pacific triangle who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to one or more colonies or other dependent areas situate wholly within the Asia-Pacific triangle;

(3) A quota immigrant born outside the Asia-Pacific triangle who is attributable by as much as one-half of his ancestry to peoples indigenous to two or more separate quota areas situate wholly within the Asia-Pacific triangle; and

(4) A quota immigrant born outside the Asia-Pacific triangle who is attributable by as much as one-half of his ancestry to peoples indigenous to a quota area or areas and one or more colonies and other dependent areas situate wholly within the Asia-Pacific triangle.

(d) No alien shall be chargeable to the Asia-Pacific quota, except one who falls within one of the categories enumerated under subparagraphs (1) to (4)

inclusive, of paragraph (c) of this section, and who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle.

(e) The quota proclaimed for "Pacific Islands (trust territory, United States administered)" to which an immigrant is chargeable in accordance with the provisions of section 202 of the act shall be distinguished from the Asia-Pacific quota which is referred to in paragraph (c) of this section.

(Sec. 202, 66 Stat. 176; 8 U. S. C. 1152)

§ 42.15 *Quotas for Chinese persons and for China*—(a) *Quota for Chinese persons.* A Chinese person who is classifiable as a quota immigrant shall be chargeable, regardless of the place of his birth, to the quota for Chinese persons of 105 annually authorized under section 201 (a) of the act, unless such person is a child chargeable to the quota of an accompanying parent as provided in section 202 (a) (1) of the act.

(b) *Quota for China.* An alien, other than a Chinese person, who was born in China and who is classifiable as a quota immigrant shall be chargeable to the quota for China regardless of his ancestry, unless such alien falls within paragraph (1), (2), (3), or (4) of section 202 (a) of the act: *Provided,* That if such alien is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle he may be excepted from chargeability to the quota for China only if he is a child chargeable to the quota of an accompanying parent as provided in section 202 (a) (1) of the act.

§ 42.16 *Quota preferences applicable to quotas of quota areas within Asia-Pacific triangle.* The provisions of section 203 (a) of the act concerning the classes of quota immigrants and the preferences within such classes, as described in § 42.11, shall apply to all quotas, including all quotas for quota areas within the Asia-Pacific triangle, which shall include the quota for Chinese persons.

§ 42.17 *Nonquota status for natives of Asia-Pacific triangle: Exceptions.* The provisions of section 101 (a) (27) of the act defining the nonquota classes, except the provisions of subparagraph (C) thereof relating to certain natives of Western Hemisphere countries, shall be applicable to qualified immigrants including Chinese persons and others who are attributable by as much as one-half of their ancestry to a people or peoples indigenous to the Asia-Pacific triangle: *Provided,* That the child of an immigrant parent who is entitled to nonquota status under the provisions of section 101 (a) (27) (C) of the act, if accompanying or following to join such a parent, shall also be entitled to nonquota status under that section of the act, notwithstanding the fact that such child may be a Chinese person or may be attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle.

(Sec. 202, 66 Stat. 176; 8 U. S. C. 1152)

§ 42.18 *Subquotas*—(a) *Definition.* The term "subquota" refers to that portion of the quota of a governing country which may be made available, subject to a limitation of 100 annually, to quota immigrants born in any colony or other component or dependent area overseas from such governing country.

(b) *Immigrants chargeable to subquotas.* Any quota immigrant born in a colony or other component or dependent area overseas from the governing country shall be chargeable to the subquota of such country, except as provided in paragraph (c) of this section, or § 42.13 (b).

(c) *Exceptions to subquota chargeability.* (1) Any quota immigrant born in a colony or other component or dependent area overseas from the governing country, who is a Chinese person or who is attributable by as much as one-half of his ancestry to a people or peoples indigenous to the Asia-Pacific triangle, shall not be chargeable to a subquota, but shall be chargeable to the Chinese quota if a Chinese person, or to another appropriate quota, as provided in section 202 (b) of the act, and §§ 42.14 and 42.15.

(2) A spouse who is an eligible quota immigrant, or a child regardless of ancestry, born in a subquota area accompanying an alien spouse or parent chargeable to the quota of the governing country of such area, may be charged to the quota of the governing country under the conditions specified in section 202 (a) (2) of the act, and not to the subquota if such subquota is exhausted: *Provided,* That this subparagraph shall not be applicable in the case of such an applicant who is within the provisions of subparagraph (1) of this paragraph.

(d) *Control of subquotas.* The numerical control of a subquota shall in the case of an oversubscribed quota of the governing country, be subject to the same limitations which apply to the quota of the governing country, including the ten percent monthly limitations upon the issuance of visas during the first ten months of each quota year and the ten percent monthly limitations shall be in relation to the whole quota and not merely based upon the subquota or subquotas.

(e) *Priority in issuing visas under subquotas.* The priority in the issuance of visas within each quota category to aliens chargeable to a subquota shall be determined by the registration priority of such aliens in relation to the whole quota of the governing country: *Provided,* That once a subquota has been exhausted for a particular quota year, no more quota visas may be issued during such quota year to aliens chargeable to such subquota, regardless of any preference status or priority of consideration to which they may otherwise be entitled, unless the provisions of § 42.13 (b) or paragraph (c) (2) of this section are applicable.

(f) *Priority of consideration under subquotas.* The order for consideration of the cases of registrants under each quota, which includes the subquota or subquotas of each quota, shall be determined in accordance with the provisions of section 203 (d) of the act.

(Sec. 202, 66 Stat. 176; 8 U. S. C. 1152)

WAITING LISTS

§ 42.20 *Immigrant waiting lists*—(a) *Quota or nonquota waiting lists.* Whenever it becomes administratively impracticable at any consular office to give consideration to, and take final action upon, the case of an applicant for a quota or a nonquota immigrant visa without a waiting period, each such applicant's priority shall be maintained by the registration of his name on an administrative waiting list at such office. Quota waiting lists shall be maintained for each quota and shall include aliens chargeable to each subquota in such manner as to show the priority date of registration within each of the preference or nonpreference classes, and to permit the transfer of the name of any applicant from one category to another without losing his original priority. Quota waiting lists shall not be required in cases of immigrants chargeable to undersubscribed quotas, but an administrative waiting list shall be established if the workload at the consular office requires a waiting period before final consideration may be given by the consular officer to the cases of immigrants chargeable to the undersubscribed quotas. Nonquota administrative waiting lists may, in the discretion of the consular officer, be maintained separately for each nonquota category or for all nonquota categories combined.

(b) *Place of registration.* Every alien who desires to have his name registered on a quota waiting list shall make application for registration at a United States consular office in the consular district in which he has his residence: *Provided,* That a consular officer shall, at the direction of the Secretary of State, or may in his discretion, accept an application for registration from nonresidents of the consular district, including aliens in the United States who are entitled to have their names entered on a quota or subquota waiting list.

(c) *Registration prior to December 24, 1952.* (1) All persons whose names were registered on quota waiting lists on December 23, 1952, shall have their names transferred to the appropriate category of the waiting list for the quota, including the subquota, to which they are chargeable without losing the priority of their original registration, unless such registration is subject to cancellation under the provisions of § 42.23.

(2) In the case of an alien entitled to second preference status under the provisions of section 203 (a) (2) of the act and § 42.11 (b), who is the alien parent of a citizen of the United States and the beneficiary of a petition approved by the Attorney General prior to, and still valid on, December 24, 1952, the date of the approval of such petition shall be considered to be the date of such alien's registration priority, except in the case of an alien who is actually registered on the waiting list on a date preceding that of the approval of the petition, in which case the date of actual registration shall establish his priority. A valid petition as referred to in this subparagraph shall continue to be valid until December 24, 1953, except as otherwise provided in § 42.28.

(d) *Registrations on or after December 24, 1952.* Except as otherwise provided in paragraph (c) of this section or in § 42.25 (b) the registration of a quota immigrant on a waiting list shall be effected on or after December 24, 1952, upon the basis of an application for registration properly executed by the immigrant and received at the consular office by mail from such immigrant. The date, as well as the hour and minute wherever practicable, of the receipt at the consular office of each registration application form shall be noted thereon and shall constitute the registration priority under which the applicant's name shall be registered in the proper category on the appropriate waiting list.

(Sec. 203, 66 Stat. 178; 8 U. S. C. 1153)

§ 42.21 *Aliens included in single registration*—(a) *Principal and derivative registrants.* The application of a quota immigrant for registration on a waiting list shall be considered as automatically including any spouse he may have, and any unmarried son or daughter under twenty-one years of age such immigrant or his spouse may have, and who is residing regularly in the household of the principal registrant, at the time his turn is reached on the waiting list and he makes a formal application for an immigrant visa, regardless of whether such spouse, son or daughter was specifically named in his application for registration. Any other alien shall be registered separately and accorded a priority as of the date of such separate registration: *Provided,* That the provisions of this paragraph requiring a separate registration in the cases of aliens other than the spouse of a principal registrant and their unmarried sons or daughters under twenty-one years of age shall apply only to those aliens who register on a quota-waiting list on or after July 1, 1954, and shall not adversely affect any registration or registration privileges acquired prior to that date.

(b) *Termination of derivative registration.* The privilege of derivative registration accorded a spouse or child under the provisions of paragraph (a) of this section, whose name has not been previously recorded on a waiting list, shall terminate only upon the occurrence of any one of the conditions specified in § 42.23 for the removal of names from a quota-waiting list.

(c) *Conversion of derivative registration.* When an alien entitled to the privilege of derivative registration has exercised his privilege by having his name placed on a quota-waiting list as of the date of registration priority of the principal registrant, such alien shall be considered thereafter to be in the same position as any other alien who is registered on a quota-waiting list.

§ 42.22 *Aliens not to be registered or to retain registration on a quota-waiting list.* (a) Except as provided otherwise in this section, the following classes of aliens shall not have their names entered or retained on a quota or subquota waiting list:

(1) Aliens who enter the United States in violation of the immigration laws.

(2) Aliens who are in the United States in willful violation of their nonimmigrant status.

(3) Aliens who are within one of the classes of excludable aliens described in section 212 (a) (17) of the act, unless the Attorney General has consented to their reapplication for admission into the United States.

(4) Aliens who are in the United States as exchange visitors under the provisions of section 201 of the United States Information and Educational Exchange Act of 1948, as amended. (62 Stat. 6; 66 Stat. 276)

(b) Notwithstanding the provisions of paragraph (a) of this section, aliens who qualify under the preference specified in section 203 (a) (1) of the act shall have their names entered or retained on the appropriate quota or subquota waiting list as of the date the approved petition was filed with the Attorney General.

(c) Notwithstanding the provisions of paragraph (a) of this section and the provisions of § 42.25 (c), aliens whose cases fall within paragraph (a) (2) of this section and who qualify under the preference specified in section 203 (a) (2), (3), or (4) of the act shall have their names entered or retained on the appropriate quota or subquota waiting list as of the date of their departure from the United States following a willful violation of status.

(d) Notwithstanding the provisions of paragraph (a) of this section and the provisions of § 42.25 (c), aliens whose cases fall within paragraph (a) (3) of this section and who qualify under the preference specified in section 203 (a) (2), (3), or (4) of the act shall have their names entered or retained on the appropriate quota or subquota waiting list as of the date the approved petition was filed with the Attorney General but in no event earlier than the date of their deportation from the United States.

(e) The provisions of paragraphs (a), (c), and (d) of this section shall not be construed to affect adversely any registration priority acquired prior to June 30, 1955, on the basis of an approved second, third, or fourth preference petition, regardless of the alien's status in the United States.

§ 42.23 *Removal of names of registrants from quota waiting list.* The registration of a quota immigrant shall be cancelled under any of the following circumstances:

(a) The registrant dies;

(b) The registrant was erroneously listed on the waiting list;

(c) The registrant enters the United States in violation of the immigration laws;

(d) The registrant abandons his intention to immigrate to the United States. An alien who for any reason fails to apply formally or informally for a visa within 60 days after being duly notified that his name has been reached on the waiting list shall be considered to have abandoned his intention to immigrate: *Provided,* That any such alien who can establish to the satisfaction of the consular officer that his failure to apply formally or informally for a visa was for reasons beyond his control and for which he was not responsible may make an application for a visa under his original priority on the waiting list when the circumstances which prevented him from applying formally or informally for a visa cease to exist, or within 60 days thereafter;

(e) The registrant has been denied an immigrant visa on some ground which cannot be overcome by the presentation of further evidence or by a probable change in the circumstances of his case;

(f) The registrant is issued an immigrant visa: *Provided,* That any alien receiving an immigrant visa who fails to use it for reasons beyond his control and for which he is not responsible, and who makes application for another visa in a subsequent quota year and within 60 days of the termination of the circumstances which prevented him from using the original visa, may be accorded his original priority on the waiting list for the purpose of making one additional application for a visa;

(g) The registrant is not eligible to retain his name on the waiting list by reason of the provisions of § 42.22.

ORDER OF PRIORITY OF CONSIDERATION

§ 42.25 *Priority for considering quota immigrant cases*—(a) *Priority in order of registration.* No immigrant within a preference category under a quota shall have his case considered before consideration is given to immigrants in a higher preference quota category as provided in section 203 (d), of the act, and no immigrant within any category under a quota shall have his case considered until after consideration shall have been given to other immigrants in the same category who have an earlier priority of registration on the chronological quota waiting list for such category.

(b) *Registration of first-preference immigrants.* The registration priority of a first-preference quota immigrant shall be determined by the date on which a petition was filed with the Attorney General for the immigration of such immigrant. An authorization received from the Secretary of State to grant first-preference quota immigrant status to the beneficiary of an approved petition shall be recorded at each consular office in the order of the date on which the petition was filed with the Attorney General and shall constitute the chronological registration record of such case on the quota waiting list, or on the administrative list if the quota is under-subscribed and the workload at the consular office necessitates an administrative waiting period.

(c) *Registration of other preference quota immigrants.* The registration priority of quota immigrants in the second, third and fourth preference classes shall be determined in each class in the chronological order in which such immigrants are registered on quota waiting lists at each consular office in the order of the receipt of their registration applications, as provided in § 42.20 (c) or in the chronological order in which the required petitions for the immigrants in such classes were filed with the Attorney General, whichever date is earlier.

(d) *Registration of nonpreference quota immigrants.* The registration priority of nonpreference quota immi-

grants shall be determined in each class by the chronological order in which the immigrants' names are registered on the appropriate quota waiting lists at each consular office in the order of the receipt of their registration applications as provided in § 42.20 (c).

(e) *Retention of registration priority.* An alien who ceased to have first, second, third, or fourth preference-quota-immigrant status shall retain his chronological registration priority which shall be transferred to any other category in which he may qualify, except to the first-preference-quota-immigrant category.

(f) *Registration priority of former applicants under the Refugee Relief Act.* The registration priority to which an alien is or was entitled under the Refugee Relief Act of 1953, as amended, as determined by (1) the date on which he was registered on a quota waiting list for the purposes of the Immigration and Nationality Act, (2) the date he actually applied for registration under the Refugee Relief Act of 1953, as amended, (3) the date on which an approved petition was filed with the Attorney General in his behalf, or (4) the date on which a verified assurance of employment, housing, and against becoming a public charge, or an assurance of adoption and proper care, was filed with the Department in his behalf, whichever date is earliest, shall be considered his registration priority on a quota waiting list for the purpose of the Immigration and Nationality Act if such alien has maintained a continuing intent to immigrate to the United States.

(Sec. 203, 66 Stat. 178; 8 U. S. C. 1153)

§ 42.26 *Procedure in granting preference status.* No alien shall be accorded consideration as a quota immigrant entitled to first, second, third, or fourth preference status unless the consular officer shall have received from the Immigration and Naturalization Service a petition filed and approved in accordance with the provisions of section 204 or section 205 of the act. Subject to the provisions of § 42.28, consular officers shall, upon receipt of such a petition, grant the status indicated in the petition, but further consideration of the case of such immigrant shall be in the order of his priority among other immigrants in the same classification as determined under the provisions of § 42.25.

§ 42.27 *Procedure in granting nonquota status in petition cases.* No alien shall be accorded consideration as a nonquota immigrant entitled to the status of minister of a religious denomination under the provisions of section 101 (a) (27) (F) (i) of the act, or to the status of a child or spouse of a citizen of the United States under the provisions of section 101 (a) (27) (A) of the act, unless the consular officer shall have received from the Immigration and Naturalization Service a petition filed and approved in accordance with the provisions of section 204 or section 205 of the act. Subject to the provisions of § 42.28, consular officers shall, upon receipt of such a petition, grant the status indicated in the petition, but further consideration of the case of such immigrant shall be in the order of his priority among other immigrants in the same classification as determined by the date on which the approved petition was filed with the Attorney General.

(Sec. 104, 66 Stat. 174; 8 U. S. C. 1104)

§ 42.28 *Suspension or termination of action in petition cases.* (a) Consular officers shall suspend or terminate action in petition cases under any of the following circumstances:

(1) The consular officer knows or has reason to believe that the petition was approved erroneously, or that the approval of the petition was obtained by fraud, misrepresentation, or other unlawful means.

(2) As to a petition approved under the provisions of section 204 or section 214 (c) of the act:

(i) The beneficiary is an alien who has been granted the status of an immigrant under the provisions of section 101 (a) (27) (F) (i) of the act, and has not obtained an immigrant visa under the status approved within one year of the date of approval of the petition;

(ii) The benificiary is an alien who has been granted the status of a nonimmigrant under the provisions of section 101 (a) (15) (H) of the act, and has not obtained a nonimmigrant visa under the status approved on or prior to the expiration date of approval shown on the approved petition;

(iii) The beneficiary is an alien who has been granted the status of a preference quota immigrant under the provisions of section 203 (a) (1) (A) of the act, and has not obtained an immigrant visa under the status approved on or prior to the expiration date shown on the approved petition. Any such petition which is terminated by the expiration of the period for which approval was given is subject to reaffirmation by the Attorney General for an additional period and is to be returned to the office of the Immigration and Naturalization Service which approved the petition with an appropriate explanation at such time as it appears that a quota number will be available within six months for the issuance of an immigrant visa to the beneficiary;

(iv) The petitioner dies, goes out of business, or files a written withdrawal of the petition before the beneficiary obtains an immigrant visa under the status approved.

(3) As to a petition approved under the provisions of section 205 of the act:

(i) The beneficiary is an alien who has been granted the status of a nonquota immigrant under the provisions of section 101 (a) (27) (A) of the act, and has not obtained an immigrant visa under the status approved within two years of the date of the approval of the petition;

(ii) The beneficiary is an alien who has been granted the status of a preference quota immigrant under the provisions of section 203 (a) (2), (3) or (4) of the act, and has not obtained an immigrant visa within three years of the date of approval of the petition, or during the quota year in which such three-year period expired;

(iii) The petitioner loses his United States citizenship or his status as an alien lawfully admitted for permanent residence, whichever status was necessary for the approval of the petition, or dies, before the beneficiary obtains an immigrant visa under the status approved;

(iv) The marriage between the petitioner and the spouse beneficiary is terminated by death, divorce or annulment before the beneficiary obtains an immigrant visa under the status approved;

(v) The child beneficiary is married at the time he makes formal application for an immigrant visa under the status approved, or will reach the twenty-first anniversary of his birth before his arrival in the United States to apply for admission under the status approved. In any such case involving a son or daughter of a United States citizen petitioner, the approved petition will continue to be valid for the purposes of section 203 (a) (4) of the act until the expiration of three years from the date of its approval, or until the expiration of the quota year in which such three-year period expired;

(4) Approval of a petition for nonquota or preference quota status has been specifically revoked by the Attorney General, and notice of revocation has been communicated to the appropriate consular officer.

(5) The consular officer knows or has reason to believe that the beneficiary of an approved petition is not entitled, for any other reason, to receive a visa under the status approved.

(b) In suspending or terminating action in a petition case for any reason specified in this section, consular officers need not report such suspension or termination to the Department except in a case in which the consular officer knows or has reason to believe that the petition was approved erroneously, or that approval was obtained by fraud, misrepresentation, or other unlawful means.

EXEMPTIONS FROM IMMIGRANT VISA REQUIREMENTS

§ 42.29 *Immigrants not required to obtain immigrant visas.* The following classes of immigrants shall not be required to obtain immigrant visas:

(a) Immigrants in possession of valid reentry permits or resident alien's border-crossing identification cards.

(b) An alien immigrant child born subsequent to the issuance of an immigrant visa to an accompanying parent, who will arrive in the United States and apply for admission during the period of validity of such visa.

(c) An American Indian born in Canada and having at least fifty per centum of blood of the American Indian race.

(d) An alien member of the armed forces of the United States who is in the uniform of, or who bears documents identifying him as a member of, such armed forces, who has been previously lawfully admitted for permanent residence, and who is proceeding to the United States under official orders or permit of such armed forces.

(e) Any alien lawfully admitted for permanent residence who is not required under the regulations of the Attorney General to present a valid immigrant visa upon returning to the United States.

(f) An alien who shall leave Hawaii, Alaska, Guam, Puerto Rico, or the Virgin Islands of the United States, and who seeks to enter the continental United States or any other place under the jurisdiction of the United States, except as limited by the proviso contained in section 212 (d) (7) of the act in the cases of aliens admitted to Hawaii.

APPLICATIONS

§ 42.30 *Application for immigrant visa*—(a) *Form and content of application.* Every alien applying for an immigrant visa shall make application therefor on Form 256. In the application the immigrant shall furnish the information required under the provisions of section 222 (a) of the act, and such additional information as may be required in the application form. The requirement of the act that an immigrant shall state in his application his race and ethnic classification does not pertain to his religion.

(b) *Persons required to make separate application.* (1) Each alien shall be required to make a separate application for an immigrant visa;

(2) An alien under 14 years of age, or one physically incapable of executing an application, may have his application for an immigrant visa executed in his behalf by a parent or guardian. If the alien has no parent or guardian, the application may be executed by any person having lawful custody of, or a legitimate interest in, such alien.

(c) *Personal appearance.* Every applicant for an immigrant visa, including an alien whose application is executed by another person, shall be required to appear personally at the consular office in connection with his application.

(d) *Photographs.* Each applicant shall be required to furnish, with his application for an immigrant visa 3 identical copies of his photograph. The photographs shall reflect a reasonable likeness of the alien as of the time they are furnished, be 2 by 2 inches in size, unmounted, show a full front view without head covering, and shall be printed on a light background. Each copy of such photograph shall be signed by the person making an application in such a way as not to obscure the alien's features. One copy of such photograph shall be attached to Form 256a and another to Form 256b. The third copy shall be enclosed in a sealed envelope which shall be appended to Form 256a.

(e) *Place of application.* Every alien applying for an immigrant visa shall make application at a United States consular office in the consular district in which he has his residence: *Provided,* That a consular officer shall at the direction of the Secretary of State, or may in his discretion, accept an application for an immigrant visa from an alien having no residence in a consular district if such alien is physically present therein.

(f) *Completion of visa application.* The consular officer to whom formal application is made for an immigrant visa shall make certain that all pertinent questions on the application form are answered and all applicable blank spaces are filled out. The consular officer shall have authority to require, in his discretion, that an applicant for an immigrant visa answer any questions pertaining to arrests, police or criminal record, or other facts in his case which are deemed to be material to his application. Such additional statements shall be attached to Form 256 and made a part of the alien's visa application and shall be covered by the alien's oath to, or affirmation of, the application. The applicant shall be required to read the application when it is completed, or it shall be read to him in his language, or he shall otherwise be apprised of its full contents, and he shall be asked whether he is willing to subscribe thereto. If the alien is not willing to subscribe to the application unless changes are made in the information stated therein, a new application containing the necessary information as stated by the alien shall be prepared.

(g) *Signature and seal.* Form 256 shall be signed in the presence of the consular officer by the applicant in the appropriate spaces in accordance with the manner in which he affixes his signature. The application shall be sworn to, or affirmed, by the applicant before the consular officer, who shall be satisfied that the applicant understands, and is willing to subscribe to, its contents. The consular officer shall then sign such application, indicate his title, and affix the seal of his office in the designated places.

(h) *Fee receipt notation.* The receipt of the prescribed fee ($5) for the furnishing and verification of each application for an immigrant visa shall be evidenced by a rubber-stamped or typed notation placed on the reverse side of Form 256a opposite the space formerly reserved for the application fee number, and properly completed in the following form:

Service No. _____
Tariff Item No. _____
Fee Paid: U. S. $_____
Local CY. equiv. _____

(Sec. 222, 66 Stat. 193; 8 U. S. C. 1202)

§ 42.31 *Immigrant preceding his family; informal examination of members of family.* (a) In the case of an applicant for an immigrant visa who proposes to precede his family to the United States, the consular officer may arrange for an informal examination of the other members of such applicant's family in order to determine whether there exists at that time any mental, physical, or other ground of ineligibility on their part to receive an immigrant visa;

(b) In the event any member of such family is found upon informal examination to be ineligible to receive an immigrant visa, the alien who intends to precede his family to the United States shall be so informed, and required by the consular officer to acknowledge in writing that he has been so informed;

(c) A determination in connection with an informal examination that an alien appears to be eligible for a visa shall carry no assurance that the alien concerned will be issued an immigrant visa in the future. The question of eligibility to receive such a visa is one which must finally be determined at the time of formal application.

§ 42.35 *Supporting documents in immigrant cases; burden of proof*—(a) *Burden of proof.* An alien who applies for an immigrant visa shall have the burden of establishing not only that he is entitled to the classification he seeks, but also that he is otherwise eligible to receive an immigrant visa under the immigration laws and the provisions of this part.

(b) *Supporting documents.* An alien applying for an immigrant visa shall be required to furnish with his application 2 copies of a police certificate; 2 certified copies of any existing prison record, military record, and record of his birth; and 2 certified copies of all other records or documents concerning him or his case, which the consular officer may deem to be necessary.

(1) The term "police certificate", as used in this section, means a certification by the appropriate police authorities stating what their records show concerning the alien, including any and all arrests, the reasons therefor, and the disposition of each case of which there is a record.

(2) The term "prison record", as used in this section, means an official document containing a report of the applicant's record of confinement in a penal or correctional institution, including his demeanor during such confinement.

(3) The term "military record", as used in this section, means an official document containing a record of the applicant's service and conduct while in military service, including any convictions of crime before military tribunals as distinguished from other criminal courts. A certificate of discharge from the military forces or an enrollment book belonging to the applicant shall not be acceptable in lieu of the official military record unless it shows the alien's complete record while in military service as hereinbefore indicated in this subparagraph. The applicant may, however, in any event be required to present for inspection such a discharge certificate or enrollment book if deemed necessary by the consular officer to establish the applicant's eligibility to receive an immigrant visa.

(4) The term "record of birth", as used in this section, means a birth certificate showing the date and place of birth and the parentage of an alien, issued by the official custodian of birth records in the country of the applicant's birth and based upon the original registration of birth. An alien who has only one copy of his birth certificate and cannot obtain another may present two certified or photostatic copies thereof, but the original shall be offered for inspection by the consular officer who may return it to the alien.

(5) The term "other records or documents", as used in this section, includes official records which are pertinent to a determination of the applicant's identity, classification, or any other matter relating to his eligibility to receive an immigrant visa.

(c) *Unobtainable documents.* (1) If an immigrant establishes to the satisfaction of the consular officer that any document or record required under this

section is unobtainable, the consular officer may permit the immigrant to submit, in lieu of such document or record, other satisfactory evidence of the fact to which such document or record would, if obtainable, pertain. A document or other record shall be considered "unobtainable" if it cannot be procured without causing to the applicant or a member of his family actual hardship, other than normal delay and inconvenience.

(2) If the consular officer determines that a supporting document, as referred to in paragraph (b) of this section, actually is unobtainable, although the catalog of available documents prepared by the Department shows that it is available, he shall affix to each copy of the visa application a statement bearing his signature and the seal of his office and setting forth in detail his reasons for considering the record or document to be unobtainable, and for accepting the particular secondary evidence attached to the visa.

(d) *Authenticity of records and documents.* If a consular officer has reason to believe that a particular record or document required under the provisions of this section and submitted by an applicant is not authentic or has been altered or tampered with in any material manner, he shall require or take such action as may be necessary to determine its authenticity, or to ascertain the facts to which such document purports to relate in the alien's case.

(Sec. 222, 66 Stat. 193; 8 U. S. C. 1202)

PASSPORTS

NOTE: Under the provisions of section 212 (a) (26) of the Immigration and Nationality Act, a nonimmigrant alien who makes application for a visa or for admission into the United States is required to be in possession of a passport which is valid for a minimum period of six months from the date of expiration of the initial period of his admission into the United States or his contemplated initial period of stay authorizing him to return to the country from which he came or to proceed to and enter some other country during such period. The regulations of the Secretary of State (22 CFR 42.36 (a)) further provide that every alien who applies for an immigrant visa and who is subject to the passport requirement must be in possession of a passport which is valid for at least sixty days beyond the period of validity of the immigrant visa issued to him. By reason of the foregoing requirements, certain foreign governments have entered into an agreement with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of six months beyond the expiration date specified in the passport. These agreements have the effect of extending the validity period of the foreign passport an additional six months notwithstanding the expiration date indicated in the passport. Notice is hereby given that the following foreign governments have concluded such an agreement with the Government of the United States:

Austria (Reisepass only), Brazil, Canada, Ceylon, Cuba, Dominican Republic, Ethiopia, Germany (Reisepass only), Guatemala, Honduras, Iceland, India, Mexico, The Netherlands, Pakistan, Portugal, United Kingdom (nonimmigrants only).

§ 42.36 *Passport requirement for immigrants*—(a) *Requirement.* Except as provided in paragraph (b) of this section, every alien applying for an immigrant visa shall present to the consular officer a passport, as defined in section 101 (a) (30) of the act and § 42.1 (f), which shall be valid for at least sixty days beyond the period of validity of the immigrant visa issued to such alien.

(b) *Exceptions.* An immigrant within any of the following categories shall not be required to present a passport in applying for an immigrant visa:

(1) An immigrant who is a stateless person;

(2) An immigrant who is a national of, and is applying for an immigrant visa outside of, a Communist-controlled country, and who, because of his opposition to Communism, is unwilling to make application for a passport to, or unable to obtain a passport from, the government of such country;

(3) An immigrant lawfully admitted for permanent residence, who is returning to the United States from a temporary visit abroad;

(4) An immigrant who is a member of the Armed Forces of the United States;

(5) An immigrant who is the parent, spouse, or unmarried son or daughter under twenty-one years of age, of a United States citizen;

(6) An immigrant who is the spouse or unmarried son or daughter under twenty-one years of age of an alien lawfully admitted for permanent residence;

(7) An immigrant who is qualified for and eligible to receive a first preference quota visa, unless such immigrant is applying for a visa in the country of which he is a national and the possession of a passport is required for departure from such country;

(8) An immigrant who has been preexamined in the United States by the Immigration and Naturalization Service and who is applying for an immigrant visa in Canada;

(9) An immigrant who establishes that he is unable to obtain a passport, who is not within any of the categories specified in the paragraph, and in whose case the passport requirement imposed by this section or by the regulations of the Attorney General shall have been waived by the Attorney General and the Secretary of State, as evidenced by a specific instruction from the Department to the consular officer.

(c) *Immigrants included in single passport.* A passport may include any person or persons whose inclusion is authorized under the laws or regulations of the issuing governmental authority: *Provided,* That a photograph of each such person fourteen years of age or over shall have been attached to the passport.

EXAMINATION AND FINGERPRINTING

§ 42.37 *Physical and mental examination of immigrants.* (a) Prior to the issuance of an immigrant visa to any alien, the consular officer shall require such alien to submit to a physical and mental examination in order to determine his eligibility to receive such a visa.

(b) At consular offices where medical officers of the United States Public Health Service are on duty, the alien's examination shall be conducted by such officers. If a medical officer of the United States Public Health Service is not available, the required examination shall be conducted by a reputable and competent physician selected by the alien from a panel of such physicians approved by the consular officer. The consular officer shall bring to the attention of the panel of physicians the regulations of the United States Public Health Service governing the medical examination of aliens, including laboratory tests, and shall advise visa applicants, when laboratory facilities for the required tests are not available, that such tests must be made at the United States port of entry and may be a basis for the alien's exclusion.

(Sec. 221, 66 Stat. 191; 8 U. S. C. 1201)

§ 42.38 *Registration and fingerprinting of immigrants*—(a) *Authority.* Every alien applying for an immigrant visa shall be fingerprinted on standard fingerprint Form AR–4, except a child under 14 years of age at the time of application for an immigrant visa.

(b) *Advance fingerprints.* An alien may be required by the consular officer at the time such alien makes preliminary or informal application for an immigrant visa, to have a set of his fingerprints taken on Form AR–4 in the event such procedure is considered necessary for the purpose of identification, or investigation. Consular officers may, where necessary, use the fingerprint card of an applicant for an immigrant visa in order to ascertain from the appropriate local or any other authorities whether they have any pertinent information concerning the applicant's eligibility to receive a visa.

(c) *Alien registration.* Every alien executing an application for an immigrant visa on Form 256 is thereby automatically registered, as required by section 221 (b) of the act, if the visa is issued.

(Sec. 221, 66 Stat. 191; 8 U. S. C. 1201)

ISSUANCE OF IMMIGRANT VISAS

§ 42.40 *Authority to issue, refuse, and revoke, immigrant visas*—(a) *Authority to issue.* Consular officers are authorized to issue immigrant visas in accordance with the authority contained in sections 221 (a) and 224 of the act, and in accordance with the procedure prescribed in § 42.41.

(b) *Authority to refuse.* Consular officers are authorized to refuse immigrant visas in accordance with the authority contained in section 221 (g) of the act. The term "reason to believe", as used in section 221 (g) of the act, shall be considered to require a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible to receive an immigrant visa as provided in the act and as implemented by the regulations contained in this part.

(c) *Authority to revoke.* Consular officers are authorized to revoke immigrant visas in accordance with the authority contained in section 221 (i) of the act and on one or more of the specific grounds set forth, and in accordance with the procedure specified in § 42.44.

(Secs. 221, 224, 66 Stat. 191, 195; 8 U. S. C. 1201, 1204)

§ 42.41 *Procedure in issuing immigrant visa*—(a) *Insertion of pertinent data.* In issuing an immigrant visa, the pertinent information shall be inserted in the designated blank spaces provided on the visa side of Form 256. The dates to be inserted in the appropriate spaces on the visa shall be in a form which shows the day, month, and year, in that order, and the name of the month shall be spelled out—such as; "24 December 1952". A symbol specified in § 42.3 shall be used to indicate the classification of the immigrant and the visa. If the visa is being issued upon the basis of a petition approved by the Attorney General, the number and date of approval of such petition shall be inserted in the space provided for the visa petition number on the visa side of Form 256.

(b) *Numbering.* Nonquota immigrant visas may be numbered in consecutive order at each consular office, beginning a new series on December 24, 1952, and thereafter on July 1 of each year, if the consular officer in charge considers the numbering of nonquota visas to be desirable. A quota immigrant visa shall bear the quota number assigned to the consular officer for use in issuing the visa to the alien concerned.

(c) *Fee receipt notation.* The receipt of the prescribed fee ($20) for the issuance of each immigrant visa shall be evidenced by a rubber-stamped or typed notation properly completed in the same form as provided in § 42.30 (h), and placed on the visa part of Form 256a and 256b under the word "seal." This notation shall be made before the impression seal is affixed and the words "Fee No." shall be cancelled.

(d) *Signature and seal.* The consular officer who issues an immigrant visa shall affix his signature, indicate his title, and impress the seal of his office on the visa side of Form 256a in a manner which partly covers the photograph and the fee stamp. Thereupon, Form 256a shall become an immigrant visa and shall be issued by delivery to the immigrant or his authorized agent or representative.

(e) (1) *Notation in the immigrant's passport.* Upon the issuance of an immigrant visa to an alien who presents a passport issued by a government which is recognized de jure by the United States, the consular officer shall place a notation in the following form in such passport:

Nonquota_____ Immigrant Visa _____
Quota _____ No. _____
Dated _____
Issued to _____
(Name)
American Consul at _____

(2) *Passport of unrecognized government.* No seal, stamp, or notation of any kind shall be placed in a passport or other travel document issued by a government not recognized de jure by the United States.

(Sec. 221, 66 Stat. 191; 8 U. S. C. 1201)

INELIGIBLE IMMIGRANTS

§ 42.42 *Classes of aliens ineligible to receive immigrant visas.* (a) The following implementation of section 212 of the act shall govern the issuance or refusal of immigrant visas in pertinent cases:

(1) *Feeble-mindedness.* [Reserved]

(2) *Insanity.* [Reserved]

(3) *One or more attacks of insanity.* [Reserved]

(4) *Psychopathic personality, epilepsy, or mental defect.* [Reserved]

(5) *Narcotic drug addicts or chronic alcoholics.* [Reserved]

(6) *Tuberculosis, leprosy, or dangerous contagious disease.* A determination of ineligibility to receive an immigrant visa under the provisions of sections 212 (a) (1) to (6), inclusive, of the act, shall be based upon the finding of a competent medical examiner as referred to in § 42.37: *Provided,* That in the case of an alien who applies for an immigrant visa at a consular office where no medical officer of the United States Public Health Service has been assigned or detailed, and the consular officer knows or has reason to believe that such alien is a drug addict, a chronic alcoholic, or is afflicted with psychopathic personality by reason of sexual deviation, a finding of ineligibility to receive an immigrant visa under the provisions of section 212 (a) (4) or (5) of the act may be based on facts or circumstances other than the finding of an examining physician.

(7) *Physical defect, disease or disability affecting alien's ability to earn a living.* An alien within the purview of section 212 (a) (7) of the act may be issued an immigrant visa, if otherwise qualified therefor, upon receipt of notice by the consular officer from the Department of the giving of a bond or undertaking, as provided in section 221 (g) of the act.

(8) *Paupers, professional beggars, or vagrants.* [Reserved]

(9) *Crime involving moral turpitude.* (i) An alien shall not be ineligible to receive a visa under the provisions of section 212 (a) (9) of the act (*a*) solely by reason of the conviction of a single offense which, if committed in the United States, would be a misdemeanor punishable by imprisonment not to exceed one year, and for which the penalty actually imposed was imprisonment not to exceed six months or a fine not to exceed $500, or both; or (*b*) solely by reason of the admission of the commission of a single offense or the commission of acts constituting the essential elements of a single offense which, if committed in the United States, would be a misdemeanor punishable by imprisonment not to exceed one year.

(ii) The term "purely political offense", as used in sections 212 (a) (9) and (10) of the act, shall include offenses which, the evidence presented to the consular officer clearly establishes, were involved in convictions obviously based on trumped-up charges or predicated upon repressive measures against racial, religious, or political minorities. The admission by an immigrant that he has committed acts which would have been punishable under the laws or decrees of a foreign country shall be considered an admission of the commission of a purely political offense within the meaning of section 212 (a) (9) of the act if the evidence presented to the consular officer clearly establishes that such laws or decrees were predicated upon the repression of racial, religious, or political minorities. The mere fact that an alien is or was a member of a racial, religious, or political minority shall not be considered as sufficient in itself to warrant a conclusion that the crime of which he was convicted was a purely political offense.

(10) *Conviction of two or more offenses.* [Reserved]

(11) *Polygamy.* Aliens who are members of religious organizations which tolerate polygamy are not ineligible to receive immigrant visas under the provisions of section 212 (a) (11) of the act, unless such aliens themselves are polygamists, or unless they practice or advocate the practice of polygamy.

(12) *Prostitutes.* The fact that an immigrant may have ceased to engage in prostitution shall not remove the immigrant's ineligibility to receive a visa under the provisions of section 212 (a) (12) of the act.

(13) *Immoral sexual act.* [Reserved]

(14) *Skilled or unskilled laborers*—(i) *Certification by Secretary of Labor required.* No immigrant shall be considered ineligible to receive a visa under the provisions of section 212 (a) (14) of the act, even if he is migrating to the United States under a contract or other prearrangement of employment of any kind in the United States, until the Secretary of Labor shall have made the certification to the Secretary of State and the Attorney General as provided in clauses (A) or (B) of section 212 (a) (14) of the act concerning the availability of such labor in the locality of the alien's destination, or the effect of the immigration of such foreign labor on conditions of workers in the United States. The existence or the cancellation of such a certification by the Secretary of Labor shall be recognized by the consular officer only upon the basis of an official notification from the Department.

(ii) *Prearranged employment immaterial to ineligibility.* When the Secretary of Labor makes the certification referred to in subdivision (i) of this subparagraph, with respect to a particular occupation, the provisions of section 212 (a) (14) of the act shall apply to an immigrant who is seeking to enter the United States for the purpose of performing skilled or unskilled labor, even if such immigrant has no offer, promise, contract of employment, or any other form of pre-arranged employment in such occupation, unless such alien falls within one of the exempt categories specified in subdivision (iii) of this subparagraph.

(iii) *Exemptions.* Notwithstanding the fact that a consular officer has been officially notified of a determination and certification by the Secretary of Labor, as referred to in subdivision (i) of this subparagraph, the provisions of section 212 (a) (14) of the act shall have no application to the following classes of immigrants:

(*a*) Parents, spouses, or sons and daughters regardless of age or marital status, of United States citizens;

(*b*) Parents, spouses, or children of aliens lawfully admitted to the United States for permanent residence;

(c) Brothers or sisters of United States citizens;

(d) Immigrants whose services are determined by the Attorney General to be needed urgently in the United States because of the high education, technical training, specialized experience, or exceptional ability of such immigrants, and to be substantially beneficial prospectively to the national economy, cultural interests, or welfare of the United States;

(e) Aliens classifiable as nonquota immigrants under the provisions of sections 101 (a) (27) (B), (F), and (G) of the act.

(15) *Public charges.* (i) Any conclusion that an immigrant is ineligible to receive a visa under the provisions of section 212 (a) (15) of the act shall be predicated upon the existence of facts or circumstances which indicate a reasonable probability that the immigrant will become a charge upon the public after entry into the United States.

(ii) A petition approved under the provisions of section 205 of the act shall have no bearing on the question of whether the beneficiary thereof will become a public charge after his arrival in the United States.

(iii) An alien within the purview of section 212 (a) (15) of the act may be issued an immigrant visa, if otherwise qualified therefor, upon receipt of notice by the consular officer from the Department of the giving of a bond or undertaking, as provided in section 221 (g) of the act.

(16) *Aliens excluded and deported.* An alien who was excluded and deported from the United States within the meaning of section 212 (a) (16) of the act shall be required to obtain permission from the Attorney General to reapply for admission if he applies for a visa within one year from the date of his deportation.

(17) *Aliens arrested and deported or removed from the United States.* (i) An alien who was arrested and deported from the United States, or who was removed from the United States within the meaning of section 212 (a) (17) of the act shall be required to obtain permission from the Attorney General to reapply for admission into the United States, regardless of the period of time which may have elapsed since his deportation or removal.

(ii) No alien who is required to obtain permission from the Attorney General to reapply for admission, as provided in sections 212 (a) (16) and (17) of the act, shall be considered eligible to receive an immigrant visa until such alien shall have obtained the necessary permission to reapply for admission, and shall have been found to be otherwise eligible to receive an immigrant visa under the act and the regulations contained in this part.

(18) *Stowaways.* [Reserved]

(19) *Fraud and misrepresentation.* (i) An alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation by fraud or by willfully misrepresenting a material fact for the purpose of gaining admission into the United States, regardless of whether such fraud or misrepresentation occurred before or after December 24, 1952, shall be ineligible to receive an immigrant visa under the provisions of section 212 (a) (19) of the act: *Provided,* That the provisions of this subdivision shall not be applicable in the case of a bona fide refugee if such fraud or misrepresentation was committed in connection with the alien's entry into, or sojourn in, a foreign country and consisted of obtaining travel documents or of misrepresenting his place of birth, and the refugee was in fear of being repatriated to his former homeland if he had disclosed the facts in his case: *Provided further,* That such fraud or misrepresentation was not committed for the purpose of evading the quota restrictions of the United States immigration laws, or investigation of the alien's record at the place of his former residence or elsewhere in connection with an application for a United States visa. The fact that an alien may be or may have been a bona fide refugee shall not be considered as sufficient in itself to remove the alien from any excludable class.

(ii) Subject to the conditions stated in subdivision (i) of this subparagraph, an alien who, upon review of his case, is found by the consular officer to have made a willful misrepresentation within the meaning of section 10 of the Displaced Persons Act of 1948, as amended (62 Stat. 1013, 64 Stat. 225; 50 App. U. S. C. 1950), for the purpose of gaining admission into the United States as an eligible displaced person, or to have made a material misrepresentation within the meaning of section 11 (e) of the Refugee Relief Act of 1953, as amended (67 Stat. 405, 8 U. S. C. 1182) for the purpose of gaining admission into the United States as an alien eligible thereunder, shall be considered ineligible to receive an immigrant visa under the provisions of section 212 (a) (19) of the act.

(20) *Immigrant documentary requirements.* [Reserved]

(21) *Noncompliance with section 203 of the act.* [Reserved]

(22) *Ineligibility to citizenship.* [Reserved]

(23) *Illicit traffic in narcotic drugs.* [Reserved]

(24) *Aliens arriving in foreign contiguous territory or adjacent islands on nonsignatory or noncomplying transportation lines.* The provisions of section 212 (a) (24) of the act shall not be applicable to the following classes of immigrants:

(i) Aliens who are described in section 101 (a) (27) (B) of the act;

(ii) Aliens who are native-born citizens of countries enumerated in section 101 (a) (27) (C) of the act;

(iii) Aliens who, prior to December 24, 1952, arrived in one of the adjacent islands from which they are seeking to enter the United States;

(iv) Aliens who are natives of adjacent islands or foreign contiguous territory and who are seeking to enter the United States directly from an adjacent island or from foreign contiguous territory;

(v) Aliens who proceeded from one adjacent island or foreign contiguous territory to another by signatory carrier and who are seeking to enter the United States from the last island or territory, regardless of the method by which they first entered an adjacent island or foreign contiguous territory;

(vi) Aliens who proceeded from the United States by nonsignatory carrier to adjacent islands or foreign contiguous territory from which they seek to reenter the United States: *Provided,* That such aliens, as of the time of their last entry into the United States, would not have been ineligible to receive an immigrant visa under the provisions of section 212 (a) (24) of the act.

(25) *Illiterates.* [Reserved]

(26) *Nonimmigrant documentary requirements.* [Reserved]

(27) *Activities prejudicial to the public interest, or endangering the welfare, safety or security of the United States.* [Reserved]

(28) *Other subversive classes*—(i) *Members or affiliates.* The provisions of section 212 (a) (28) of the act shall be considered to relate to the ineligibility of aliens to receive visas because of their present or former voluntary membership in, or affiliation with, the classes described therein, including voluntary membership in, or affiliation with, the proscribed parties, organization, and groups as specified therein, regardless of the purpose of such aliens in coming to the United States.

(a) The term "affiliate", as used in section 212 (a) (28) of the act with reference to an organization, means an organization substantially directed, dominated, or controlled by one of the parties within the statutory proscription, which is or was used or operated by such party to help maintain its control over the country, or to help disseminate its economic and governmental doctrines or ideology;

(b) Service, whether voluntary or not, in the armed forces of any country shall not be regarded, of itself, as constituting or establishing an alien's membership in, or affiliation with, any proscribed party or organization, and shall not, of itself, constitute a ground of ineligibility to receive a visa;

(c) Voluntary service in a political capacity, such as a political commissar with the armed forces of any country, shall constitute affiliation with the political party or organization in power at the time of such service;

(d) Membership or affiliation, whether voluntary or not, which ended before an alien reached his sixteenth birthday shall not constitute a ground of ineligibility to receive a visa. If an alien continues or continued his membership or affiliation beyond his sixteenth birthday, the question whether his membership or affiliation after his sixteenth birthday is or was voluntary shall be determined as in the case of any other alien. In that connection, the facts relating to his activities only after his sixteenth birthday may be considered in determining whether the continuation of his membership or affiliation is or was voluntary;

(e) The term "operation of law", as used in section 212 (a) (28) (I) of the act, shall include any case wherein the alien without his acquiescence automatically becomes or became a member or affiliate of a proscribed party or organization by official act, proclamation, order, edict, or decree.

(ii) *Totalitarianism.* In accordance with the definition of "totalitarian party" contained in section 101 (a) (37) of the act, former or present voluntary members of, or aliens who were, or are, voluntarily affiliated with a non-communist party, organization, or group, or of any section, subsidiary, branch, affiliate or subdivision thereof, which during the time of its existence did not or does not advocate the establishment in the United States of a totalitarian dictatorship, shall not be considered ineligible under the provisions of section 212 (a) (28) of the act to receive visas, unless such aliens are known or believed by the consular officer to advocate, or to have advocated, personally, the establishment in the United States of a totalitarian dictatorship or totalitarianism, as defined in the act. Aliens who are, or have been, voluntary members of, or voluntarily affiliated with, the Communist party, or any of its sections, subsidiaries, branches, affiliates, or subdivisions, in any country, shall be considered, as specifically declared by the act, to be ineligible to receive visas, except as provided in subdivision (iii) of this subparagraph. If any other party is found to be a "totalitarian party", as defined in section 101 (a) (37) of the act, former or present voluntary membership in or affiliation with such party, or any of its sections, subsidiaries, branches, affiliates, or subdivisions, shall render an alien ineligible to receive a visa, except as provided in subdivision (iii) of this subparagraph.

(iii) *Defectors.* The term "defector" includes an alien who was a voluntary member of, or was voluntarily affiliated with, a proscribed party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, which exists, as well as a proscribed party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, which no longer exists but which did exist within the period of the last 5 years prior to the date of the application for a visa. The five-year period of defection required by the provisions of section 212 (a) (28) (I) (ii) of the act shall be considered as having begun to run from the established date of an alien's cessation of voluntary membership or affiliation or from the date such party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, ceased or ceases to exist. The words "actively opposed", as used in section 212 (a) (28) (I) (ii) of the act, shall be considered as embracing speeches, writings, and other overt or covert activities, during a period of at least 5 years prior to the application for a visa, in opposition to the doctrine, program, principles, and ideology of the party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, of which the alien was formerly a member or affiliate. An alien shall not be required, except in questionable circumstances, to show that he has actively opposed the doctrine, program, principles, and ideology of a proscribed party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof during the time it did not exist. However, such alien shall be required to show that during the period of non-existence of the party or organization, or the section, subsidiary, branch, or affiliate or subdivision thereof, he did not personally advocate the doctrine, program, principles, and ideology of such party or organization, or of the section, subsidiary, branch, or affiliate or subdivision thereof, within the meaning of the act.

(iv) *Public interest with regard to visas.* Consular officers shall maintain a coordinated and uniform interpretation and appraisal of what constitutes the public interest in issuing or refusing visas to defectors. Such coordination and uniformity shall be accomplished by a reference of the consular officer's opinion to the Secretary of State for possible consultation with the Attorney General.

(29) *Activities relating to espionage, sabotage, public disorder, or other subversive activity.* [Reserved]

(30) *Alien accompanying another alien ordered excluded and deported.* [Reserved]

(31) *Alien contributing to illegal entry.* [Reserved]

(b) *Failure of application to comply with act.* An immigrant's visa application shall be considered as failing to comply with the provisions of the act if:

(1) The applicant fails to furnish the information to be included in such application as required by the act and the regulations contained in this part.

(2) Such application contains a false or incorrect statement.

(3) Such application is not supported by the necessary documents required under the provisions of the act or the regulations contained in this part.

(4) The applicant refuses to be fingerprinted as required by the act.

(5) The necessary fee is not paid for such application or for the immigrant visa.

(6) The alien fails to swear to, or affirm, the application before the consular officer.

(7) The visa application otherwise fails to meet the specific requirements of the act for reasons for which the alien is responsible.

(c) *Former exchange visitors.* (1) No alien who was admitted into the United States subsequent to June 4, 1956, as an exchange visitor, or who otherwise acquired the status of an exchange visitor subsequent to June 4, 1956, including any alien granted an extension of the period of his temporary admission subsequent to the effective date of this regulation, shall be eligible to apply for and receive an immigrant visa notwithstanding the provisions of section 203 (b), (c), or (d) of the act, or the provisions of § 42.25 unless (i) the consular officer is satisfied that such alien has resided and been physically present abroad for an aggregate of at least two years since his departure from the United States following the termination of his exchange-visitor status in a country or countries cooperating in the exchange-visitor program, or (ii) the requirements of this subparagraph are waived as provided in section 201 (b) of the United States Information and Educational Exchange Act of 1948, as amended. (See § 41.102 of this chapter in cases of former exchange visitors who apply for nonimmigrant "H" visas.)

(2) Notwithstanding the provisions of subparagraph (1) of this paragraph, the requirement of a two-year residence and physical presence abroad shall not apply in the case of an alien who was in the United States as an exchange visitor on or before June 4, 1956, who proceeded abroad temporarily on a personal visit or for reasons related to his exchange-visitor program, and who was readmitted into the United States subsequent to June 4, 1956, for the remainder of the period of authorized stay granted prior to the effective date of this regulation to continue his participation in the exchange-visitor program with which he was connected at the time of his departure from the United States.

REFUSAL AND REVOCATION OF IMMIGRANT VISAS

§ 42.43 *Procedure in refusing immigrant visas.* (a) No immigrant visa, quota or nonquota, shall be issued to an alien if the consular officer is prohibited under the provisions of section 221 (g) of the act, from issuing a visa to such alien.

(b) When an immigrant visa is refused, a memorandum of refusal shall be prepared on Form 290 and retained in the appropriate consular file. The action of refusing an immigrant visa shall be reviewed by the consular officer in charge of visa work at the post, and if he concurs in the refusal he shall countersign the memorandum of refusal. If the consular officer in charge of visa work or the principal officer at the post does not concur in the refusal, he shall refer the case to the Department for an advisory opinion.

(c) If upon preliminary examination and after being informed of the consular officer's determination of his ineligibility to receive a visa an applicant decides not to execute a formal visa application, such a circumstance shall, for the purposes of this part, constitute an informal refusal of an immigrant visa. If an applicant has executed a formal application for an immigrant visa on Form 256 and has paid the application fee, a determination by the consular officer of the applicant's ineligibility to receive a visa shall, for the purposes of this part, constitute a formal refusal of an immigrant visa.

(d) In formally refusing an immigrant visa the consular officer shall write or stamp diagonally across the visa side of Form 256a and Form 256b in red ink the words "Visa refused under authority of _____" (insert specific provision or provisions of law or regulation on which refusal is based). This notation shall be signed and dated by the consular officer refusing the visa. The application fee stamp shall be mutilated. Form 256a shall be delivered to the alien and Form 256b shall be retained in the consular file. The original of any supporting document submitted by the alien with his application may be returned to him if not required to be attached to Form 256.

§ 42.44 *Revocation of immigrant visas*—(a) *Grounds for revocation.* Consular officers are authorized to revoke an

immigrant visa under the following circumstances:

(1) The consular officer knows, or after investigation is satisfied, that the visa was procured by fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means; or

(2) The consular officer obtains information establishing the alien was otherwise ineligible to receive the particular visa at the time it was issued.

(b) *Notice of revocation.* (1) Notice of revocation shall, if practicable, be given to the alien at his last known address prior to his departure for the United States. Whenever circumstances permit, an alien shall be given an opportunity to show why he believes revocation to be, or to have been, unwarranted.

(2) Notice of revocation shall be given to the master, commanding officer, agent, owner, charterer, or consignee of the carrier or transportation line on which the alien is known or believed to intend to travel to the United States.

(c) *Report of revocation.* A full report concerning the revocation of an immigrant visa shall be communicated to the Department for transmission to the Attorney General. A copy of such report shall be sent to the consular office which issued the visa if the revocation is effected by any other consular office upon its own initiative, upon instruction of the issuing office, or upon instructions from the Department. If it is not practicable to give the alien notice of revocation prior to his departure for the United States, the full report shall explain the circumstances and shall be submitted promptly to the Department for transmission to the Attorney General.

(d) *Surrender of revoked visa.* Upon receiving notice of revocation of his immigrant visa, the alien shall be requested to surrender Form 256a to the consular office indicated in the notice, for cancellation of the visa. The word "revoked" shall be written plainly on the visa by the consular officer, who shall sign and date such notation. Appropriate notation of the action taken, including a statement of the reason therefor, shall be made on Form 256b or on an appended memorandum. Any notation in the alien's passport concerning the issuance of the visa shall be cancelled.

(e) *Disposition of revoked visa quota number.* A quota number which has been used in issuing an immigrant visa may not be used again in issuing an immigrant visa to another alien, and such number need not be returned to the Department even if the immigrant visa is revoked, lost, stolen, destroyed, or expires without being used.

(Sec. 221, 66 Stat. 192; 8 U. S. C. 1201)

§ 42.45 *Disposition of supporting documents.* (a) Documents furnished in support of an application for an immigrant visa, other than those required to be permanently attached to Form 256, may, in the discretion of the consular officer, be returned to the person furnishing them. An alien shall not be given documents of a personal or confidential nature furnished to the consular officer directly by the alien's sponsor or other person, but such documents may be returned to the person furnishing them if they are irreplaceable. If such documents are returned, the consular officer shall prepare and attach to Form 256b a memorandum briefly summarizing the contents of the documents and the circumstances of their return.

(b) *Furnishing visa records for court proceedings.* Upon receipt by a consular officer of a request to furnish information from a visa file or record for use in court proceedings, as contemplated in section 222 (f) of the act, the consular officer shall submit such information with a full report to the Department.

(c) *Visa revoked, mutilated, or expired.* An immigrant visa which has expired, or which has been revoked or mutilated, shall, whenever practicable, be taken up, endorsed with an appropriate notation, and filed with the Form 256b at the consular office where the visa was originally issued. In the event such a visa is taken up at an office other than the issuing office, it shall be forwarded to such issuing office.

§ 42.46 *Refund of immigrant visa fee.* The fee of twenty dollars ($20.00) collected for the issuance of an immigrant visa shall not be refunded without specific authorization from the Department. In requesting such authorization the consular officer shall state in his communication the basis for the proposed refund, indicating clearly whether the visa was issued through some fault of the applicant or of the consular officer.

VALIDITY AND REVALIDATION

§ 42.47 *Validity of immigrant visa.* (a) The period of validity of an immigrant visa, quota or nonquota, shall not exceed four months, beginning with the date of issuance.

(b) If the visa was originally issued with a period of validity of less than four months, such period may be extended up to but not exceeding four months from the date of issuance of the visa. If an immigrant applies for an extension of the period of validity of his visa at a consular office other than the issuing office, the consular officer shall, unless he is satisfied beyond any doubt that the alien is eligible for the extension, communicate with the issuing office to ascertain if any objection is perceived to such extension. In extending the period of validity of an immigrant visa, the consular officer shall make appropriate notation of the new expiration date of the visa, affix his signature, indicate his title, and impress the seal of his office thereon.

(c) No fee shall be charged for extending the period of validity of an immigrant visa.

(d) An alien who is returning to Hawaii from a temporary visit abroad, and who (1) establishes that he entered Hawaii without an immigration visa between May 1, 1934, and July 3, 1946, inclusive, pursuant to the last sentence of section 8 (a) (1) of the act of March 24, 1934, as amended (48 Stat. 456), and that he was on the date of such entry a citizen of the Philippine Islands, or (2) establishes that he was admitted to Hawaii as a national of the United States, shall be considered classifiable as a nonquota immigrant under the provisions of section 101 (a) (27) (B) of the act, and, if otherwise qualified, shall be issued a nonquota immigrant visa limited in validity to application for admission only to Hawaii. *Provided,* That this limitation shall not apply in the case of an alien who is within a class declared to be nonquota immigrants under the provisions of section 101 (a) (27) of the act, other than subparagraph (C) thereof, and other than subparagraph (B) thereof in the case of an alien admitted to Hawaii only and subject to the restrictions prescribed in section 212 (d) (7) of the act. In any case in which a visa is limited in validity to application for admission only to Hawaii, such limitation shall be noted conspicuously on the face of the visa.

(Sec. 221, 66 Stat. 191; 8 U. S. C. 1201)

§ 42.48 *Issuance of new or replace immigrant visa—*(a) *Nonquota immigrant visa.* (1) A nonquota immigrant who establishes that his visa has been lost or mutilated, or has expired, may be issued a new nonquota immigrant visa at the same or any other consular office upon payment of the statutory application and visa fees: *Provided,* That the immigrant is again found to be qualified to receive such a visa under the immigration laws and regulations.

(2) Prior to issuing to an alien a new nonquota immigrant visa at a consular office other than that which issued the original visa, the consular officer shall communicate with the original visa-issuing office to ascertain if any reason is known why a new visa should not be issued.

(3) In the event a new nonquota immigrant visa is issued as provided in subparagraph (1) of this paragraph, such visa shall be given a new number in the series of nonquota immigrant visas issued at the consular office if that office numbers nonquota visas.

(b) *Replace quota immigrant visa.* (1) A quota immigrant who establishes that his visa has been lost or mutilated, or that he was otherwise unable to use it during the period of its validity because of reasons beyond his control and for which he was not responsible, may be issued a replace quota immigrant visa under the original quota number during the same quota year in which the original visa was issued, upon payment anew of the statutory application and visa fees: *Provided,* That the immigrant is otherwise qualified to receive such a visa under the immigration laws and regulations and the consular officer is in possession of the duplicate signed consular-file copy of the original visa.

(2) Prior to issuing a replace quota immigrant visa to an alien whose original immigrant visa was issued at some other consular office, the consular officer shall communicate with such other office to ascertain if any reason is known why a replace visa should not be issued.

(3) In issuing a replace quota immigrant visa, as provided in subparagraph (1) of this paragraph, the word "REPLACE" shall be inserted on Forms 256a and 256b before the word "IMMIGRANT" in the title of the visa.

(4) An immigration visa issued before December 24, 1952 may not be replaced on or after that date, but the immigrant may be issued an immigrant visa under the act and the regulations contained in this part, under the same quota number before June 30, 1953, upon payment of the new application and visa fees.

(Sec. 221, 66 Stat. 191; 8 U. S. C. 1201)

TRANSFER OF PENDING CASES

§ 42.49 *Transfer of cases.* (a) The case of an applicant for an immigrant visa which is pending at one consular office may be transferred to another consular office at the applicant's request and risk if (1) there is reasonable justification for the transfer of the applicant's file, and (2) the receiving consular office has no reason to believe that the alien will not appear personally to apply for a visa.

(b) The transferring office shall include in the transfer of a case to another office, or shall forward as soon as possible thereafter, a report of clearance or nonclearance concerning the alien in the district of his former residence.

(c) The transfer of a case shall include any authorization to grant nonquota or preference quota status based upon an approved petition, the alien's registration priority, and all documents in the alien's file.

(d) In no case shall a quota number be transferred from one consular office to another. A quota number allotted by the Department for use in issuing an immigrant visa to an alien whose case is being transferred to another office shall be returned to the Department.

PART 44—DOCUMENTATION OF IMMIGRANTS UNDER SECTION 15 OF THE ACT OF SEPTEMBER 11, 1957

Sec.

44.1 Definitions.
44.2 Classes of applicants under section 15 of the act of September 11, 1957.
44.3 Procedure in applying for visa.
44.4 Registration priority for issuance of visas.
44.5 Ineligibility to receive visas.
44.6 Procedure in issuing visas.

AUTHORITY: §§ 44.1 to 44.6 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104. Interpret or apply sec. 15, 71 Stat. 639; 50 U. S. C. App. 1971a note.

§ 44.1 *Definitions.* The following definitions, in addition to the pertinent definitions contained in section 15 of the act of September 11, 1957, section 101 of the Immigration and Nationality Act and Part 42 of this chapter, shall be applicable to this part:

(a) "Act" means the act of September 11, 1957 (Public Law 85–316, 71 Stat. 639).

(b) "Applicant" means an alien who seeks to enter the United States under the provisions of section 15 of the act of September 11, 1957.

(c) "Ethnic origin" as used in sections 2 (c) and 4 (a) (9) and (10) of the Refugee Relief Act of 1953, as amended, shall be determined on the basis of a combination of two or more of the following factors specified in subparagraphs (1) to (5), inclusive, of this paragraph, which combination shall include the factor specified in either subparagraph (1) or (2) of this paragraph:

(1) Applicant, other than a German expellee, emigrated from or is indigenous to the country of ethnic origin claimed;

(2) Antecedents emigrated from or were indigenous to the country of ethnic origin claimed;

(3) Uses the language or dialect of the country of ethnic origin claimed as the common language of the home or for social communication;

(4) Resided in the country of birth, if other than the country of ethnic origin, in an area predominantly populated by persons of ethnic stock or origin claimed who, as distinguished from the surrounding population, retained the social characteristics and group homogeneity attributable to such persons;

(5) Evidences common attributes or social characteristics of the ethnic group to which he ascribes his origin and with which he resided in the country of his birth, if other than the country of ethnic origin, such as educational institutions attended, church affiliation, social and political associations and affiliations, name, business or commercial practices and associates and secondary language or dialect.

(d) "Firmly resettled" means the status of an alien, who at any time after the occurrence of events which form the basis of his claim to a refugee status, has been reestablished in a home under circumstances which indicate his intention and assure him a reasonable opportunity of remaining permanently. Nothing in this paragraph shall be construed as an exclusive definition of the term "firmly resettled" inasmuch as the facts and circumstances in the individual case must necessarily determine the question of firm resettlement.

(e) "Has fled or shall flee" as used in section 15 (c) (1) of the act of September 11, 1957, shall be deemed to include cases of forceful removal when the alien concerned declines to return to the area from which he was removed because of persecution or fear of persecution. The persecution or fear of persecution which caused the alien to flee from his usual place of abode need not be the same persecution which causes his inability to return.

(f) "Refugee" means any person in a country or area which is neither Communist nor Communist-dominated, who because of persecution, fear of persecution, natural calamity or military operations is out of his usual place of abode and unable to return thereto, who has not been firmly resettled and who is in urgent need of assistance for the essentials of life or for transportation.

§ 44.2 *Classes of applicants under section 15 of the act of September 11, 1957*—(a) *German expellees.* This class shall consist of refugees of German ethnic origin who (1) were born in and were forcibly removed from or forced to flee from Albania, Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, Union of Soviet Socialist Republics, Yugoslavia, or areas provisionally under the administration or control or domination of any such countries, except the Soviet Zone of military occupation of Germany, and (2) are residing in the area of the German Federal Republic, western sectors of Berlin or in Austria at the time of application for a visa. Zone "B" of Trieste shall be considered an area provisionally under the administration of Yugoslavia. An immigrant visa issued to an alien within the class described in this paragraph shall be issued only in the German Federal Republic or in the western sector of Berlin or in Austria, and shall bear the symbol K–8 in the space provided for nonquota classification.

(b) *Netherlands refugees.* This class shall consist of refugees who: (1) Are of Dutch ethnic origin, and (2) resided on August 7, 1953, in continental Netherlands. An immigrant visa issued to an alien within the class described in this paragraph shall be issued only in continental Netherlands, and shall bear the symbol K–9 in the space provided for nonquota classification.

(c) *Netherlands relatives.* This class shall consist of persons who: (1) Are of Dutch ethnic origin, (2) resided on August 7, 1953, in continental Netherlands, and (3) qualify under any of the preferences specified in paragraph (2), (3), or (4) of section 203 (a) of the Immigration and Nationality Act. A prerequisite to qualification under any of such preferences shall be the approval by the Attorney General of a petition provided for in section 205 of the Immigration and Nationality Act. An immigrant visa issued to an alien within the class described in this paragraph shall be issued only in continental Netherlands, and shall bear the symbol K–9 in the space provided for nonquota classification.

(d) *Refugee-escapees.* This class shall consist of aliens who, because of persecution or fear of persecution on account of race, religion, or political opinion have fled or shall flee (1) from any Communist, Communist-dominated, or Communist-occupied area, or (2) from any country within the general area of the Middle East as defined in section 15 (c) (2) of the act, and who cannot return to such area, or to such country, on account of race, religion, or political opinion. An immigrant visa issued to an alien within the class described in this paragraph may be issued at any United States consular office which is authorized to issue immigrant visas, and shall bear the symbol K–10 in the space provided for nonquota classification.

(e) *Spouses and unmarried minor sons and daughters.* This class shall consist of the accompanying spouses and the accompanying unmarried sons or daughters under twenty-one years of age, including stepsons or stepdaughters and sons or daughters adopted prior to July 1, 1957, of persons described in paragraphs (a) to (d), inclusive, of this section: *Provided,* That a quota number is not available to such alien at the time of his application for a visa. A spouse, son, or daughter shall be deemed to be accompanying the principal applicant if such spouse, son, or daughter is issued an immigrant visa within four months

of the date of issuance of an immigrant visa to the principal applicant. An immigrant visa issued to an alien within the class described in this paragraph shall be issued only in the country or area in which the principal applicant is, or could be, issued an immigrant visa under the act, and shall bear the same symbol which is or was used in issuing an immigrant visa to the principal applicant, in the space provided for nonquota classification. In any case where the principal applicant precedes his family to the United States, or in which the family unit is not traveling together, the name of the principal applicant shall be inserted in the immigrant visa issued to the spouse, son, or daughter.

§ 44.3 *Procedure in applying for visa*—(a) *Applicants for refugee-escapee classification.* In support of an application for refugee-escapee classification the alien shall submit a statement furnishing biographic data and describing the circumstances of his flight, escape, departure, or forceful removal from a Communist-dominated, or Communist-occupied area or from the general area of the Middle East, the hardship and persecution suffered, and a summary of his educational attainments, professional or technical abilities, and any manual skills or vocational experience which would tend to make such applicant of maximum value to the United States. This statement may be submitted by the applicant directly to the consular officer or in the applicant's behalf by a representative of the United States Escapee Program or any reputable welfare or refugee agency, and shall be supported by character references from interested persons bearing upon the applicant's attachment to the principles of constitutional democratic government.

(b) *Form and place of application.* Every applicant for an immigrant visa under section 15 of the act shall make application therefor on Form FS–256 in accordance with the provisions of section 222 of the Immigration and Nationality Act and § 42.30 of this chapter except as otherwise provided in § 44.2 (a), (b), and (c) with respect to the place of application.

§ 44.4 *Registration priority for issuance of visas*—(a) *Registration priority of applicants other than refugee-escapees.* Applicants desiring to qualify under the provisions of § 44.2 (a), (b), or (c) who were previously registered on quota waiting lists, including the beneficiaries of approved petitions, shall have the burden of coming forward to claim the benefits of the act. The names of such applicants who have not previously been registered on a quota waiting list, or in whose cases an approved petition for preference status has not been received at the consular office, shall be entered on administrative waiting lists in the chronological order in which they apply for registration. Every applicant within the class described in § 44.2 (a), (b), or (c) shall be entitled to a registration priority as determined by (1) the date indicated by his registration on a quota waiting list for the purposes of the Immigration and Nationality Act, (2) the date on which a verified assurance of employment, housing, and against becoming a public charge was filed with the Department of State in his behalf under the Refugee Relief Act of 1953, as amended, (3) the date on which an approved petition was filed with the Attorney General in his behalf, or (4) the date he actually applied for registration under the act, whichever date is earliest.

(b) *Registration priority of refugee-escapees.* Applicants desiring to qualify as refugee-escapees under the provisions of § 44.2 (d) shall be accorded a registration priority as of the date of approval of their classification as a refugee-escapee by the Department.

§ 44.5 *Ineligibility to receive visas.* An applicant shall be considered ineligible to receive a special nonquota immigrant visa provided for in section 15 of the act on the following grounds:

(a) He is not classifiable within any of the classes described in § 44.2 (a), (b), (c), (d), or (e);

(b) He is ineligible to receive an immigrant visa under the applicable provisions of the Immigration and Nationality Act and the regulations contained in Part 42 of this chapter;

(c) A quota number is available at the time of his visa application for the issuance of a quota immigrant visa to such applicant.

§ 44.6 *Procedure in issuing visas.* The issuance of special nonquota immigrant visas under section 15 of the act shall be in accordance with the provisions of section 221 of the Immigration and Nationality Act and § 42.41 of this chapter. An immigrant visa issued under the act shall bear a number assigned by the Department for use in issuing such visa, and shall also bear the petition number and approval date of the petition in the case of an applicant eligible under § 44.2 (c).

PART 46—CONTROL OF ALIENS DEPARTING FROM THE UNITED STATES

Sec.

46.1 Definitions.
46.2 Authority of departure-control officer to prevent alien's departure from the United States.
46.3 Aliens whose departure is deemed prejudicial to the interests of the United States.
46.4 Procedure in case of alien prevented from departing from the United States.
46.5 Hearing procedure before special inquiry officer.
46.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.
46.7 Instructions from the Secretary of State required in certain cases.

AUTHORITY: §§ 46.1 to 46.7 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104. Interpret or apply sec. 215, 66 Stat. 190; 8 U. S. C. 1185.

§ 46.1 *Definitions.* For the purposes of this part:

(a) The term "alien" means any person who is not a citizen or national of the United States.

(b) The term "Commissioner" means the Commissioner of Immigration and Naturalization.

(c) The term "regional commissioner" means an officer of the Immigration and Naturalization Service duly appointed or designated as a regional commissioner, or an officer who has been designated to act as a regional commissioner.

(d) The term "district director" means an officer of the Immigration and Naturalization Service duly appointed or designated as a district director, or an officer who has been designated to act as a district director.

(e) The term "United States" means the States, the District of Columbia, Alaska, the Canal Zone, Hawaii, Puerto Rico, the Virgin Islands, Guam, American Samoa, Swains Island, the Trust Territory of the Pacific Islands, and all other territory and waters, continental and insular, subject to the jurisdiction of the United States.

(f) The term "continental United States" means the several States and the District of Columbia.

(g) The term "geographical part of the United States" means (1) the continental United States, (2) Alaska, (3) Hawaii, (4) Puerto Rico, (5) the Virgin Islands, (6) Guam, (7) the Canal Zone, (8) American Samoa, (9) Swains Island, or (10) the Trust Territory of the Pacific Islands.

(h) The term "depart from the United States" means depart by land, water, or air (1) from the United States for any foreign place, or (2) from one geographical part of the United States for a separate geographical part of the United States: *Provided,* That a trip or journey upon a public ferry, passenger vessel sailing coastwise on a fixed schedule, excursion vessel, or aircraft, having both termini in the continental United States or in any one of the other geographical parts of the United States and not touching any territory or waters under the jurisdiction or control of a foreign power, shall not be deemed a departure from the United States.

(i) The term "departure-control officer" means any immigration officer as defined in 8 CFR 1.1 (a) (11), who is designated to supervise the departure of aliens, or any officer or employee of the United States designated by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of an outlying possession of the United States, to supervise the departure of aliens.

(j) The term "port of departure" means a port in the continental United States, Alaska, Guam, Hawaii, Puerto Rico or the Virgin Islands, designated as a port of entry by the Attorney General or by the Commissioner, or in exceptional circumstances such other place as the departure-control officer may, in his discretion, designate in an individual case, or a port in America Samoa, Swains Island, the Canal Zone, or the Trust Territory of the Pacific Islands, designated as a port of entry by the chief executive officer thereof.

(k) The term "special inquiry officer" shall have the meaning ascribed thereto in section 101 (b) (4) of the Immigration and Nationality Act.

§ 46.2 *Authority of departure-control officer to prevent alien's departure from the United States.* (a) No alien shall

depart, or attempt to depart, from the United States if his departure would be prejudicial to the interests of the United States under the provisions of § 46.3. Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of § 46.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with a written temporary order directing him not to depart, or attempt to depart, from the United States until notified of the revocation of the order.

(b) The written order temporarily preventing an alien, other than an enemy alien, from departing from the United States shall become final 15 days after the date of service thereof upon the alien, unless prior thereto the alien requests a hearing as hereinafter provided. At such time as the alien is served with an order temporarily preventing his departure from the United States, he shall be notified in writing concerning the provisions of this paragraph, and shall be advised of his right to request a hearing if entitled thereto under § 46.4. In the case of an enemy alien, the written order preventing departure shall become final on the date of its service upon the alien.

(c) Any alien who seeks to depart from the United States may be required, in the discretion of the departure-control officer, to be examined under oath and to submit for official inspection all documents, articles, and other property in his possession which are being removed from the United States upon, or in connection with, the alien's departure. The departure-control officer shall temporarily prevent the departure of any alien who refuses to submit to such examination or inspection, and may, if necessary to the enforcement of this requirement, take possession of the alien's passport or other travel document.

§ 46.3 *Aliens whose departure is deemed prejudicial to the interests of the United States.* The departure from the United States of any alien within one or more of the following categories shall be deemed prejudicial to the interests of the United States:

(a) Any alien who is in possession of, and who is believed likely to disclose to unauthorized persons, information concerning the plans, preparations, equipment, or establishments for the national defense and security of the United States.

(b) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities of any kind designed to obstruct, impede, retard, delay or counteract the effectiveness of the national defense of the United States or the measures adopted by the United States or the United Nations for the defense of any other country.

(c) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities which would obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or action taken by any country cooperating with the United States in measures adopted to promote the peace, defense, or safety of the United States or such other country.

(d) Any alien who seeks to depart from the United States for the purpose of organizing, directing, or participating in any rebellion, insurrection, or violent uprising in or against the United States or a country allied with the United States, or of waging war against the United States or its allies, or of destroying, or depriving the United States of sources of supplies or materials vital to the national defense of the United States, or to the effectiveness of the measures adopted by the United States for its defense, or for the defense of any other country allied with the United States.

(e) Any alien who is subject to registration for training and service in the Armed Forces of the United States and who fails to present a Registration Certificate (SSS Form No. 2) showing that he has complied with his obligation to register under the Universal Military Training and Service Act, as amended.

(f) Any alien who is a fugitive from justice on account of an offense punishable in the United States.

(g) Any alien who is needed in the United States as a witness in, or as a party to, any criminal case under investigation or pending in a court in the United States: *Provided*, That any alien who is a witness in, or a party to, any criminal case pending in any criminal court proceeding may be permitted to depart from the United States with the consent of the appropriate prosecuting authority, unless such alien is otherwise prohibited from departing under the provisions of this part.

(h) Any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be, conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state, or local.

(i) Any alien whose technical or scientific training and knowledge might be utilized by an enemy or a potential enemy of the United States to undermine and defeat the military and defensive operations of the United States or of any nation cooperating with the United States in the interests of collective security.

(j) Any alien whose case does not fall within any of the categories described in paragraphs (a) to (i), inclusive, of this section, but which involves circumstances of a similar character rendering the alien's departure prejudicial to the interests of the United States.

§ 46.4 *Procedure in case of alien prevented from departing from the United States.* (a) Any alien, other than an enemy alien, whose departure has been temporarily prevented under the provisions of § 46.2 may, within 15 days of the service upon him of the written order temporarily preventing his departure, request a hearing before a special inquiry officer. The alien's request for a hearing shall be made in writing and shall be addressed to the district director having administrative jurisdiction over the alien's place of residence. If the alien's request for a hearing is timely made, the district director shall schedule a hearing before a special inquiry officer, and notice of such hearing shall be given to the alien on Form I–227. The notice of hearing shall, as specifically as security considerations permit, inform the alien of the nature of the case against him, shall fix the time and place of the hearing, and shall inform the alien of his right to be represented, at no expense to the Government, by counsel of his own choosing.

(b) Every alien for whom a hearing has been scheduled under paragraph (a) of this section shall be entitled (1) to appear in person before the special inquiry officer, (2) to be represented by counsel of his own choice, (3) to have the opportunity to be heard and to present evidence, (4) to cross-examine the witnesses who appear at the hearing, except that if, in the course of the examination, it appears that further examination may divulge information of a confidential or security nature, the special inquiry officer may, in his discretion, preclude further examination of the witness with respect to such matters, (5) to examine any evidence in possession of the Government which is to be considered in the disposition of the case, provided that such evidence is not of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, (6) to have the time and opportunity to produce evidence and witnesses on his own behalf, and (7) to reasonable continuances, upon request, for good cause shown.

(c) Any special inquiry officer who is assigned to conduct the hearing provided for in this section shall have the authority to: (1) administer oaths and affirmations, (2) present and receive evidence, (3) interrogate, examine, and cross-examine under oath or affirmation both the alien and witnesses, (4) rule upon all objections to the introduction of evidence or motions made during the course of the hearing, (5) take or cause depositions to be taken, (6) issue subpoenas, and (7) take any further action consistent with applicable provisions of law, Executive orders, proclamations, and regulations.

§ 46.5 *Hearing procedure before special inquiry officer.* (a) The hearing before the special inquiry officer shall be conducted in accordance with the following procedure:

(1) The special inquiry officer shall advise the alien of the rights and privileges accorded him under the provisions of § 46.4.

(2) The special inquiry officer shall enter of record (i) a copy of the order served upon the alien temporarily preventing his departure from the United States, and (ii) a copy of the notice of hearing furnished the alien on Form I–227.

(3) The alien shall be interrogated by the special inquiry officer as to the matters considered pertinent to the proceeding, with opportunity reserved to the alien to testify thereafter in his own behalf, if he so chooses.

(4) The special inquiry officer shall present on behalf of the Government such evidence, including the testimony

of witnesses and the certificates or written statements of Government officials or other persons, as may be necessary and available. In the event such certificates or statements are received in evidence, the alien may request and, in the discretion of the special inquiry officer, be given an opportunity to interrogate such officials or persons, by deposition or otherwise, at a time and place and in a manner fixed by the special inquiry officer: *Provided*, That when in the judgment of the special inquiry officer any evidence relative to the disposition of the case is of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, such evidence shall not be presented at the hearing but shall be taken into consideration in arriving at a decision in the case.

(5) The alien may present such additional evidence, including the testimony of witnesses, as is pertinent and available.

(b) A complete verbatim transcript of the hearing, except statements made off the record, shall be recorded. The alien shall be entitled, upon request, to the loan of a copy of the transcript, without cost, subject to reasonable conditions governing its use.

(c) Following the completion of the hearing, the special inquiry officer shall make and render a recommended decision in the case, which shall be governed by and based upon the evidence presented at the hearing and any evidence of a confidential or security nature which the Government may have in its possession. The decision of the special inquiry officer shall recommend (1) that the temporary order preventing the departure of the alien from the United States be made final, or (2) that the temporary order preventing the departure of the alien from the United States be revoked. This recommended decision of the special inquiry officer shall be made in writing and shall set forth the officer's reasons for such decision. The alien concerned shall at his request be furnished a copy of the recommended decision of the special inquiry officer, and shall be allowed a reasonable time, not to exceed 10 days, in which to submit representations with respect thereto in writing.

(d) As soon as practicable after the completion of the hearing and the rendering of a decision by the special inquiry officer, the district director shall forward the entire record of the case, including the recommended decision of the special inquiry officer and any written representations submitted by the alien, to the regional commissioner having jurisdiction over his district. After reviewing the record, the regional commissioner shall render a decision in the case, which shall be based upon the evidence in the record and on any evidence or information of a confidential or security nature which he deems pretinent. Whenever any decision is based in whole or in part on confidential or security information not included in the record, the decision shall state that such information was considered. A copy of the regional commissioner's decision shall be furnished the alien, or his attorney or representative. No administrative appeal shall lie from the regional commissioner's decision.

(e) Notwithstanding any other provision of this part, the Secretary of State, after consultation with the Attorney General, may at any time permit the departure of an individual alien or of a group of aliens from the United States if he determines that such action would be in the national interest. If the Secretary of State specifically requests the Attorney General to prevent the departure of a particular alien or of a group of aliens, the Attorney General shall not permit the departure of such alien or aliens until he has consulted with the Secretary of State.

(f) In any case arising under §§ 46.1 to 46.7, the Secretary of State shall, at his request, be kept advised, in as much detail as he may indicate is necessary, of the facts and of any actions taken or proposed.

§ 46.6 *Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.* (a) In addition to the restrictions and prohibitions imposed by the provisions of this part upon the departure of aliens from the United States, any alien who seeks to depart from the Canal Zone, the Trust Territory of the Pacific Islands, or an outlying possession of the United States shall comply with such other restrictions and prohibitions as may be imposed by regulations prescribed, with the concurrence of the Secretary of State and the Attorney General, by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or by the governor of an outlying possession of the United States, respectively. No alien shall be prevented from departing from such zone, territory, or possession without first being accorded a hearing as provided in §§ 46.4 and 46.5.

(b) The Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of any outlying possession of the United States shall have the authority to designate any employee or class of employees of the United States as hearing officers for the purpose of conducting the hearing referred to in paragraph (a) of this section. The hearing officer so designated shall exercise the same powers, duties, and functions as are conferred upon special inquiry officers under the provisions of this part. The chief executive officer of such zone, territory, or possession shall, in lieu of the regional commissioner, review the recommended decision of the hearing officer, and shall render a decision in any case referred to him, basing it on evidence in the record and on any evidence or information of a confidential or a security nature which he deems pertinent.

§ 46.7 *Instructions from the Secretary of State required in certain cases.* In the absence of appropriate instructions from the Secretary of State, departure-control officers shall not exercise the authority conferred by § 46.2 in the case of any alien who seeks to depart from the United States in the status of a nonimmigrant under section 101 (a) (15) (A) or (G) of the Immigration and Nationality Act, or in the status of a nonimmigrant under section 11 (3), 11 (4), or 11 (5) of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (61 Stat. 756): *Provided*, That in cases of extreme urgency, where the national security so requires, a departure-control officer may preliminarily exercise the authority conferred by § 46.2 pending the outcome of consultation with the Secretary of State, which shall be undertaken immediately. In all cases arising under this section, the decision of the Secretary of State shall be controlling: *Provided*, That any decision to prevent the departure of an alien shall be based upon a hearing and record as prescribed in this part.

SUBCHAPTER F—NATIONALITY AND PASSPORTS

PART 50—NATIONALITY PROCEDURES UNDER THE IMMIGRATION AND NATIONALITY ACT

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FORMAL RENUNCIATION OF NATIONALITY

AUTHORITY: §§ 50.1 and 50.2 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104.

§ 50.1 *Renunciation procedure.* Persons desiring to renounce their United States nationality under section 349 (a) (6) of the Immigration and Nationality Act (66 Stat. 268) may do so by appearing before a diplomatic or consular officer of the United States and taking an oath of renunciation of nationality of the United States in the form prescribed by the Secretary of State.

§ 50.2 *Execution and disposition of oath of renunciation.* The form shall be executed in quadruplicate. The original and one copy shall be sent to the Department, and two copies retained in the files of the office in which it was executed. After the Department of State has approved the form, it will so advise the appropriate officer of the Foreign Service, who will thereafter make a notation on the two copies retained by him that the form has been approved by the Department and showing the day of approval. A copy of such form may be furnished to the person to whom it relates upon request therefor. When submitting the form of renunciation of American nationality, it must be accompanied by the certificate of loss of American nationality. The approval of the certificate of loss of nationality will be by rubber stamp thereon which may also be taken to cover approval of the form of renunciation of nationality.

OATH OF ALLEGIANCE TAKEN BY DUAL NATIONAL TO AVOID DIVESTITURE OF UNITED STATES NATIONALITY

AUTHORITY: §§ 50.6 to 50.8 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104.

§ 50.6 *Dual nationals voluntarily seeking or claiming benefits of foreign nationality.* A person who acquired at birth the nationality of the United States and of a foreign state and who has voluntarily sought or claimed benefits of the nationality of any foreign state, as, for example, by applying for a foreign passport or identity card, or by applying for registration as a national of a foreign country, or by any other similar act, regardless of whether he is a national of such state, shall be deemed to be within the scope of section 350 (1) of the Immigration and Nationality Act (66 Stat. 269). The section is not considered applicable to a person who has sought or claimed benefits of the nationality of any foreign state in a manner which has caused loss of American nationality.

§ 50.7 *Procedure for taking oath.* A person who desires to take an oath of allegiance to the United States before a United States diplomatic or consular officer for the purpose of avoiding the loss of American nationality under section 350 (1) of the Immigration and Nationality Act (66 Stat. 269) shall execute an application for a passport or registration as an American citizen, which application shall contain an oath of allegiance in the form prescribed by the Secretary of State.

§ 50.8 *Effect of taking oath.* The oath of allegiance, when taken before a United States diplomatic or consular officer, shall be deemed sufficient to fulfill the requirement of section 350 (1) of the Immigration and Nationality Act (66 Stat. 269): *Provided,* That the person has passed the age of 22 years and has not thereafter resided continuously for three years in the foreign state of which he is a national by birth: *And provided also,* That the oath shall not be required of such a person if his foreign residence begins after he has attained the age of 60 years and he shall have had his residence in the United States for 25 years after having attained the age of 18 years.

ASSERTION BY MINOR OF CLAIM TO UNITED STATES NATIONALITY

AUTHORITY: §§ 50.9 and 50.10 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104.

§ 50.9 *Procedure for asserting claim.* A national of the United States, who, while under eighteen years of age, has expatriated himself under the provisions of section 349 (a) (2), (4), (5), or (6) of the Immigration and Nationality Act (66 Stat. 267–268) may assert his claim to United States nationality under section 351 (b) of the Immigration and Nationality Act (66 Stat. 269) within six months after attaining the age of 18 years on the form prescribed for this purpose by the Secretary of State.

§ 50.10 *Execution and disposition of form.* The form for asserting the claim to the nationality of the United States shall be executed in triplicate. The original shall be forwarded to the Department of State, a copy shall be retained in the office in which it was executed, and a copy shall be furnished to the person asserting the claim.

CRITERIA FOR DETERMINING WHETHER NATURALIZED NATIONAL COMES WITHIN SCOPE OF SECTION 354 (2)

AUTHORITY: §§ 50.11 to 50.13 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104.

§ 50.11 *Carrying on a commercial enterprise.* Under section 354 (2) (A) of the Immigration and Nationality Act (66 Stat. 271), a naturalized American national residing abroad temporarily for the purpose of engaging in a commercial enterprise which substantially and directly benefits American trade or commerce shall not lose his nationality by having a continuous residence for five years in any foreign state or states covered by section 352 (a) (2) of the Immigration and Nationality Act (66 Stat. 269). It must appear that the national has no substantial or controlling reason for residing abroad other than to engage in the commercial enterprise and that his foreign residence is temporary. Further, the character of the commercial enterprise must be such that its effect is to increase directly and substantially production, sales, inventory, or profits, or to facilitate the acquisition of raw materials, distribution of products or the extension of services of or for an American financial, commercial, or business organization having its principal place of business in the United States.

§ 50.12 *Carrying on scientific research.* (a) Under section 354 (2) (B) of the Immigration and Nationality Act (66 Stat. 271), a naturalized American national, who is temporarily residing abroad for the purpose of carrying on scientific research on behalf of a bona fide educational, research, experimental, or other institution, which institution shall be specifically accredited by the Secretary of State, and the purpose of which research is to discover, develop, or test scientific knowledge, principles, theory, apparatus, etc., for practical uses or applications which would directly and substantially benefit the interests of the United States, shall not be deemed to have lost his American nationality by having a continuous residence for five years in any foreign state or states covered by section 352 (a) (2) of the Immigration and Nationality Act (66 Stat. 269).

(b) The term "an institution accredited by the Secretary of State" means an institution which has established by evidence satisfactory to the Secretary of State that it is engaged in research which is directly and substantially beneficial to the United States. The evidence to show that the institution in which the naturalized American citizen is employed is such an organization, may be submitted when the naturalized citizen first applies for further passport facilities or for registration as an American citizen. Initially, there shall be submitted an affidavit by two principal officers of the institution setting forth complete information concerning the institution and

its activities. In the affidavit, the name of the institution, the location of its principal office and place, or places, of business and the type of organization, i. e., whether it is a sole proprietorship, partnership, or corporation, should be stated; the owners and officers should be fully identified and their nationalities stated; the names, locations, and activities of organizations and firms of which the institution is a branch, subsidiary, or affiliate, or in which there is a community of ownership, should be stated. The Secretary of State may require such additional evidence as may be deemed necessary for a determination as to whether the institution shall be accredited.

(c) After an institution has been once accredited by the Secretary of State, it will be necessary only to submit evidence to show that its character and operations have not changed in the interim from the date of such accrediting and the time at which a person may subsequently seek to claim the benefits of section 354 (2) (B) of the Immigration and Nationality Act (66 Stat. 271).

(d) Where more than one person is engaged simultaneously in essentially similar scientific research for the same institution, it will be necessary to submit the required evidence concerning the character and operations of the institution only in the case of one person. However, evidence must be submitted in each individual case to show that the person concerned is doing scientific research of the type specified in this paragraph for the accredited institution.

(e) Each case and each organization must be considered on its merits, and, on the basis thereof as submitted, officers of the Foreign Service will be advised from time to time by the Department of State of the names of the scientific research institutions which have been accredited.

§ 50.13 *Work or activities under unique or unusual circumstances.* (a) Under section 354 (2) (C) of the Immigration and Nationality Act (66 Stat. 271), a naturalized American citizen residing abroad temporarily, who under unique or unusual circumstances engages in work or activities which directly and substantially benefit the interests of the United States, shall not be deemed to have lost his nationality under section 352 (a) (2) of the Immigration and Nationality Act (66 Stat. 269).

(b) Section 354 (2) (C) would apply to a person who, with or without compensation, motivated by devotion to the United States and with intention to benefit the United States engages in work or activities of a continuing nature which enhance in a direct and substantial way the material or cultural wealth, prestige or security of the United States.

(c) It may apply to a person who apparently is abroad for a reason or purpose which ordinarily would not be of direct or substantial benefit to the United States, but who by reason of his employment, position, standing, prestige, influence or associations, is able to contribute in a direct and substantial way to the wealth, prestige or security of the United States.

(d) Each case of this character must be submitted to the Department of State and will be considered on its own merits.

CERTIFICATION OF LOSS OF UNITED STATES NATIONALITY

AUTHORITY: §§ 50.14 to 50.19 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104.

§ 50.14 *Certification by diplomatic or consular officer.* Whenever a diplomatic or consular officer of the United States has reason to believe that a person, while in a foreign country, has lost his American nationality under any provision of Chapter 3 of Title III of the Immigration and Nationality Act (66 Stat. 267), or under any provision of Chapter IV of the Nationality Act of 1940 (54 Stat. 1168), as amended, he shall certify the facts upon which such belief is based to the Department of State in writing.

§ 50.15 *Cases in which a certificate should be prepared.* The certificate should be prepared in the case of any person coming within the scope of any of the provisions of Chapter IV of the Nationality Act of 1940. The certificate should also be prepared in the case of any person coming within the scope of the provisions of Chapter 3, Title III of the Immigration and Nationality Act, except that, in the case of a national who has performed any of the acts specified in paragraphs (2), (4), (5), and (6) of section 349 (a), Chapter 3, Title III of the Immigration and Nationality Act, such certificate shall not be prepared and submitted until after he shall have attained the age of 18 years and 6 months and shall have failed to assert his claim to United States nationality in the manner prescribed by the Secretary of State, within 6 months after attaining the age of 18 years.

§ 50.16 *Affidavit of expatriated person.* When obtainable, an affidavit executed in quadruplicate by the expatriated person shall be attached to each copy of the certificate of the officer. This affidavit shall contain in substance:

(a) That the affiant has voluntarily expatriated himself by the performance of one of the acts or the fulfillment of the conditions specified in Chapter 3, Title III of the Immigration and Nationality Act (66 Stat. 267), or Chapter IV of the Nationality Act of 1940 (54 Stat. 1168);

(b) That his permanent residence in the United States, if he ever had one, has been voluntarily abandoned and that the expatriated person neither intends nor desires to resume residence in the United States in the immediate or near future;

(c) If naturalized in the United States, that the naturalization certificate is or has been surrendered voluntarily because of his expatriation; and

(d) That the affiant neither intends nor desires to preserve his allegiance to the United States but intends and desires to preserve his new allegiance, if one has been acquired.

§ 50.17 *Reference in certificate to other documents.* (a) When documents, communications, or excerpts therefrom, from competent offices or officials of foreign governments, and statements or affidavits by the persons concerned are referred to in that portion of the certificate having reference to the nature of the evidence adduced which is believed to have caused expatriation, verified copies of the documents, communications, statements, affidavits, or excerpts therefrom, shall be attached to and made a part of the certificate.

(b) When reference is made to passports or applications for passports, registration, repatriation, and similar documents, or to affidavits forming a part of an application, or to departmental communications, copies thereof shall not be attached to and made a part of the certificate unless specifically authorized by the Department of State, but the pertinent statement or statements shall be quoted in the certificate. The quotation shall be limited to the admission of the act of expatriation and no extraneous or explanatory matter should be included.

§ 50.18 *Amplification of certificate.* When preparing a certificate of expatriation, the certificate shall be amplified in appropriate cases by adding a paragraph thereto setting forth the names, places and dates of birth, and present addresses of the spouse and children, if any, of the individual concerned and whether any such person is considered to have acquired foreign nationality. The certificate, however, is not to be regarded as a certificate of expatriation of the spouse or children of any person in whose case a certificate is prepared.

§ 50.19 *Execution and distribution of certificate.* The certificate shall be executed in quadruplicate. The original and two copies shall be sent to the Department and the fourth copy retained in the files of the office in which it was executed. After the Department of State has approved the certificate, one copy shall then be returned to the appropriate diplomatic or consular officer, who shall thereafter make a notation on the fourth retained by him to the effect that the certificate has been approved by the Department under the date which appears on the approved copy returned to him by the Department. He shall thereafter forward the fourth copy of such certificate to the person to whom it relates.

ISSUANCE OF CERTIFICATE OF NATIONALITY

AUTHORITY: §§ 50.20 to 50.23 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104.

§ 50.20 *Application for certificate.* (a) Any person who acquired the nationality of the United States at birth and who is involved in any manner in judicial or administrative proceedings in a foreign state in connection with which the establishment of his nationality in the United States is pertinent, may apply for a certificate of American nationality in the form prescribed by the Secretary of State. (Sec. 359, 66 Stat. 273.)

(b) In the United States, including Alaska and Hawaii, the application must be executed before a clerk of a Federal or State court authorized by section 310 (a) of the Immigration and Nation-

ality Act (66 Stat. 239) to naturalize aliens within the jurisdiction in which the applicant resides, or before an agent of the Department of State. In an insular possession of the United States the application must be executed before a person in the office of the Chief Executive who has authority to administer oaths. In a foreign country the application must be executed before a diplomatic or consular officer of the United States. When an application is executed before a diplomatic or consular officer it shall be in duplicate.

(c) There shall be submitted with the application documentary evidence establishing that the applicant is involved in judicial or administrative proceedings pending in a foreign country in connection with which the establishment of his nationality of the United States is pertinent. There shall be affixed to each application, including the duplicate application when required, a photograph of the applicant not more than 3 by 3 inches and not less than 2½ by 2½ inches in size, unmounted, printed on thin paper showing the full front view of the features of the applicant, and taken within six months of the date when submitted. A separate photograph, which must be identical to that affixed to the application, shall be submitted, in order that it may be affixed to the certificate of nationality if and when issued. The original copy of the application shall in all cases be submitted to the Department of State.

§ 50.21 *Evidence of nationality required.* Each application for a certificate of nationality must be accompanied by evidence of nationality of the character which is required by the Rules Governing the Granting and Issuing of Passports in the United States issued by the President on March 31, 1938, or any rules which may subsequently be issued by him (see §§ 51.51 to 51.73 of this chapter). If the applicant has previously submitted satisfactory evidence of American citizenship in connection with an application for a passport or registration, it will not be necessary for him to duplicate such evidence. It will, however, be necessary for the applicant to satisfy the Secretary of State that he has not expatriated himself under the Immigration and Nationality Act or any prior act.

§ 50.22 *Issuance of certificate.* Upon the approval of the application a certificate of nationality for use in a judicial or administrative proceeding in a foreign state shall be issued.

§ 50.23 *Transmission of certificate to foreign state.* When a certificate of nationality is issued, it shall be transmitted through official channels to the judicial or administrative officer of the foreign state in which it is to be used.

CERTIFICATE OF IDENTITY FOR TRAVEL TO THE UNITED STATES TO APPLY FOR ADMISSION

AUTHORITY: §§ 50.24 to 50.40 issued under sec. 104, 66 Stat. 174; 8 U. S. C. 1104. Interpret or apply sec. 360, 66 Stat. 273; 8 U. S. C. 1503.

§ 50.24 *Contents of application.* The application for a certificate of identity shall show:

(a) The full and true name of the applicant;

(b) The period(s) and place(s) of his residence outside the United States;

(c) That he has been physically present in the United States or that he is under sixteen years of age and was born abroad of a citizen parent;

(d) That he claims to be a national of the United States, and the basis of such claim and evidence submitted in support thereof;

(e) That such claim is made in good faith and upon a substantial basis;

(f) That he claims a right or privilege as a national of the United States, and specifically the nature of such claim;

(g) That such right or privilege has been denied him by a specified department or agency or official of the United States on the ground that the applicant is not a national of the United States, and the date and place of such denial;

(h) That he desires to proceed to a port of entry in the United States and there to apply for admission;

(i) That he understands that he may apply for admission into the United States at any port of entry and that he shall be subject to all the provisions of the Immigration and Nationality Act relating to the conduct of proceedings involving aliens seeking admission into the United States;

(j) Such other facts and proofs, with respect to the foregoing, as may be required by the application form or by the diplomatic or consular officer before whom the application for a certificate of identity is executed.

§ 50.25 *Affidavit of supporting witness.* The application for a certificate of identity shall be supported by the affidavit of a credible witness, but this requirement may be waived in the discretion of the diplomatic or consular officer before whom the application is executed.

§ 50.26 *Supporting evidence.* (a) The application for a certificate of identity shall be supported by evidence of the official decision of the specified department, independent agency, or official thereof denying the applicant a right or privilege upon the ground that he is not a national of the United States and evidence that he has exhausted his administrative remedies with such department, agency, or official.

(b) The applicant shall submit with his application for a certificate of identity a statement setting forth in detail the reasons why he considers the final decision of the department, independent agency, or official thereof to be erroneous.

(c) The applicant shall submit a statement that he fully and truthfully disclosed all pertinent facts to the department, independent agency, or official thereof and that he had no additional evidence to submit at that time. The diplomatic or consular officer may require such other evidence of identity and citizenship as may appear to him to be available.

§ 50.27 *Form and execution of application.* (a) The application for a certificate of identity shall be made in quadruplicate on Form FS–343 (revised) and shall be signed and sworn to (or affirmed) by the applicant in person before a diplomatic or consular officer of the United States.

(b) The affidavit of the witness, if not waived, shall also be made before a diplomatic or consular officer of the United States.

(c) The application shall be accompanied by nine identical photographs of the applicant taken within thirty days of the date on which the application is filed. The photographs shall be two by two inches in size, unmounted, printed on thin paper, have a light background, and clearly show a full front view of the features of the applicant (with head bare, unless the applicant is a member of a religious order wearing a headdress), with the distance from the top of head to point of chin approximately one and one fourth inches. Snapshot, group, or full-length pictures will not be accepted.

(d) The applicant, except in the case of a person physically or otherwise incapable of signing his name, shall sign each copy of the photograph with his full, true name in such manner as not to obscure the features. The signature shall be by mark if the applicant is unable to write.

(e) One photograph shall be glued to the original application and one to each copy thereof and impressed with the legend machine so as not to cover the features.

(f) The remaining five photographs shall be affixed in like manner to the certificate of identity and copies thereof in the event that document is issued to the applicant.

(g) Officers not having a legend machine will use the impression seal. The consular impression seal should invariably be used in completing the application.

(h) Fingerprints of the applicant shall be required and attached to the application and each copy thereof.

§ 50.28 *Independent investigation.* When an application for a certificate of identity is executed before a diplomatic or consular officer, an independent investigation of the facts in the case should be made, as far as practicable, by such officer, even though the application and proof submitted therewith may, on their face, appear to justify the issuance of a certificate of identity. Such investigation should include an investigation of all the facts and circumstances which would result in loss of American nationality.

§ 50.29 *New or additional evidence.* At any time during the processing of an application for a certificate of identity, when new or additional evidence which casts doubt on the validity of the original decision that the applicant was not a citizen of the United States comes to the attention of a diplomatic or consular officer, he shall forward the evidence, together with his comments regarding its credibility, to the Department of State. Pending the receipt of the Department's decision in the matter, the diplomatic or consular officer shall take no further action on the application for the certificate of identity.

§ 50.30 *Meaning of good faith.* Good faith means an honest belief of the applicant that he is a national of the United States, and is to be determined by the diplomatic or consular officer of the United States in the light of the facts and circumstances of each case. For example, where it appears that United States nationality has been lost by naturalization of the person upon his own application in a foreign state, good faith would appear to be lacking in the absence of a satisfactory showing to the contrary. Good faith may be considered as lacking when false statements have been made or false documentary evidence has been submitted to the Department, independent agency, or official thereof. Also, special care should be taken in the examination of the case of an applicant who, while in a foreign state, has exercised any rights or performed any duties for which only nationals of such state are eligible, or where the facts of the case indicate that he may have expatriated himself in some manner. Good faith will not be considered as established unless the applicant is able to present evidence to show that he is in fact the individual he claims to be.

§ 50.31 *Meaning of substantial basis.* A substantial basis of a claim of United States nationality means one which satisfies the diplomatic or consular officer of the United States that the claim of the applicant that he is a national of the United States is, notwithstanding any previous ruling of a department, agency, or executive official of the United States, sufficiently meritorious to justify a determination of the question by the Attorney General in connection with an application for admission into the United States. A substantial basis may not be deemed to exist where a court of the United States has held that the person concerned is not an American national.

§ 50.32 *Denial of a right or privilege as a national of the United States.* Denial by a department or agency or official of the United States of a right or privilege as a national of the United States may occur in the administration of various laws. It should appear that the right or privilege denied was one to which the person would otherwise have been entitled but for the fact that he was deemed not to have been a national of the United States. For example, such denial may occur where a person has applied as a national of the United States for a passport or for registration at an American consulate or for nonquota status of an alien wife or minor child, and the application is denied on the ground that the applicant is not a national of the United States. The denial of a right or privilege on the ground that the person has not established his identity is not a denial of any right or privilege as a national of the United States within the meaning of section 360 (b) of the Immigration and Nationality Act (66 Stat. 273).

§ 50.33 *In case of doubt as to issuance of certificate of identity.* Where it appears that the presence of the applicant in the United States would endanger the public safety or where the diplomatic or consular officer believes that the applicant is a national of the United States and entitled to a passport as such or where the diplomatic or consular officer has any doubt with respect to the action he should take upon the application for a certificate of identity, the officer should suspend action and consult the Department of State.

§ 50.34 *Sixty days' notice prior to issuance of certificate of identity.* If the diplomatic or consular officer decides that the issue of a certificate of identity is warranted, he shall give the Department of State by cable sixty days' notice of his intention to issue a certificate of identity and of the travel plans and port of arrival of the applicant. At the same time, he shall forward to the Department by mail three copies of the application for a certificate of identity, a report in triplicate of the result of the independent investigation conducted by him, and the original documentary evidence which was submitted in support of the application. Upon the receipt of the copies of the application and evidence, the Department of State will forward to the District Director of the Immigration and Naturalization Service for the port of arrival full details concerning the case.

§ 50.35 *Form and execution of certificate of identity.* The certificate of identity shall be prepared in quintuplicate on Form FS–343a. It shall be signed and sealed by the diplomatic or consular officer, who shall state on the original and each copy thereof the date and place of issuance. The original shall be delivered to the applicant. The four copies shall be marked "copy". One copy shall be retained in the files of the issuing office, one copy shall be sent to the District Director of the Immigration and Naturalization Service for the port of arrival, and two copies shall be sent to the Department of State.

§ 50.36 *Period of validity of certificate of identity.* A certificate of identity shall be issued only after the applicant has completed his travel plans. The certificate shall expire two months from the date of its issuance and shall be extended only upon the recommendation of the Immigration and Naturalization Service.

§ 50.37 *Denial of certificate of identity.* In case the certificate of identity is denied by a diplomatic or consular officer, a notation to that effect shall be made by him in the space provided therefor at the end of the original application and on each copy thereof. The notation shall set forth definitely the factual and/or legal grounds for the denial. The original application shall be retained in the files of the office to which the application was submitted, one copy shall be returned to the applicant, and two copies shall be sent to the Department of State together with all original documentary evidence submitted by the applicant.

§ 50.38 *Appeal by applicant.* (a) When an applicant is denied a certificate of identity, he may appeal by a written statement to the Secretary of State, setting forth fully the pertinent facts and the grounds upon which United States nationality is claimed and his reasons for considering that the denial of his application by the diplomatic or consular officer is not justified.

(b) The statement shall be executed in quadruplicate and submitted to the diplomatic or consular office in which the denial was made. If the statement contains facts not set forth in the application, it shall be sworn to (or affirmed) by the applicant before a diplomatic or consular officer of the United States and an investigation shall be made by the diplomatic or consular officer of the new or additional facts alleged. A report of this investigation shall accompany the applicant's statement to the Department of State. The original statement and one copy shall be forwarded by the diplomatic or consular officer to the Department of State. One copy of the statement shall be retained in the files of the diplomatic or consular office in which the denial was made and a copy returned to the applicant.

(c) If it is not practicable for the statement to be sworn to or affirmed by the applicant in the diplomatic or consular office in which the denial was made, it may be sworn to or affirmed in any other diplomatic or consular office of the United States. In such case, the original and two copies of the statement shall be forwarded by that office to the diplomatic or consular office in which the application was denied, but, if that is not practicable, they shall be sent directly to the Department of State. One copy shall be returned to the applicant by the taking office. The office in which the application was denied shall retain one copy and forward the original and the other copy to the Department of State.

§ 50.39 *Direct appeal to the Secretary of State by attorney in the United States.* When a certificate of identity has been refused by a diplomatic or consular officer abroad, the applicant may appeal directly to the Secretary of State through his attorney in the United States. The appeal shall be directed to the Passport Office of the Department of State. No special form is prescribed for such appeal. The evidence to be furnished in the appeal through the attorney, in the United States shall be as prescribed in § 50.38 of this part. The Passport Office will process the appeal in due course in accordance with the facts in each individual case.

§ 50.40 *Certificate of identity obtained by fraud or other illegality.* Whenever a certificate of identity is found by a diplomatic or consular officer of the United States to have been obtained by fraud or other illegality, or to be in the possession of a person other than the rightful holder, such officer shall, if practicable, obtain possession of the certificate and send it, together with a report on the matter, directly to the Department of State.

CERTIFICATE OF IDENTITY FOR ADMISSION TO THE UNITED STATES TO PROSECUTE AN ACTION UNDER SECTION 503 OF THE NATIONALITY ACT OF 1940

AUTHORITY: §§ 50.45 to 50.57 issued under sec. 503, 54 Stat. 1171, sec. 4, 63 Stat. 111, as amended; 8 U. S. C. 903, 5 U. S. C. 151c.

§ 50.45 *Issuance of certificate of identity under the Nationality Act of 1940.* Section 503 of the Nationality Act of 1940 (54 Stat. 1171, 1172; 8 U. S. C. 903) provided:

If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any Department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person, regardless of whether he is within the United States or abroad, may institute an action against the head of such Department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such person claims a permanent residence for a judgment declaring him to be a national of the United States. If such person is outside the United States, and shall have instituted such an action in court, he may, upon submission of a sworn application showing that the claim of nationality presented in such action is made in good faith and has a substantial basis, obtain from a diplomatic or consular officer of the United States in the foreign country in which he is residing a certificate of identity stating that his nationality status is pending before the court, and may be admitted to the United States with such certificate upon the condition that he shall be subject to deportation in case it shall be decided by the court that he is not a national of the United States. Such certificate of identity shall not be denied solely on the ground that such person has lost a status previously had or acquired as a national of the United States; and from any denial of an application for such certificate the applicant shall be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing the reasons for his decision. The Secretary of State, with approval of the Attorney General, shall prescribe rules and regulations for the issuance of certificates of identity as above provided.

§ 50.46 *Application for certificate of identity*—(a) *What application shall show.* The application for a certificate of identity shall show:

(1) The full and true name of the applicant;

(2) The place of his residence outside the United States;

(3) That he claims to be a national of the United States, and the basis of such claim and evidence submitted in support thereof;

(4) That such claim is made in good faith and upon a substantial basis;

(5) That he claims a right or privilege as a national of the United States, and specifically the nature of such claim;

(6) That such right or privilege has been denied him by a specified department or agency or executive official of the United States on the ground that the applicant is not a national of the United States, and the date and place of such denial;

(7) That an action for a judgment declaring applicant to be a national of the United States has been instituted by him against the head of such department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the specified district in which he claims permanent residence;

(8) That such action was instituted in good faith with the intention of prosecuting it to conclusion and is pending in such court;

(9) That he desires to proceed to the United States to prosecute such action;

(10) That, if granted a certificate of identity and admitted to the United States for the purpose of prosecuting such action, he will do so with due diligence;

(11) That he understands that admission to the United States upon such certificate of identity shall be under regulations prescribed by the Immigration and Naturalization Service, and upon the condition that he shall be subject to deportation if the final outcome of such court action is not to the effect that he is a national of the United States and if he then fails to depart therefrom without delay in accordance with directions from the Immigration and Naturalization Service; and

(12) Such other facts and proofs, with respect to the foregoing, as may be required by the application form or by the diplomatic or consular officer before whom the application for a certificate of identity is executed.

(b) *Supporting witness.* The application for a certificate of identity shall be supported by the affidavit of a credible witness, but this requirement may be waived in the discretion of the officer before whom the application is executed.

(c) *Form and execution.* The application for a certificate of identity shall be made in quadruplicate on an approved form and shall be signed and sworn to (or affirmed) by the applicant in person before a diplomatic or consular officer of the United States. The affidavit of the witness, if not waived, shall also be made before a diplomatic or consular officer of the United States. The application shall be accompanied by four photographs of the applicant taken within thirty days of the date on which the application is filed. The photographs shall be 2 by 2 inches in size, unmounted, printed on thin paper, have a light background, and clearly show a full front view of the features of the applicant (with head bare, unless the applicant is a member of a religious order wearing a headdress), with the distance from the top of head to point of chin approximately 1¼ inches. Snapshot, group, or full length pictures will not be accepted. The applicant, except in the case of a person physically or otherwise incapable of signing his name, shall sign each copy of the photograph with his full, true name in such manner as not to obscure the features. The signature shall be by mark if the applicant is unable to write. One photograph shall be glued to the original application and one to each copy thereof and impressed with the legend machine so as not to cover the features. Officers not having a legend machine will use the impression seal. The consular impression seal should invariably be used in completing the application. Fingerprints of the applicant shall be required and attached to the application and each copy thereof, as in the case of a visa.

§ 50.47 *Independent investigation.* When an application for a certificate of identity is executed before a diplomatic or consular officer, an independent investigation of the facts in the case should be made, as far as practicable, by such officer, even though the application and proofs submitted therewith may on their face appear to justify issuance of a certificate of identity.

§ 50.48 *Good faith and substantial basis of claim of United States nationality*—(a) *Relationship to provision concerning loss of nationality.* The provision in section 503 of the Nationality Act of 1940 that a certificate of identity shall not be denied "solely on the ground that such person has lost a status previously had or acquired as a national of the United States" is to be read with the provision of the section that the claim of nationality presented in the court action be made in good faith and have a substantial basis.

(b) *Meaning of good faith.* Good faith means an honest belief of the applicant that he is a national of the United States, and is to be determined by the diplomatic or consular officer of the United States in the light of the facts and circumstances of each case. For example, where it appears that United States nationality has been lost by naturalization of the person upon his own application in a foreign state, good faith would appear to be lacking in the absence of a satisfactory showing to the contrary. Special care should be taken in the examination of the case of an applicant who, while in a foreign state, has exercised any rights or performed any duties for which only nationals of such state are eligible.

(c) *Meaning of substantial basis.* A substantial basis of a claim of United States nationality means one which satisfies the diplomatic or consular officer of the United States at the claim of the applicant that he is a national of the United States is, notwithstanding any previous ruling of a department, agency, or executive official of the United States, sufficiently meritorious to justify resort to the court for a determination of the question.

§ 50.49 *Denial of a right or privilege as a national of the United States.* Denial by a department or agency or executive official of the United States of a right or privilege as a national of the United States may have occurred in the administration of various laws. For example, it may have occurred where a person applied as a national of the United States for a passport or for registration at an American consulate or for nonquota status as an alien wife or alien minor child of an American citizen under sections 4 and 9 of the Immigration Act of 1924, and the application was denied on the ground that the applicant was not a national of the United States.

§ 50.50 *Proof of institution of action.* Proof that the applicant has instituted an action referred to in § 50.46 is best made by presentation of a duly certified copy of the complaint filed in the action.

The presentation of such a copy may be waived only when other evidence is furnished which satisfactorily establishes that the suit has been instituted and is pending.

§ 50.51 *In case of doubt as to issuance of certificate of identity.* Where it appears that the presence of the applicant in the United States would endanger the public safety or where the diplomatic or consular officer believes that the applicant is a national of the United States and entitled to a passport as such or where the diplomatic or consular officer has any doubt with respect to the action he should take upon the application for a certificate of identity, the officer should suspend action and consult the Department of State.

§ 50.52 *Form and issuance of certificate of identity.* The certificate of identity shall be issued on the approved form, printed upon the application form. It shall be signed and sealed by the diplomatic or consular officer, who shall state on the original and each copy thereof the date and place of issuance. The three copies shall be marked "copy". One copy and any documentary evidence submitted by the applicant shall be retained in the files of the issuing office, and two copies sent to the Department of State, one of which shall be forwarded to the Central Office, Immigration and Naturalization Service, Department of Justice.

§ 50.53 *Period of validity of certificate of identity.* A certificate of identity shall expire six months from the date of its issuance, unless extended by direction of the Secretary of State.

§ 50.54 *Denial of certificate of identity.* In case the certificate of identity is denied by a diplomatic or consular officer, a notation to that effect shall be made by him in the space provided therefor at the end of the original application and on each copy thereof. The notation shall set forth definitely the grounds for the denial. The original application and any documentary evidence submitted by the applicant shall be retained in the files of the office to which the application was submitted. One copy shall be returned to the applicant, and two copies shall be sent to the Department of State, one of which shall be forwarded to the Central Office, Immigration and Naturalization Service, Department of Justice.

§ 50.55 *Appeal by applicant.* When an applicant is denied a certificate of identity, he may appeal by a written statement to the Secretary of State, setting forth fully the pertinent facts and the grounds upon which United States nationality is claimed and his reasons for considering that the denial of his application by the diplomatic or consular officer is not justified. The statement shall be executed in quadruplicate and submitted to the diplomatic or consular office in which the denial was made. If the statement contains facts not set forth in the application it shall be sworn to (or affirmed) by the applicant before a diplomatic or consular officer of the United States. The original statement and one copy shall be forwarded by the diplomatic or consular officer to the Department of State with two copies of the application for the certificate of identity and any documentary evidence submitted by the applicant, if the copies have not already been sent to that Department. One copy of the statement shall be retained in the files of the diplomatic or consular office in which the denial was made and one copy returned to the applicant. If it is not practicable for the statement to be sworn to or affirmed by the applicant in the diplomatic or consular office in which the denial was made, it may be sworn to or affirmed in any other diplomatic or consular office of the United States. In such case, the original and two copies of the statement shall be forwarded by that office to the diplomatic or consular office in which the application was denied, but if that is not practicable they shall be sent directly to the Department of State. One copy shall be returned to the applicant.

§ 50.56 *Certificate of identity obtained by fraud or other illegality.* Whenever a certificate of identity is found by a diplomatic or consular officer of the United States to have been obtained by fraud or other illegality, or to be in the possession of a person other than the rightful holder, such officer shall, if practicable, obtain possession of the certificate and send it, together with a report on the matter, directly to the Department of State.

§ 50.57 *Repeal of section 503, and savings clause.* Section 503 of the Nationality Act of 1940 was repealed by section 403 (a) (42) of the Immigration and Nationality Act of 1952. However, section 405 (a) of that act provides in part as follows:

> Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect.

PART 51—PASSPORTS

NOTE: Part 51 not included in this republication.

PART 52—BIRTHS AND MARRIAGES

52.1 Registration of births.
52.2 Celebration of marriage.
52.3 Acting as official witness at marriage ceremonies.
52.4 Certificate of Witness to Marriage.
52.5 Authentication of marriage and divorce documents.
52.6 Certification to marriage laws.

AUTHORITY: §§ 52.1 to 52.6 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c.

§ 52.1 *Registration of births.* Consular officers are required, upon application, to record the birth abroad of children who are American citizens. They should impress upon American citizens resident in their respective districts the desirability and importance of a prompt registration of such births. No fee shall be charged for the registration of a birth and the furnishing to the parents of one copy of the completed form. Charges for additional copies are as prescribed in the Schedule of Fees (§ 21.1 of this chapter) or in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 52.2 *Celebration of marriage.* Foreign Service officers are forbidden to celebrate marriages.

§ 52.3 *Acting as official witness at marriage ceremonies*—(a) *Diplomatic representative not empowered to act as official witness.* A diplomatic representative is not empowered to act as an official witness at a marriage ceremony.

(b) *Consular officer authorized to act as official witness.* A consular officer may, when requested, act as an official witness at a marriage ceremony (see 22 U. S. C. 72), provided that one of the contracting parties is a citizen of the United States and provided the consular officer has assured himself that the requirements of the law at the place of celebration have been complied with as far as practicable. While it is not intended to modify in any way the principle of international law that the form of celebrating marriage is determined ordinarily by the law of the place of celebration, the following exceptions are recognized:

(1) When it is impossible to use such form;

(2) When it is repugnant to the religious convictions of the parties;

(3) When it is not imposed on foreigners by the sovereign prescribing it;

(4) When the ceremony is performed in a non-Christian or semicivilized country. (See 7 Op. Atty. Gen. 18.)

§ 52.4 *Certificate of Witness to Marriage.* Whenever a consular officer witnesses a ceremony of marriage, he shall complete in every detail Form No. 87, Certificate of Witness to Marriage, affix thereto the seal of the consulate, certify that the marriage took place in his presence, and sign such certificate. (See 22 U. S. C. 72.)

§ 52.5 *Authentication of marriage and divorce documents.* Whenever a consular officer is requested to authenticate the signature of local authorities on a document of marriage when he was not a witness to the marriage, he shall include in the body of his certificate of authentication the qualifying statement, "For the contents of the annexed document, the Consulate (General) assumes no responsibility."

The same statement shall be included in certificates of authentication accompanying decrees of divorce.

§ 52.6 *Certification to marriage laws.* Although a consular officer may have knowledge respecting the laws of marriage, he shall not issue any official certificate as to such laws.

PART 53—TRAVEL CONTROL OF CITIZENS AND NATIONALS IN TIME OF WAR OR NATIONAL EMERGENCY

AMERICAN CITIZENS AND NATIONALS

Sec.
53.1 Definition of the term "United States".
53.2 Limitations upon travel.
53.3 Exceptions to regulations in § 53.2.
53.4 Persons considered as bearing passports.
53.5 Prevention of departure from or entry into the United States.
53.6 Attempt of a citizen or national to enter without a valid passport.
53.7 Optional use of a valid passport.

AUTHORITY: §§ 53.1 to 53.7 issued under sec. 215, 66 Stat. 190; 8 U. S. C. 1185.

§ 53.1 *Definition of the term "United States".* The term "United States" as used in this part includes the Canal Zone, and all territory and waters, continental or insular, subject to the jurisdiction of the United States.

§ 53.2 *Limitations upon travel.* No citizen of the United States or person who owes allegiance to the United States shall depart from or enter into or attempt to depart from or enter into any part of the United States as defined in § 53.1, unless he bears a valid passport which has been issued by or under authority of the Secretary of State or unless he comes within one of the exceptions prescribed in § 53.3.

§ 53.3 *Exceptions to regulations in § 53.2.* No valid passport shall be required of a citizen of the United States or of a person who owes allegiance to the United States:

(a) When traveling between the continental United States and the Territory of Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands, or between any such places; or

(b) When traveling between the United States and any country or territory in North, Central, or South America or in any island adjacent thereto: *Provided,* That this exception shall not be applicable to any such person when traveling to or arriving from a place outside the United States for which a valid passport is required under this part, if such travel is accomplished via any country or territory in North, Central, or South America or any island adjacent thereto: *And provided also,* That this section shall not be applicable to any seaman except as provided in paragraph (c) of this section; or

(c) When departing from or entering the United States in pursuit of the vocation of seaman: *Provided,* That the person is in possession of a specially validated United States merchant mariner's document issued by the United States Coast Guard; or

(d) When departing from or entering into the United States as an officer or member of the enlisted personnel of the United States Army or the United States Navy on a vessel operated by the United States Army or the United States Navy; or

(e) When traveling as a member of the Armed Forces of the United States or a civil employee of the Department of Defense between the continental United States, the Canal Zone, and all territories, continental or insular, subject to the jurisdiction of the United States, and any foreign country or territory for which a valid passport is required under the regulations in this part: *Provided,* That he is in possession of a document of identification issued for such purposes by the Department of Defense; or

(f) When traveling as an air crewman on board an American aircraft which is engaged in commercial air-transport service for the carriage of goods, passengers, or mail between the United States and a foreign country: *Provided,* That he is in possession of an identification card issued by the Civil Aeronautics Board which complies with the International Civil Aviation Organization requirements; or

(g) When specifically authorized by the Secretary of State, through the appropriate official channels, to depart from or enter into the United States, as defined in § 53.1.

§ 53.4 *Persons considered as bearing passports.* Every citizen of the United States, or person who owes allegiance to the United States, who is included in a valid passport issued by or under authority of the Secretary of State shall for the purpose of the rules and regulations in this part be considered as bearing a separate valid passport if such passport is presented to the appropriate official at the time he departs from or enters into or attempts to depart from or enter into any territory of the United States as defined in § 53.1.

§ 53.5 *Prevention of departure from or entry into the United States.* (a) Nothing in this part shall be construed as prohibiting the Secretary of State or his representative at a port in the United States from preventing the departure from or entry into the United States, as defined in § 53.1, of a citizen of the United States or a person who owes allegiance to the United States, unless he bears a passport, card of identification, or other document of identity issued by or under authority of the Secretary of State, notwithstanding the fact he may be destined for or arriving from a place outside any such territory of the United States for which a valid passport is not required under the regulations in this part.

(b) Nor shall anything in the regulations in this part be construed as prohibiting the Secretary of State or his representative at a port in the United States from preventing temporarily the departure from or entry into the United States, as defined in § 53.1, of a citizen of the United States or a person who owes allegiance to the United States, notwithstanding the fact that such person may bear a valid passport, card of identification, or other document of identity issued by or under authority of the Secretary of State or be destined for or arriving from a place outside any such territory of the United States for which a valid passport is not required under the regulations in this part.

§ 53.6 *Attempt of a citizen or national to enter without a valid passport.* If any person who alleges that he is a citizen of the United States or a person who owes allegiance to the United States attempts to enter the United States contrary to the provisions of the regulations in this part, the appropriate officer of the United States at the port at which the attempt is made to enter the United States, if satisfied that such person is a citizen of the United States or a person who owes allegiance to the United States, shall detain such person and immediately report the facts in the case to the Secretary of State and await his instructions.

§ 53.7 *Optional use of a valid passport.* Nothing in this part shall be construed to prevent the use of a valid passport by any citizen of the United States, or a person who owes allegiance to the United States, in a case in which a passport is not required by this part.

SUBCHAPTER G—INTERNATIONAL EDUCATIONAL EXCHANGE SERVICE

PART 61—PAYMENTS TO AND ON BEHALF OF PARTICIPANTS IN THE INTERNATIONAL EDUCATIONAL EXCHANGE PROGRAM

Sec.
61.1 Definitions.
61.2 Applicability of this part under special circumstances.
61.3 Grants to foreign participants to observe, consult, or demonstrate special skills.
61.4 Grants to foreign participants to lecture, teach, and engage in research or training.
61.5 Grants to foreign participants to study.
61.6 Assignment of United States Government employees to consult, lecture, teach, engage in research, or demonstrate special skills.
61.7 Grants to United States participants to consult, lecture, teach, engage in research, or demonstrate special skills.
61.8 Grants to United States participants to study.
61.9 General provisions.

AUTHORITY: §§ 61.1 to 61.9 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c. Interpret or apply secs. 537, 3, 12, 70 Stat. 561, 890, 892; 22 U. S. C. 1797, 5 U. S. C. 170h, 170q.

§ 61.1 *Definitions.* For the purpose of this part the following terms shall have the meaning here given:

(a) *International educational exchange program of the Department of State.* A program to promote mutual understanding between the people of the United States and those of other countries and to strengthen cooperative international relations in connection with which payments are made direct by the Department of State, as well as similar programs carried out by other Government departments and agencies and by private organizations with funds appropriated or allocated to the Department of State when the regulations in this part apply under the provisions of § 61.2 (a) and (b).

(b) *Program and Department.* For convenience, the international educational exchange program of the Department of State will hereinafter be referred to as the "program", and the Department of State will hereinafter be referred to as the "Department".

(c) *Participant.* Any person taking part in the program for purposes listed in §§ 61.3 through 61.8, including both citizens of the United States and citizens

and nationals of the other countries with which the program is conducted.

(d) *Transportation.* All necessary travel on railways, airplanes, steamships, busses, streetcars, taxicabs, and other usual means of conveyance.

(e) *Excess baggage.* Baggage in excess of the weight or size carried free by public carriers on first-class service.

(f) *Per diem allowance.* Per diem in lieu of subsistence includes all charges for meals and lodging; fees and tips; telegrams and telephone calls reserving hotel accommodations; laundry, cleaning and pressing of clothing; transportation between places of lodging or business and places where meals are taken. Maximum rates of per diem have been approved by the Bureau of the Budget in accordance with Public Law 885, 84th Congress.

§ 61.2 *Applicability of this part under special circumstances—(a) Funds administered by another department or agency.* The regulations in this part shall apply to payments made to or on behalf of participants from funds appropriated or allocated to the Department and transferred by the Department to some other department, agency or independent establishment of the Government unless the terms of the transfer provide that such regulations shall not apply in whole or in part or with such modifications as may be prescribed in each case to meet the exigencies of the particular situation.

(b) *Funds administered by private organizations.* The regulations in this part shall apply to payments made to or on behalf of participants from funds appropriated or allocated to the Department and administered by an institution, facility, or organization in accordance with the terms of a contract or grant made by the Department with or to such private organizations, unless the terms of such contract or grant provide that the regulations in this part are not to be considered applicable or that they are to be applied with such modifications as may be prescribed in each case to meet the exigencies of the particular situation.

(c) *Appropriations or allocations.* The regulations in this part shall apply to payments made by the Department with respect to appropriations or allocations which are or may hereafter be made available to the Department for the program so far as the regulations in this part are not inconsistent therewith.

§ 61.3 *Grants to foreign participants to observe, consult, or demonstrate special skills.* A citizen or national of a foreign country who has been awarded a grant to observe, consult with colleagues, or demonstrate special skills may be entitled to any or all of the following benefits when authorized by the Department:

(a) *Transportation.* First-class accommodations on steamship, airplane, railway, or other means of conveyance. For travel in a privately owned vehicle, reimbursement will be in accordance with the provisions of the Standardized Government Travel Regulations.

(b) *Excess baggage.* Excess baggage as deemed necessary by the Department.

(c) *Per diem allowances.* (1) Per diem allowance not to exceed $17 in lieu of subsistence expenses while traveling to and from the United States (except for the period spent on seagoing vessels), while on authorized or emergency stopovers, and while participating in the program.

(2) Per diem allowance not to exceed $6 in lieu of subsistence expenses while traveling on seagoing vessels outside the continental limits of the United States.

(d) *Tuition and related expenses.* Tuition and related expenses in connection with attendance at seminars and workshops, professional meetings, or other events in keeping with the purpose of the grant.

(e) *Books and educational materials allowance.* A reasonable allowance for books and educational materials.

(f) *Advance of funds.* Advance of funds including per diem.

§ 61.4 *Grants to foreign participants to lecture, teach, and engage in research or training.* A citizen or national of a foreign country who has been awarded a grant to lecture, teach, and engage in research or training may be entitled to any or all of the following benefits when authorized by the Department:

(a) *Transportation.* First-class accommodations on steamship, airplane, railway, or other means of conveyance. For travel in a privately owned vehicle, reimbursement will be in accordance with the provisions of the Standardized Government Travel Regulations.

(b) *Excess baggage.* Excess baggage as deemed necessary by the Department.

(c) *Per diem allowance.* (1) Per diem allowance not to exceed $12 in lieu of subsistence expenses while traveling to and from the United States (except for the period spent on seagoing vessels), while on authorized or emergency stopovers, and while participating in the program.

(2) Per diem allowance not to exceed $6 in lieu of subsistence expenses while traveling on seagoing vessels outside the continental limits of the United States.

(d) *Allowance.* An allowance of not to exceed $50 in lieu of per diem while traveling to and from the United States.

(e) *Tuition and related expenses.* Tuition and related expenses in connection with attendance at educational institutions, seminars and workshops, professional meetings, or other events in keeping with the purpose of the grant.

(f) *Books and educational materials allowance.* A reasonable allowance for books and educational materials.

(g) *Advance of funds.* Advance of funds including per diem.

§ 61.5 *Grants to foreign participants to study.* A citizen or national of a foreign country who has been awarded a grant to study may be entitled to any or all of the following benefits when authorized by the Department:

(a) *Transportation.* First-class accommodations on steamship, airplane, railway, or other means of conveyance. For travel in a privately owned vehicle, reimbursement will be in accordance with the provisions of the Standardized Government Travel Regulations.

(b) *Excess baggage.* Excess baggage as deemed necessary by the Department.

(c) *Per diem allowance.* (1) Per diem allowance not to exceed $9 in lieu of subsistence expenses while traveling to and from the United States (except for the period spent on seagoing vessels), while on authorized or emergency stopovers, or in a travel status within the United States.

(2) Per diem allowance not to exceed $6 in lieu of subsistence expenses while traveling on seagoing vessels outside the continental limits of the United States.

(3) Per diem allowance not to exceed $8 while present and in attendance at an educational institution, facility or organization.

(4) Per diem allowance not to exceed $12 while participating in authorized field trips or conferences.

(d) *Allowance.* An allowance of not to exceed $35 in lieu of per diem while traveling to and from the United States.

(e) *Tuition.* Tuition and related fees for approved courses of study.

(f) *Books and educational materials allowance.* A reasonable allowance for books and educational materials.

(g) *Tutoring assistance.* Special tutoring assistance in connection with approved courses of study.

(h) *Advance of funds.* Advance of funds including per diem.

§ 61.6 *Assignment of United States Government employees to consult, lecture, teach, engage in research, or demonstrate special skills.* An employee of the United States Government who has been assigned for service abroad to consult, lecture, teach, engage in research, or demonstrate special skills, may be entitled to any or all of the following benefits when authorized by the Department:

(a) *Transportation.* Transportation and miscellaneous expenses in the United States and abroad, including baggage charges, and per diem in lieu of subsistence at the maximum rates allowable while in a travel status in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended. The participant shall be considered as remaining in a travel status during the entire period covered by his assignment unless otherwise designated.

(b) *Advance of funds.* Advances of per diem as provided in the Travel Expense Act of 1949, as amended.

(c) *Compensation.* Compensation in accordance with Civil Service rules; or in accordance with the grade in which the position occupied may be administratively classified; or Foreign Service Act, as amended.

(d) *Allowances for cost of living and living quarters.* Allowances for living quarters, heat, fuel, light, and to compensate for the increased cost of living in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), when not in a travel status as provided in paragraph (a) of this section.

(e) *Books and educational materials allowance.* A reasonable allowance for books and educational materials. Such books and materials, unless otherwise

specified, shall be selected by the employee and purchased and shipped by the Department or its agent. At the conclusion of the assignment, the books and educational materials shall be transferred to and become the property of an appropriate local institution or be otherwise disposed of as directed by the Department.

(f) *Families and effects.* Cost of transportation of immediate family and household goods and effects when going to and returning from posts of assignment in foreign countries in accordance with the provisions of the Foreign Service Regulations of the United States of America.

§ 61.7 *Grants to United States participants to consult, lecture, teach, engage in research, or demonstrate special skills.* A citizen of the United States who has been awarded a grant to consult, lecture, teach, engage in research, or demonstrate special skills may be entitled to any or all of the following benefits when authorized by the Department:

(a) *Transportation.* Transportation and miscellaneous expenses in the United States and abroad, including baggage charges, and per diem in lieu of subsistence while in a travel status. Per diem at the maximum rates allowable in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended, unless otherwise specified. The participant shall be considered as remaining in a travel status during the entire period covered by his grant unless otherwise designated.

(b) *Orientation and debriefing within the United States.* For the purpose of orientation and debriefing within the United States compensation, travel and per diem at the maximum rates allowable in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended, unless otherwise specified.

(c) *Advance of funds.* Advance of funds including per diem.

(d) *Compensation.* Compensation at a rate to be specified in each grant.

(e) *Allowances.* Appropriate allowances as determined by the Department.

(f) *Books and educational materials allowance.* A reasonable allowance for books and educational materials. Such books and materials, unless otherwise specified, shall be selected by the grantee and purchased and shipped by the Department or its agent. At the conclusion of the grant, the books and materials shall be transferred to and become the property of an appropriate local institution or be otherwise disposed of as directed by the Department.

§ 61.8 *Grants to United States participants to study.* A citizen of the United States who has been awarded a grant to study may be entitled to any or all of the following benefits when authorized by the Department.

(a) *Transportation.* Transportation and miscellaneous expenses in the United States and abroad, including baggage charges, and per diem in lieu of subsistence while in a travel status. Per diem at the maximum rates allowable in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended, unless otherwise specified. Travel status shall terminate upon arrival at the place of study designated in the grant and shall recommence upon departure from that place to return home.

(b) *Orientation and debriefing within the United States.* For the purpose of orientation and debriefing within the United States travel and per diem at the maximum rates allowable in accordance with the provisions of the Standardized Government Travel Regulations and the Travel Expense Act of 1949, as amended, unless otherwise specified.

(c) *Advance of funds.* Advance of funds including per diem.

(d) *Maintenance allowance.* A maintenance allowance at a rate to be specified in each grant.

(e) *Tuition.* Tuition and related fees for approved courses of study.

(f) *Books and educational materials allowance.* A reasonable allowance for books and educational materials.

(g) *Tutoring assistance.* Special tutoring assistance in connection with approved courses of study.

§ 61.9 *General provisions.* The following provisions shall apply to the foregoing regulations:

(a) *Health and accident insurance.* Payments for the costs of health and accident insurance for foreign participants while such participants are en route or absent from their homes for purposes of participation in the program when authorized by the Department.

(b) *Transportation of remains.* Payments for the actual expenses of preparing and transporting to their former homes the remains of persons, not United States Government employees, who may die away from their homes while participating in the program are authorized.

(c) *Maxima not controlling.* Payments and allowances may be made at the rate or in the amount provided in the regulations in this part unless an individual grant or travel order specifies that less than the maximum will be allowed under any part of the regulation in this part. In such case, the grant or travel order will control.

(d) *Individual authorization.* Where the regulations in this part provide for compensation, allowance, or other payment, no payment shall be made therefore unless a definite amount or basis of payment is authorized in the individual case, or is approved as provided in paragraph (f) of this section.

(e) *Computation of per diem and allowance.* In computing per diem and allowances payable while on a duty assignment, except for travel performed under the Standardized Government Travel Regulations, fractional days shall be counted as full days, the status at the end of the calendar day determining the status for the entire day.

(f) *Subsequent approval.* Whenever without prior authority expense has been incurred by a participant, or an individual has commenced his participation in the program as contemplated by the regulations in this part, the voucher for payments in connection therewith may be approved by an official designated for this purpose, such approval constituting the authority for such participation or the incurring of such expense.

(g) *Additional authorization.* Any emergency, unusual or additional payment deemed necessary under the program if allowable under existing authority, may be authorized whether or not specifically provided for by this part.

(h) *Biweekly payment.* Unless otherwise specified in the grant, all compensation and allowances for U. S. participants shall be payable biweekly and shall be computed as follows: an annual rate shall be derived by multiplying a monthly rate by 12; a biweekly rate shall be derived by dividing an annual rate by 26; and a calendar day rate shall be derived by dividing an annual rate by 364. If any maximum compensation or allowance authorized by these regulations or by the terms of any grant is exceeded by this method of computation and payment, such excess payment is hereby authorized. This paragraph may apply to payments made to participants from funds administered as provided in § 61.2 (a) and (b) in the discretion of the department, agency, independent establishment, institution, facility, or organization concerned.

(i) *Payments.* Payments of benefits authorized under any part of the regulations in this part may be made either by the Department of State or by such department, agency, institution, or facility as may be designated by the Department.

(j) *Duration.* The duration of the grant shall be specified in each case.

(k) *Cancellation.* If a recipient of a grant under this program fails to maintain a satisfactory record or demonstrates unsuitability for furthering the purposes of the program as stated in § 61.1 (a), his grant shall, in the discretion of the Secretary of State or such officer as he may designate, be subject to cancellation.

(l) *Outstanding grant authorizations.* Grants and other authorizations which are outstanding and in effect on the date the present regulations become effective, and which do not conform to this part, shall nevertheless remain in effect and be governed by the regulations under which they were originally issued, unless such grants or other authorizations are specifically amended and made subject to the present regulations in which case the individual concerned will be notified.

PART 62—FOREIGN STUDENTS

Sec.
62.1 Regulations to be drafted.
62.2 Applications.
62.3 Reference of applications.
62.4 Copies of regulations to Department of State.
62.5 Granting of application.
62.6 Limitations.

AUTHORITY: §§ 62.1 to 62.6 issued under 52 Stat. 1034, as amended; 20 U. S. C. 221.

§ 62.1 *Regulations to be drafted.* Subject to the provisions and require-

ments of this part, appropriate administrative regulations shall be drafted by each executive department or agency of the Government which maintains and administers educational institutions and schools coming within the scope of the legislation. Such regulations shall carefully observe the limitations imposed by the Act of June 24, 1938, and shall in each case include:

(a) A list of the institutions and courses in the department or agency concerned in which instruction is available under the terms of the legislation.

(b) A statement of the maximum number of students of the other American republics who may be accommodated in each such institution or course at any one time.

(c) A statement of the qualifications to be required of students of the other American republics for admission, including examinations, if any, to be passed.

(d) Provisions to safeguard information that may be vital to the national defense or other interests of the United States.

§ 62.2 *Applications.* Applications for citizens of the other American republics to receive the instruction contemplated by the said Act of June 24, 1938, shall be made formally through diplomatic channels to the Secretary of State by the foreign governments concerned.

§ 62.3 *Reference of applications.* The Secretary of State shall refer the applications to the proper department or agency of the Government for advice as to what reply should be made to the application.

§ 62.4 *Copies of regulations to Department of State.* In order to enable the Secretary of State to reply to inquiries received from the governments of the other American republics, the Department of State shall be promptly supplied with copies of the regulations drafted by the other departments and agencies of the Government and of subsequent amendments thereto.

§ 62.5 *Granting of application.* Upon receipt of a reply from another department or agency of the Government, as contemplated by § 62.3, in which it is recommended that an application be granted, the Secretary of State shall notify the government of the American republic concerned, through diplomatic channels, that permission to receive the instruction requested in the application is granted, provided the applicant complies with the terms of this part and with the terms of the administrative regulations of the department or agency concerned.

§ 62.6 *Limitations.* In granting permission to citizens of the other American republics to receive instruction under the provisions of the said act of June 24, 1938, the Secretary of State shall limit the number of such permissions so that not more than one citizen of any one American republic shall receive instruction at the same time in the United States Military Academy; and he shall not grant any such permission to a citizen of any of the American republics to receive instruction in any institution or school if the issuance of such permission will curtail the admission of citizens of the United States eligible to receive instruction therein.

PART 63—EXCHANGE-VISITOR PROGRAM

Sec.
63.1 Definitions.
63.2 Application for Exchange-Visitor Program designation.
63.3 Action on applications for Exchange-Visitor Program designation.
63.4 Notification to exchange visitors.
63.5 Applications for exchange-visitor status, extensions of stay, and program transfers.
63.6 Application for waiver of the provisions of Public Law 555, 84th Congress.
63.7 Action on applications for waiver of the provisions of Public Law 555, 84th Congress.

AUTHORITY: §§ 63.1 to 63.7 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c. Interpret or apply secs. 201, 1005, 1009, 62 Stat. 7, 14; 22 U. S. C. 1446, 1437, 1440.

CROSS REFERENCES: For consular procedure with respect to issuance of visas to exchange visitors, see 22 CFR 41.41 of this chapter.

§ 63.1 *Definitions.* (a) As used in this part the term "act" refers to the United States Information and Educational Exchange Act of 1948, as amended.

(b) As used in this part the term "sponsor" means any existing reputable United States agency or organization or recognized international agency or organization having United States membership and offices which makes application as hereinafter prescribed to the Secretary of State for designation of a program under its sponsorship as an "Exchange-Visitor Program."

(c) As used in this part, the term "Exchange-Visitor Program" means a program of a sponsor designed to promote interchange of persons, knowledge and skills, and the interchange of developments in the field of education, the arts, and sciences, and concerned with one or more of the categories of exchange visitors defined in paragraph (g) of this section, which has been designated as such by the Secretary of State, and in actual operation serves to promote mutual understanding between the people of the United States and the people of other countries.

(d) As used in this part, the term "Secretary" means either the Secretary of State or an officer duly designated by him.

(e) As used in this part, the term "Department" means the Department of State.

(f) As used in this part the term "cooperating country" means any country with which the Department is authorized to conduct exchange of persons under the provisions of section 201 of the act.

(g) As used in this part the term "exchange visitor" means any foreign national who has been selected by a sponsor to participate in an Exchange-Visitor Program and who is seeking to enter or has entered the United States temporarily in one of the following categories:

(1) A "student", for the purpose of study, research, or training at, or under the auspices of, an established school or institution of learning, or

(2) A "trainee", for the purpose of obtaining practical training in a specialized field of knowledge and skill in a nonacademic institution or agency, or

(3) A "teacher", for the purpose of teaching in established primary or secondary schools, or established schools offering specialized instruction, or

(4) A "guest instructor", for the purpose of imparting knowledge through lectures or special instruction, or

(5) A "professor", for the purpose of teaching or advanced research, or both, in an established institution of higher learning, or

(6) A "leader in a field of specialized knowledge or skill", for purposes of observation, consultation, advanced research or training or the sharing of such specialized knowledge or skill.

(h) As used in this part the term "participant" means a foreign national who has effected his admission into the United States as an exchange-visitor or who has acquired exchange-visitor status subsequent to admission.

§ 63.2 *Application for Exchange-Visitor Program designation.* (a) Any sponsor may apply to the Secretary for designation of a program under its sponsorship as an "Exchange-Visitor Program." Such application shall be made on Form DSP–37, "Exchange-Visitor Program application." The application shall be completed in all details and shall be submitted to the Secretary.

(b) Each sponsor shall assume, inter alia, in the application the obligation to:

(1) Notify the District Director of the Immigration and Naturalization Service having administrative jurisdiction over the participant's place of temporary residence when (i) a participant has completed the sponsor's program and is scheduled to depart from the United States or to transfer to another Exchange-Visitor Program, or (ii) a participant has ceased to engage in the activity for which he was admitted and to maintain exchange-visitor status.

(2) Instruct any participant requiring a temporary extension of stay to apply to the Immigration and Naturalization Service at least 30 days before the expiration of the participant's stay and provide the participant requiring the extension with written evidence showing the period and terms of the extension desired.

(3) Provide any participant requiring transfer to another Exchange-Visitor Program with a release in writing which will certify to the need or desirability of further Exchange-Visitor Program participation.

§ 63.3 *Action on applications for Exchange-Visitor Program designation—*(a) *Evidence.* Whenever an application for program designation on Form DSP–37 is submitted to the Secretary, it shall be examined to ascertain the adequacy of the information furnished. If sufficient information has not been furnished, the sponsor shall be requested to supply information in which the application is deficient. In addition to the information furnished on the DSP–37, the Secretary may require a sponsor to present any evidence of a documentary nature, e. g., program reports, institutional catalogues, letters of professional recognition, accreditation, or approval, which he may

consider necessary in making his determination of the eligibility of the program to be designated as an Exchange-Visitor Program.

(b) *Decision by the Secretary of State.* Upon receipt and consideration of the Form DSP-37, including any required additional evidence, the Secretary may in his discretion designate the sponsor's program as an Exchange-Visitor Program. The Secretary will notify the sponsor in writing of his decsion. The Secretary may in his discretion revoke designation of an Exchange-Visitor Program for any sufficient cause, including but not restricted to: (1) Failure to maintain educational standards as established by competent professional agencies; (2) failure to submit reports on program operation when requested by the Secretary.

(c) *Assignment of serial number.* (1) If designation is made, the program will be assigned a number within one of the following series:

G–I—Programs sponsored by the International Educational Exchange Service.

G–II—Programs sponsored by the International Cooperation Administration.

G–III—Programs sponsored by the United States Information Agency.

G–IV—Programs sponsored by international agencies or organizations.

G–V—Programs sponsored by national, state, or local governmental agencies.

P–I—Programs sponsored by educational institutions such as schools, colleges, universities, seminaries, libraries, museums, and institutions devoted to scientific and technological research.

P–II—Programs sponsored by hospitals and related institutions.

P–III—Programs sponsored by non-profit associations, foundations and institutes.

P–IV—Programs sponsored by business and industrial concerns.

P–V—Programs sponsored by host institutions and organizations to international conferences, congresses, and symposia.

(2) The sponsor will thereafter refer to the serial number in any correspondence with the Secretary, consular officers, or the Immigration and Naturalization Service concerning the Exchange-Visitor Program or any individual included in such program.

(d) *Notification to consuls and the Immigration and Naturalization Service.* When a program has been designated as an Exchange-Visitor Program, the American consular officers concerned and the Commissioner of Immigration and Naturalization shall be notified by the Department of the sponsor, serial number, and nature and purpose of the program.

§ 63.4 *Notification to exchange visitors.* The officer designated as the Responsible Officer of an Exchange-Visitor Program shall execute a Form DSP–66 in a single original copy and furnish it to each selected participant for presentation to the American consular office in applying for a visa. The Responsible Officer is required to furnish in the Form DSP–66 the time and terms of the proposed exchange visit which must be demonstrably within the scope of the designated Exchange-Visitor Program concerned. The exchange visitor must present a Form DSP–66 properly filled out by the sponsor and must personally execute the reverse to be eligible for a visa and must present, at the port of entry, Form DSP–66 endorsed by the consular officer issuing the visa to be eligible for admission into the United States.

§ 63.5 *Applications for exchange-visitor status, extensions of stay, and program transfers*—(a) *Application for change of status to exchange-visitor.* Such application shall be made by the prospective exchange visitor who has been admitted into the United States in one of the nonimmigrant classifications specified in 101 (a) (15) of the Immigration and Nationality Act and who has maintained bona fide nonimmigrant status to the office of the Immigration and Naturalization Service nearest the alien's place of temporary residence. The application must be accompanied by a Form DSP–66 properly executed by the sponsor and the prospective exchange visitor. The Immigration and Naturalization Service officer to whom application is made may request the views of the Department prior to the granting of the change of status in those cases in which (1) the applicant has resided in the United States for a period of one year or longer immediately preceding his application, or (2) the officer cannot determine from the evidence submitted that the program activity proposed for the applicant is clearly within the scope of the designation of the Exchange-Visitor Program concerned, or that the selection procedures agreed upon between the sponsor and the Department of State at the time of the designation have been followed.

(b) *Application for extension of stay.* Such application shall be made at least 30 days before the expiration of the exchange-visitor's authorized stay to the District Director of the Immigration and Naturalization Service having administrative jurisdiction over the exchange visitor's place of temporary residence. The application shall be accompanied by the Form DSP–66 with which the exchange-visitor originally obtained status, properly endorsed by the sponsor to show the time and terms of the extended stay for which application is made. If the application falls within one of the categories of cases which the Department has advised the Immigration and Naturalization Service are questionable from an exchange point of view, or should be subject to special checks, the Immigration and Naturalization Service may refer the application to the Department for its views prior to action on the application.

(c) *Application for program transfer.* An application for permission to transfer from one designated Exchange-Visitor Program to another must be submitted to the District Director of the Immigration and Naturalization Service nearest the exchange visitor's place of temporary residence by the exchange-visitor concerned at least thirty days before participation in the program to which the exchange visitor wishes to transfer is scheduled to begin. Any application for program transfer must be accompanied by a duly executed Form DSP–67. The District Immigration and Naturalization Service Office concerned may request the views of the Department as to whether or not a proposed transfer is in the best interests of international exchange in any case in which the applicant is unable to present a certificate of release from the current sponsor, in which it appears that the transfer is solely or principally for the purpose of continuing the residence and employment of the exchange visitor in the United States, or in which the officer cannot perceive clear progress toward an educational objective, before granting the exchange visitor permission to transfer.

§ 63.6 *Application for waiver of the provisions of Public Law 555, 84th Congress.* Any exchange visitor or former exchange visitor who desires to have all or part of the foreign residence requirement, provided in Public Law 555, 84th Congress, waived may apply to the District Director of the Immigration and Naturalization Service having administrative jurisdiction over his intended place of permanent residence in the United States. Such application shall consist of an affidavit as to the facts concerning the admission and stay of the exchange visitor or former exchange visitor and the reason or reasons why the applicant desires to apply for permanent residence to commence before the completion of the foreign residence requirement. The application must be supported by documentary evidence that ineligibility for permanent residence status would (a) impose undue hardship upon the exchange visitor that could not have been anticipated at the time exchange visitor status or the last extension of stay as an exchange visitor was granted, or (b) be clearly detrimental to a program or activity of official interest to a United States agency, or (c) impose undue restriction on a foreign national who paid a visit of 90 days or less to the United States as an exchange visitor at the request of a United States institution or agency to contribute to a project or program of the institution or agency. Former exchange visitors who have returned abroad may make application to the nearest American consular office.

§ 63.7 *Action on applications for waiver of the provisions of Public Law 555, 84th Congress.* The District Director of the Immigration and Naturalization Service shall forward any application received, together with any documents submitted therewith, to the Department through the appropriate Regional Commissioner. The consular office shall forward any application received directly to the Department. The Secretary shall review each application to determine that it does not constitute misuse of the exchange program on the part of foreign nationals or United States institutions or agencies. After review of the application, the Secretary may in his discretion recommend that the application be granted or denied. The recommendation of the Secretary shall be forwarded by the Department to the Regional Commissioner of the Immigration and Naturalization Service having jurisdiction over the district office in which the application was filed.

SUBCHAPTER H—PROTECTION AND WELFARE OF AMERICANS, THEIR PROPERTY AND ESTATES

PART 71—PROTECTION AND WELFARE OF CITIZENS AND THEIR PROPERTY

GENERAL ACTIVITIES

Sec.
71.1 Protection of Americans abroad.
71.2 Requests for naval force in foreign port.
71.3 American claimants to foreign estates and inheritances.
71.4 Real property of deceased American citizens.
71.5 Storage or safekeeping of private property.
71.6 Services for distressed Americans.
71.7 Reports on catastrophes abroad.
71.8 Assistance to American Red Cross.
71.9 Presentation of Americans at foreign courts.

AUTHORITY: §§ 71.1 to 71.9 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c.

§ 71.1 *Protection of Americans abroad.* Officers of the Foreign Service shall perform such duties in connection with the protection of American nationals abroad as may be imposed upon them by rules and regulations prescribed by the Secretary of State.

§ 71.2 *Requests for naval force in foreign port.* Diplomatic representatives and consular officers shall not request the presence of a naval force in a foreign port unless a public emergency so necessitates. The request may be addressed to the officers in command of the naval force, in which event responsibility of action rests with them, or it may be addressed to the Department of State. In either case, the request should contain detailed reasons for its submission.

§ 71.3 *American claimants to foreign estates and inheritances.* Where treaty provisions, local laws, or established usage permit, a consular officer should protect the interests of American citizens claiming foreign estates and inheritances.

§ 71.4 *Real property of deceased American citizens.* In the absence of special provisions by treaty the devolution and transfer of real property are covered by the law of the place where the property is situated. When real property is left by the decedent within the country where death occurs, or where the decedent was domiciled at the time of death, the consular officer, or diplomatic officer, if there be no consular officer, should if feasible informally observe the proceedings and report to the diplomatic mission or the Department any apparent irregularity or unnecessary delay in settling the estate.

§ 71.5 *Storage or safekeeping of private property.* Except in a public emergency, no officer of the Foreign Service shall accept private property for storage or safekeeping in the office or for transmission to some other destination, unless it is property belonging to the estate of a deceased American citizen, or property over which the officer has jurisdiction as a result of a catastrophe at sea. In public emergencies, officers may accept private property for storage and safekeeping or for transmission to another destination, provided the owner signs a statement to the effect that the property is being accepted for deposit at his request, at his own risk, and with full knowledge that neither the Government of the United States nor any of its officers assumes responsibility therefor.

§ 71.6 *Services for distressed Americans.* Officers of the Foreign Service shall extend every possible aid and assistance within their power to distressed American citizens within their districts, but they shall not expend the funds nor pledge the credit of the Government of the United States for this purpose, except in the case of American seamen, or except as authorized by the Department of State.

§ 71.7 *Reports on catastrophes abroad.* Whenever a great catastrophe occurs abroad, either on land or on sea, the officer within whose district the catastrophe takes place or into whose district the survivors are brought shall report immediately by telegraph the names of any American citizens who have been killed or injured and the names of American citizens known to be safe.

§ 71.8 *Assistance to American Red Cross.* Officers and employees of the Foreign Service may cooperate fully with the American Red Cross within their respective districts and subject to the limitations prescribed in § 102.806 (22 CFR, 1947 Supp.). They shall, however, avoid taking an active part in the solicitation of memberships or the collection of funds.

§ 71.9 *Presentation of Americans at foreign courts.* The chief of the mission concerned may exercise his discretion in the matter of procuring the presentation of American citizens at the court of the country to which he is accredited.

PART 72—DEATHS AND ESTATES

REPORTING DEATHS OF UNITED STATES CITIZENS

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AUTHORITY: §§ 72.1 to 72.55 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842. Interpret or apply R. S. 1709, as amended; 22 U. S. C. 1175.

REPORTING DEATHS OF UNITED STATES CITIZENS

§ 72.1 *Consular responsibility.* (a) A consular officer (or in his absence a diplomatic officer) is responsible for reporting to the Department, to the legal representative, and to the closest known relative the deaths of all United States citizens occurring in his consular district except as otherwise provided in § 72.2. In order that he may be informed of such deaths, the consular officer should enlist the cooperation and assistance of the local authorities and the members of the American community.

(b) A consular agent is not authorized to report the deaths of United States citizens to the Department, to the legal representative and to the closest known relative. The consular agent should, however, immediately report the circumstances of the death to his principal consular officer, who then has the responsibility for reporting in the manner prescribed in §§ 72.1 through 72.8.

§ 72.2 *Exceptions to consular responsibility*—(a) *Department of Defense personnel.* The Department of Defense

is required to report officially the deaths of its military and civilian personnel. However, if no representative of the Department of Defense is present in the consular district where the death occurs, the consular officer should inform the Mission in the country to which he is assigned regarding the circumstances, for action by the appropriate attache. In colonial or trustee areas, or in countries in which no Defense Department attaches are assigned, the consular officer should telegraph the particulars of the death to the Department of State, indicating the maximum length of time before local burial is mandatory, for action by the Department of Defense. All inquiries concerning the death of any person falling within this category should be referred to the Department of Defense, Washington 25, D. C. Instructions in this paragraph do not apply to reporting the deaths of dependents of Department of Defense personnel, or to reporting the deaths of contractor personnel, i. e., United States civilians employed in foreign countries by commercial concerns operating under contract with the Department of Defense, or their dependents. The deaths of such persons should be reported in the manner prescribed in § 72.4.

(b) *Coast Guard personnel.* The United States Coast Guard is required to report officially the deaths of its military and civilian personnel. If death occurs in any country in Europe or the British Isles in which a Coast Guard detail is not assigned, the consular officer should inform the Senior Coast Guard Merchant Marine Detail Officer (Europe), London, England, by telegraph. If the death occurs outside Europe or the British Isles, the consular officer should telegraph the particulars of the death to the Department of State, indicating the maximum length of time before local burial is mandatory, for action by the Coast Guard. All inquiries concerning the death of Coast Guard personnel should be referred to the Commandant, United States Coast Guard, Washington 25, D. C. The instructions in this section do not apply to reporting the deaths of dependents of Coast Guard personnel. The deaths of such persons should be reported in the manner prescribed in § 72.4.

§ 72.3 *Telegraphic notifications of death*—(a) *Use of telegraph.* When instructions must be obtained from the next of kin or other interested person in the United States as to disposition of the remains, notification of death should be sent by telegraph to the Department for forwarding. If available to the consular officer, the name and address of the next of kin or legal representative (§ 72.18) should be included in the message. In instances in which the remains must be disposed of immediately, the consular officer may communicate by telegraph direct with the next of kin or legal representative, requesting instructions for disposition of the remains. In such event the telegram to the Department should indicate that this action has been taken.

(b) *Content of notification.* All such notifications should state the minimum cost of

(1) Local burial;

(2) Cremation (if applicable);

(3) Embalming, preparing and shipping the remains; and

(4) The maximum period of time before local burial is mandatory.

(c) *Payment of charges.* The cost of these initial notifications of death by telegraph is a proper charge against official funds. Subsequent telegrams relating to matters for personal decision are normally at the expense of interested parties.

§ 72.4 *Normal reporting procedure*—(a) *Purpose and use of Form FS–192.* Form FS–192, "Report of the Death of an American Citizen", is an administrative report established for the purpose of providing essential facts concerning the death of a United States citizen, and should be used to report the death officially to the Department, to the legal representative, and to the closest known relative of the deceased. Notification of death by telegraph does not eliminate the necessity for reporting the death on Form FS–192.

(b) *Information required on Form FS–192.* All information called for under the various headings of Form FS–192 should be supplied in as much detail as possible. When prolonged delay is experienced in procuring full data, the consular officer should prepare and distribute a preliminary report of death on Form FS–192, marking the report "Preliminary." This should be followed by a final and complete report as soon as full data are available. Expanded comments necessary to cover special circumstances concerning the death, should appear under the heading "Remarks." When applicable, statements concerning the following subjects should also appear under the heading "Remarks":

(1) Disposition made of the passport and certificate of naturalization (see § 72.8);

(2) If the deceased is known to have been the recipient of continuing payments other than salary from the Federal Government (e. g., retirement, social security, disability compensation, or veterans insurance or benefits), indication of the nature of the payments received;

(3) If the deceased is a Selective Service registrant of inductible age, his Selective Service registration number and the number and address of his Local Board, when known.

(c) *Signing and sealing of Form FS–192.* All copies of the Form FS–192 should be signed by the consular officer with his name and official title typed below, and the consular impression seal should be impressed on each copy.

(d) *Transmission of Form FS–192 to the Department.* The original of Form FS–192 shall be sent to the Department, plus one additional copy for each agency concerned, if the deceased was:

(1) A recipient of continuing payments other than salary from the Federal Government; or

(2) An officer or employee of the Federal Government (other than Department of Defense or Coast Guard); or

(3) A Selective Service registrant of inductible age.

(e) *Transmission of form to legal representative and next of kin.* A copy of Form FS–192 should be sent to the legal representative. A copy should also be sent to the closest known relative of the deceased (or relatives, if there are two or more persons having equal interests). No fee is prescribed for sending one copy each of completed Form FS–192 to the legal representative and to the closest known relative or relatives.

(f) *Transmission of form to other consular districts.* In the event that a part of the personal estate of the decedent is known to be in a consular district other than that in which the death occurs (see § 72.32), a copy of Form FS–192 should be sent to the consular officer in the other district.

(g) *Supplying copies of form.* Copies of Form FS–192 shall be supplied by the Department of State or by the Foreign Service post upon request to any person having valid need therefor. Charges are as prescribed in the Schedule of Fees (§ 21.1 of this chapter) or in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 72.5 *Reports of presumptive deaths*—(a) *Provisional report.* Upon the receipt of evidence that a United States citizen is missing and is presumed to be dead, a report should be submitted to the Department on Form FS–192, with the title amended to read "Report of the Presumptive Death of an American Citizen". A statement should be inserted in the form under the heading "Cause of Death" such as the following: "Reported missing, believed to be dead", giving the source of the information upon which the presumption is based. A statement should also be included under the heading "Remarks" showing the requirements of local law for the establishment of legal presumption of the death of missing persons; i. e., whether under local law the legal presumption of death automatically arises at the expiration of a stipulated lapse of time, or whether formal action is necessary to obtain legal confirmation of the death of missing persons.

(b) *Final report.* In the event that the fact of death is established, a final complete report shall be submitted to the Department on Form FS–192 marked "Final Report", in which reference shall be made, under the heading "Remarks", to the provisional report. If feasible, a "Final Report" should be submitted at such time as legal presumption of death arises in accordance with local law.

§ 72.6 *Reports of deaths on the high seas*—(a) *On vessels of United States registry.* When a United States citizen (not a seaman) dies on board a vessel of the United States making a voyage from a port in the United States to any foreign port, the master of the vessel is required to enter the circumstances of the death in the official log book (46 U. S. C. 201). Customarily, these circumstances are reported to the consular officer at the first port of call. On the basis of the log entry, the consular officer should report the death on Form FS–192 in the manner prescribed for other United States citizens (see § 72.4). A copy of the text of the log entry, certified by the master,

should be retained with the office copy of Form FS–192.

(b) *On vessels of foreign registry.* When a United States citizen dies on a vessel of foreign registry, all information obtained from the master of the vessel for purposes of reporting the death on Form FS–192, should be supported by a certified copy of the text of the log entry, if obtainable.

§ 72.7 *Reports on deceased persons believed to be United States citizens*—(a) *Verification of citizenship.* As Form FS–192 may be accepted in courts of law, or considered elsewhere, as evidence of United States citizenship at the time of death, the consular officer should consult the regulations describing the evidence of citizenship which is acceptable for passport and registration purposes and should exercise due care in determining the citizenship status of the deceased. In doubtful cases he should transmit the Form FS–192 to the Department under cover of a despatch stating that the citizenship of the deceased has not been verified. The Department will then determine whether Form FS–192 may be released to the legal representative, next of kin, or other interested person, and will inform the consular officer of whatever action is taken.

(b) *Presumptions as to citizenship status.* When the deceased was not currently documented at a Foreign Service office as a United States citizen, it must be assumed that, if the deceased was

(1) A native citizen, he had retained United States citizenship at the time of death, in the absence of evidence of an affirmative act of expatriation under paragraph 1, section 2 of the act of March 2, 1907, section 401 of the Nationality Act of 1940, or sections 340 or 350 of the Immigration and Nationality Act;

(2) A naturalized citizen, he had retained United States citizenship at the time of death, in the absence of evidence that he had lost nationality of the United States by having a continuous residence for three years in the territory of a foreign state as provided in section 352 (a) (1) of the Immigration and Nationality Act, or by having a continuous residence for five years in any other foreign state or states as provided in section 352 (a) (2) of the same act, unless there is evidence that his case comes within one of the exceptions established under sections 353 or 354 of the act. Nationality may also have been lost under similar provisions contained in section 404 of the Nationality Act of 1940. The term residence as used herein means the place of general abode, and residence shall be considered continuous for the purpose of sections 350 and 352 (a) (1) and (2) of the act where there is a continuity of stay but not necessarily an uninterrupted physical presence in a foreign state or states or outside the United States.

§ 72.8 *Disposition of nationality documents*—(a) *Passport.* The passport of a deceased United States citizen should be cancelled by the consular officer and either returned to the Department or delivered to the person having a legitimate interest therein. Only a person who is included in the passport may be considered to have a legitimate interest in it. The date and place of death should be noted on the passport, and an appropriate notation made on Form FS–192 (see § 72.4 (b) (1)).

(b) *Certificate of naturalization.* The certificate of naturalization of a deceased United States citizen should be taken up by the consular officer and forwarded to the Department for transmission to the Department of Justice; or, if the certificate is claimed by any person who may have a legitimate interest therein, it should be endorsed by the consular officer to show the date and place of death of the person to whom it was originally issued, and should then be delivered to the person entitled thereto, with appropriate notation made on Form FS–192 (see § 72.4 (b) (1)).

DISPOSITION OF REMAINS

§ 72.9 *Consular responsibility.* (a) In the absence of relatives or other interested persons, the consular officer should exert all reasonable effort to carry out the expressed wishes of the deceased or next of kin as to local burial, cremation, or shipment of the remains, taking care that the legal requirements of the country are met. However, the consular officer is neither authorized nor expected to assume any financial responsibility for, or to incur any expense in connection with, the disposition of the remains of deceased persons unless specifically instructed to do so by the Department. When the next of kin or other interested person cannot be reached within the period provided by local law for the interment or preservation of dead bodies and sufficient funds can be realized from the personal estate of the deceased in the consular officer's possession, he should arrange for disposal of the remains locally and draw funds from the estate to cover the costs (see § 72.39; also § 72.30 as regards withdrawals from bank accounts). If there are not sufficient funds in the estate to cover the costs, and funds are unobtainable from relatives or other interested persons, there may be no alternative but to accept disposal of the remains by the local authorities in accordance with local law or regulations. (See also § 72.13 for remains requiring special handling.)

(b) A consular agent may, upon instructions from his principal consular officer, arrange for the disposition of remains of deceased United States citizens. His principal consular officer has, in accordance with §§ 72.9 to 72.14, the responsibility for reporting to relatives and for complying with the laws of the country in which the death occurred as well as the requirements of the United States.

§ 72.10 *Local burial*—(a) *Arrangements for funerals.* When the responsibility for local burial falls on the consular officer (see § 72.9), he should endeavor to carry out the expressed instructions of the deceased or, in the absence of such instructions, the wishes of the next of kin. Funeral services should be conducted in accordance with the rites of the religious faith of the deceased, if known. In each instance the consular officer should notify known friends of the deceased and other interested persons in the consular district (such as any American community organizations) of the date and place of the funeral. When practicable, the services should be attended by a member of the consular staff.

(b) *Report to relatives.* The next of kin, or other person whose wishes have been considered in making the arrangements for local burial, should be informed by letter of any funeral service that is held.

(c) *Erection of markers.* If the consular officer is requested to make arrangements for the erection of markers on graves, he may assist to the extent of ascertaining any feasible procedure for making local arrangements and effecting direct remittance for this purpose, and informing the interested party accordingly.

(d) *Upkeep of graves.* The maintenance and repair of graves of persons whose remains are interred abroad, including officers and employees of the Foreign Service, is not a proper charge against official funds unless specifically authorized. If the consular officer is requested to make arrangements for the upkeep of graves, he may assist to the extent indicated in paragraph (c) of this section with respect to the erection of markers.

§ 72.11 *Cremation*—(a) *Arrangements.* When cremation is desired, and the facilities are available, the consular officer should see that all necessary arrangements are made if compatible with the requirements of the country in which the death occurred, having in mind particularly such local laws as may prohibit cremation unless specific request for such disposition was made in writing by the individual prior to death.

(b) *Disposition of ashes.* Disposition of the ashes should be made in accordance with the expressed wishes of the deceased or the next of kin, or other interested person. If shipment to the United States is desired, only local health requirements must be met, as there are no sanitary requirements for entry of ashes into the United States. A marking should be made on, or a marker firmly affixed to, the container in which the ashes are shipped. The latter should be accompanied by

(1) An official death certificate;

(2) Cremation certificate;

(3) Certificate from the crematorium stating that the container holds only the cremated remains of the deceased; and

(4) A permit to export (if required locally).

§ 72.12 *Shipment of remains to the United States*—(a) *Arrangements.* Whenever the remains of persons who have died abroad, regardless of the nationality of the deceased, are to be shipped to the United States, the consular officer should assure himself that they are properly encased and accompanied by all necessary papers pertain-

ing to the death, exhumation (if applicable) and preparation for shipment. The requirements of the country where the death occurred must be met at all times.

(b) *Local documents accompanying remains.* The following documents should accompany the remains for shipment, attached to the consular mortuary certificate (see paragraph (d) of this section):

(1) A certificate of death issued by the local registrar of deaths, or similar authority, identifying the remains, showing the place, date and cause of death as certified by the attending physician, with a listing of the cause of death conforming as far as practicable with the terminology of the International List of Causes of Death (needed to comply with United States Quarantine and interstate requirements);

(2) The affidavit described in paragraph (c) of this section (for United States Customs), which also would generally include evidence of embalming, when applicable (needed to comply with the requirements for interstate shipment);

(3) A "transit permit" authorizing export of the body out of the country, issued by the health authority at the port of embarkation, stating the date of its issuance, name of deceased, sex, race, age, cause and date of death (needed to comply with New York health requirements).

(c) *Packing and labeling of casket.* In order to facilitate clearance through United States Customs at the port of entry, the undertaker, or whatever person is responsible for packing the body for shipment, should be required to make a sworn declaration—to be attached to the consular mortuary certificate (see paragraph (d) of this section)—that the casket or box contains only the body of the deceased and the necessary clothing and packing. The sworn declaration should be made, if practicable, before the consular officer; if not, it should be made before a qualified local official, whose signature and seal can be authenticated by the consular officer. The outer box should be labeled in conformity with port of entry health requirements.

(d) *Consular mortuary certificate.* A consular mortuary certificate should be prepared indicating how the case is marked and addressed, means of transportation to the United States, name of carrier, date and place of shipment, port of entry and scheduled time of arrival. The documents listed in paragraph (b) of this section should be ribboned to the consular mortuary certificate, which should be signed by the consular officer and sealed with the consular press seal.

§ 72.13 *Remains requiring special handling*—(a) *Foreign Service personnel.* In the absence of relatives or other interested persons, the consular officer should make all necessary arrangements for the disposition of the remains of deceased officers and employees of the Foreign Service according to specific instructions from the Department.

(b) *Personnel of other Government agencies.* The consular officer should extend to other departments or agencies of the United States Government all appropriate aid, in accordance with specific instructions received through the Department of State for the disposition of the remains of an employee who has died while serving in a foreign country.

§ 72.14 *Fees for disposing of remains.* No fees are prescribed for services in connection with the disposition of remains.

PERSONAL ESTATES OF DECEASED CITIZENS

§ 72.15 *Statutory responsibility of consular officer.* Sections 1175–1179 of Title 22 of the United States Code prescribe the statutory responsibility of officers of the United States Foreign Service for the personal estates of deceased United States citizens dying outside the United States.

§ 72.16 *Regulatory responsibility of consular officer.* Except as otherwise provided in §§ 72.18 through 72.26, the consular officer (or in his absence a diplomatic officer) should take possession and dispose of the personal estates (other than the articles described in §§ 72.29 and 72.30) of all United States citizens who die within his jurisdiction or were residing therein at the time of death. This responsibility should be discharged in accordance with the procedure prescribed herein so far as that procedure is authorized by:

(a) Treaty provisions; or

(b) The laws or authorities of the country wherein the estate is located; or

(c) Established usage.

§ 72.17 *Responsibility of consular agents.* A consular agent has no statutory authority to take possession and dispose of the personal estate of a deceased citizen of the United States, except under the immediate supervision and as the agent of his principal consular officer. The consular agent, therefore, should immediately report the circumstances to, and request instructions from, his principal consular officer, who should assume the responsibility for taking possession and disposing of the personal estate in accordance with the regulations in this part.

§ 72.18 *Responsibility if legal representative is present.* According to law (22 U. S. C. 1175), the consular officer should not take possession or dispose of the personal estate of a deceased citizen who has left a legal representative in the country where the death occurred or in the country where he was residing at the time of death. As used here, the term "legal representative" means

(a) An executor designated by will or testament;

(b) An administrator appointed in intestate proceedings.

(c) An agent of executor or administrator qualifying by power of attorney;

(d) A child of legal age;

(e) A parent;

(f) The next of kin (nearest blood relative);

(g) The surviving spouse.

§ 72.19 *Responsibility if trustee for personal estate is present.* Likewise, the law (22 U. S. C. 1175) stipulates that the consular officer should not take possession or dispose of the personal estate of a deceased citizen who has left in the country where the death occurred, or in which he was residing at the time of death, a "trustee by him appointed". The language of the statute includes any person, natural or juristic, appointed by the decedent in a will, or appointed by a deed to hold legal title to the personal property for the benefit of a named beneficiary.

§ 72.20 *Responsibility if "partner in trade" is present.* Although the law (22 U. S. C. 1175) also relieves the consular officer of responsibility if a "partner in trade" is present, the death of one member of a partnership automatically dissolves this relationship. Consequently, the surviving partner or partners have no beneficial interest as "partners in trade" in the personal estate of the deceased. The duties and responsibilities of provisional conservator of the personal estate of the deceased cannot therefore be assumed by a surviving partner, unless he is duly authorized to act as a legal representative of the deceased. Accordingly, the presence of a former "partner in trade" will not necessarily relieve the consular officer of his responsibility.

§ 72.21 *Responsibility if will intended to operate locally exists.* If a will is discovered which is intended to operate locally, and a local or domiciliary representative named by the decedent qualifies promptly and takes charge of the personal estate, the consular officer should assume no responsibility for the estate (§§ 72.18 and 72.19), and should not take possession, inventory and dispose of the personal property and effects, or in any way serve as agent for the local or domiciliary representative. However, if the laws of the country permit and if the local or domiciliary representative does not qualify promptly, the consular officer may have to take protective action in the interest of the estate to the extent of placing his seal on the personal property and effects of the decedent, such seal to be broken or removed only at the request of the local or domiciliary representative. Furthermore, he should see that the foreign authorities accord due recognition to the American interests involved and provide proper protection for the property under local procedures. If prolonged delays are encountered by the local or domiciliary representative in making arrangements to take charge of the personal estate, the consular officer may request that the will be offered for probate, if in his judgment such action is advisable in the interest of the estate.

§ 72.22 *Responsibility if will intended to operate in the United States exists.* If a will that is intended to operate in the United States is found among the effects taken into possession by the consular officer, it should be forwarded immediately to the person or persons designated, in the event that their whereabouts are known. When this is impossible, the will should be sent to the appropriate court in the State of the decedent's domicile. Special directions contained in the will for the conservation by the consular officer of the per-

sonal estate should be observed by him so far as the laws of the foreign country and these regulations permit him to act.

§ 72.23 *Responsibility in case of Department of Defense personnel.* The Department of Defense is required, in the absence of a legal representative or other authorized person (see §§ 72.18 and 72.19), to assume responsibility for the disposition of the personal estates of its military and civilian personnel who have died abroad. However, when no representative of the Department of Defense, or other authorized person, is present at the time of death, the consular officer should take possession of the personal estate and hold it for disposition in accordance with instructions from the Department of Defense. No fee should be charged for services so rendered (§ 72.54). Instructions in this section do not apply to the personal estates of dependents of Department of Defense personnel; nor to contractor personnel, i. e., United States civilians employed in foreign countries by commercial concerns operating under contract with the Department of Defense, and their dependents. The estates of such persons should be disposed of in the manner prescribed by §§ 72.28 to 72.51, if no legal representative is present.

§ 72.24 *Responsibility in case of Coast Guard personnel.* The United States Coast Guard is required, in the absence of a legal representative or other authorized person (see §§ 72.18 and 72.19), to assume responsibility for the disposition of the personal estates of its military and civilian personnel who have died abroad. However, when no representative of the Coast Guard, or other authorized person, is present at the time of death, the consular officer should take possession of the personal estate and hold it for disposition in accordance with instructions from the Commandant, United States Coast Guard. No fees should be charged for services so rendered (§ 72.54). Instructions in this section do not apply to the personal estates of dependents of Coast Guard personnel. The estates of such persons should be disposed of in the manner prescribed by §§ 72.28 to 72.51, if no legal representative is present.

§ 72.25 *Responsibility in case of citizens dying on the high seas*—(a) *Consular responsibility not provided by statute.* There is no express provision of law authorizing the consular officer to take possession and dispose of the personal estate of a citizen of the United States (not a seaman) who has died on the high seas.

(b) *When death occurs on board vessel of United States registry.* If the death occurred on board a vessel of the United States, the master of the vessel, in the absence of a legal representative or other authorized person (see §§ 72.18 and 72.19), should be requested to take custody and return the personal estate to the shipping company in the United States for forwarding to the legal representative or other authorized person.

(c) *When death occurs on board vessel of foreign registry.* Death on board a vessel of foreign registry is considered to have occurred in the territory of the country of the ship's registry, and the estate laws of that country are applicable in such cases. In the absence of a legal representative or other authorized person (see §§ 72.18 and 72.19), the consular officer should take possession and dispose of the personal estate, provided that the laws of the country of assignment as well as the laws of the country of the ship's registry permit. The procedure in such cases is identical with that followed in the disposition of the estate of any United States citizen who may have died within the consular district, except that no fees should be charged for services rendered (§ 72.55).

§ 72.26 *Responsibility in case of seamen.* See §§ 85.4 to 85.9 of this chapter for regulations regarding the disposition of the personal estates of seamen who have died while serving as members of the crew of a vessel of the United States. The consular officer should take possession and dispose of the personal estates of United States citizens who have died while serving as seamen on board foreign vessels, in the manner prescribed by § 72.25 (c).

§ 72.27 *Responsibility in case of Foreign Service personnel.* In the absence of a legal representative or other authorized person, the consular officer should take possession and dispose of the personal estates of deceased Foreign Service personnel in the manner prescribed by these regulations for other deceased citizens of the United States, except that no fee should be charged (§ 72.54). Travel orders issued by the Department for shipment of the personal effects of deceased officers and employees of the Foreign Service constitute only administrative authorization to transport the effects to a given destination, and in no way relieve the consular officer of the responsibility for satisfying himself of a claimant's right to the personal estate prior to shipment (§ 72.43).

§ 72.28 *Effects to be taken into possession.* Although no limitations are placed by law (22 U. S. C. 1175) on the nature and extent of the personal property that should be taken into possession by the consular officer in the absence of a legal representative, experience has shown that the need exists to delimit by regulation the consular officer's obligations, but not his authority, in this regard. For example, the consular officer would not normally be expected to take physical possession of the articles covered in § 72.29 unless the items are of such nature and quantity as to be readily included with the personal effects of the nature described in this section, or unless such action, when physically possible, is necessary for the preservation or protection of the property. The consular officer does, however, have responsibility for taking reasonable steps to safeguard the articles of the personal estate which he does not take into possession until disposition can be effected by the legal representative. The personal effects which the consular officer would normally take into possession in any event include the following:

(a) Convertible assets, consisting of currency, redeemable transportation tickets, evidences of debts due and payable in the country of the officer's assignment, and any other instruments negotiable by the consular officer;

(b) Perishable property (including most foodstuffs), having commercial value;

(c) Luggage;

(d) Wearing apparel;

(e) Miscellaneous personal effects;

(f) Jewelry, heirlooms and articles of sentimental value;

(g) Non-negotiable instruments, defined as any document or instrument not saleable or transferrable by the consular officer, but which requires either the signature of the decedent or action by, or endorsement of, his legal representative; and includes transportation tickets not redeemed or redeemable by the consular officer, traveler's checks, promissory notes, evidences of debts not due and payable in the country of the officer's assignment, stocks, bonds or other similar instruments, bank books, books showing deposits in building and loan associations, etc. No fee is charged on non-negotiable instruments taken into possession by the consular officer; see § 72.53.

(h) Personal documents and papers.

§ 72.29 *Nominal possessions; property not normally taken into possession.* (a) The taking of articles of personal property into nominal possession from local officials or other persons, for the explicit purpose of on-the-spot release to the "legal representative" as defined in § 72.18 against the latter's memorandum receipt discharging the consular officer without further accounting of any responsibility for articles so transferred by him, shall not be construed as the taking of custody by the officer. No fee shall be charged for the consular officer's service in effecting transfer of the articles in the manner described, provided that he is not required to prepare a consular inventory, appraise the articles, or list the contents of containers, and provided further that the effects are not taken in safekeeping upon official accountability.

(b) The consular officer is not normally expected to take physical possession, as provisional conservator, of livestock or of articles of personal property which may be found in residences and places of storage such as furniture, household effects and furnishings, bulky works of art, etc., unless the items are of such nature and quantity as to be readily included with the personal effects (§ 72.28), or unless such action, when physically possible, is necessary for the preservation or protection of the property, especially where the articles are of considerable intrinsic value; nor is the consular officer normally expected to take into physical possession motor vehicles, airplanes, or powered watercraft. Personal property not taken into possession should, however, be safeguarded by affixing the consular seal on the premises or on the property

(whichever is appropriate), provided the laws of the country permit; or by taking reasonable steps to ensure that such items are placed in safekeeping (at the expense of the estate) until action can be taken by the legal representative. In order to protect the interests of the estate, the consular officer should prepare a list, in quintuplicate, of the articles not taken into physical custody, with indication of safeguarding measures taken, for submission with the inventory of effects which must be prepared for all items in his possession (see § 72.35). If the property which normally would be sealed by the consular officer is not immediately accessible, he should consider requesting the local authorities to seal the premises, or the property, or otherwise ensure that the property remains intact until consular seals can be placed thereon or the property placed in safe storage, or until the legal representative assumes responsibility therefor.

§ 72.30 *Bank deposits in foreign countries.* The existence of bank deposits when known should be reported to the legal representative, or other authorized person, who should be informed of the general procedure required by local law to withdraw such deposits and whether legal counsel is advisable for that purpose. There is no express provision of law authorizing the consular officer to withdraw or otherwise dispose of bank deposits in foreign countries left by deceased United States citizens. Such deposits, therefore, are considered for the purpose of the regulations in this part as forming no part of the personal estate of a decedent, and no Foreign Service fees are chargeable thereon (§ 72.53 (c)). In the event that the consular officer is requested by the legal representative of the estate to withdraw bank balances on his behalf in order to defray local expenses in connection with the death and the settlement of the personal estate of the decedent, he may comply with such request if facilities are provided by the depository for this purpose. Funds withdrawn should be limited to the amount necessary to defray the expenses prescribed herein, and fees should be collected on the amount withdrawn, in accordance and § 72.52.

§ 72.31 *Action when immediate possession is impracticable.* The law imposes no affirmative obligation upon the consular officer to travel long distances for the purpose of taking on-the-spot possession of a personal estate. If occasion to visit the locality where the death occurred coincides with the need to take action, the consular officer should avail himself of the occasion to assume custody of the effects. Normally, however, the consular officer's initial responsibility in such cases does not extend beyond reasonable efforts to obtain possession of the estate. He should communicate with the persons, officials, or organizations having custody of the effects, requesting that the effects be delivered to him, at the expense of the estate, for lawful disposition. If the local authorities should decline to surrender possession to the consular officer in a case where he feels that his right to take possession is clear, he may refer the matter to the mission. The consular officer's personal responsibility for any given item among the personal effects commences only when that item reaches his hand.

§ 72.32 *Action when property is in other consular districts.* If any portion of the personal estate is known to be in another consular district, mention of this should be made under "Remarks" in the Form FS–192; and a copy of this form should be sent to the consular officer concerned (see § 72.4 (f)) who should assume responsibility independently for taking possession and disposing of these effects in the manner prescribed herein. If the cash resources of the personal estate found in one consular district are insufficient to pay the decedent's debts in that district or in the country of the consular officer's assignment (see § 72.39), the funds found among the personal effects in the other consular district may be utilized to pay the decedent's debts in both districts or countries. In such cases, the consular officer who effects the transfer of the funds should enter the disbursement in his final statement of account (see § 72.51), including the funds transferred in the gross amount of the estate in his possession, for the assessment of fees as indicated in §§ 72.52 to 72.55. The funds transferred should also appear in the final statement of account of the consular officer receiving them as "receipts" and "disbursements", stating the source. However, no fee should be charged on the amount involved (see § 72.53 (b)).

§ 72.33 *Official notification to legal representative.* The preparation and forwarding of Form FS–192 complies with the law (22 U. S. C. 1176) as regards notification of death to the legal representative as well as to the Secretary of State. Failing by direct means to locate a legal representative, the consular officer may, if required in connection with the settlement of the estate, have recourse to giving public notice of the death in "one of the gazettes" (i. e. any suitable periodical) in the consular district.

§ 72.34 [Reserved.]

§ 72.35 *Procedure for inventorying and appraising effects.* After taking possession of the personal estate of a deceased citizen, the consular officer should immediately inventory and appraise the personal effects on the basis of the local market value, article by article, with the assistance of two other persons who should join him in signing the inventory and in certifying to the accuracy of the appraised value of each article inventoried. The inventory should include only that part of the personal estate actually taken into possession by the consular officer, regardless of value and the fact that the death may have occurred in one consular district and a portion of the personal effects may be found in another consular jurisdiction. Care should be exercised not to over-estimate the value of the personal effects, which is the basis on which Foreign Service fees will be charged (§ 72.52). The consular officer may, in his discretion, call upon professional appraisers at the expense of the estate when warranted by the nature of the personal effects, i. e., expensive jewelry, furs, etc.

§ 72.36 *Preparation and disposition of inventory.* The inventory of effects should be prepared in quintuplicate. All copies should be signed by the consular officer and the two persons who assisted in its preparation, and they should be disposed of in the following manner:

(a) The original retained in the office files;

(b) Two copies, under cover of a despatch, sent to the Department (one copy for transmission to the General Accounting Office);

(c) One copy to the legal representative (two copies if the next of kin is the legal representative); and

(d) One copy to the next of kin.

§ 72.37 *Disposal of perishable property.* As soon as practicable after the consular officer takes possession, the perishable portion of the personal estate having commercial value (including most foodstuffs) should be sold at auction, i. e., to the most favorable bidder, unless the amount involved does not justify such expenditure. A newspaper advertisement, written or oral requests for bids from any interested party, or the services of a professional auctioneer, may all serve the purpose of insuring an impartial sale. When the value of the goods or circumstances do not justify such action, the consular officer may proceed directly with the sale of the goods.

§ 72.38 *Collection of debts due deceased.* The consular officer should endeavor to collect only those debts due the decedent from persons or concerns in the country in which the death occurred or in the country in which the decedent was residing at the time of death. Debts so collected are regarded as part of the decedent's personal estate, and should be included in the gross amount thereof for the assessment of fees (§ 72.52).

§ 72.39 *Payment of debts owed by deceased*—(a) *When cash resources suffice.* The decedent's debts which the consular officer is reasonably certain are legitimately owed in the country in which the death occurred, or in the country in which he was residing at the time of death, including expenses incident to the disposition of the remains and the personal effects, should be paid out of the cash resources of the personal estate taken into possession by the consular officer; namely, money found among the personal effects, proceeds of the sale of the perishable property, or funds received through the collection of debts owed the decedent. See § 72.32 in regard to the personal estate in another consular district. Any doubtful claim against the estate should be referred to the legal representative or other authorized person for consideration; a claim for damages for a negligent or wrongful act of the decedent is not a debt to be paid by the consular officer unless it has been reduced to judgment.

(b) *When cash resources are insufficient.* In the event that the cash resources of the personal estate are not

sufficient to pay the debts owing in the country in which the death occurred, or in the country in which the decedent was residing at the time of death, the consular officer should endeavor to obtain sufficient funds from the legal representative, next of kin or other interested person. See § 72.32 concerning funds found in another consular district. Fees are not charged on funds so furnished (§ 72.53). If sufficient funds cannot be assembled from the foregoing sources, the consular officer should sell at auction (see § 72.37), such portion of the personal estate as may be necessary to pay the debts and expenses. Should occasion arise for sale of motor vehicles, airplanes or powered watercraft, title to which and liens upon which in the United States and almost universally are matters of official record, care should be taken to conform with applicable registration requirements. Articles which are most marketable, and at the same time least likely to be desired by the heirs of the decedent, should be sold first. Jewelry, heirlooms and articles which may have sentimental value to relatives, regardless of intrinsic value, should be sold only in case of necessity, and in the order named. Members of the decedent's family should be notified of the necessity for the sale, if practicable, in order that they may purchase these articles if they desire. Proceeds from the sale are regarded as forming part of the personal estate and should be included in the gross amount thereof for the assessment of Foreign Service fees (see § 72.52).

§ 72.40 *Consular officer not to act as administrator of estate.* The consular officer normally should not accept appointment from any foreign state or from a court in the United States to act as administrator, or to assist (except as provisional conservator) in administering the personal estate of a deceased citizen who has died, or was residing at the time of death, within his consular district. Neither should he accept appointment as guardian or in any other fiduciary capacity in the settlement of the estate without:

(a) Having previously obtained the permission of the Secretary of State to accept such appointment; and

(b) Having assured himself that he has authority so to act under treaty provisions, local law or usage.

If authorization is received as to appointment in any of the capacities indicated above, the consular officer will be required to execute bond, with surety to be approved by the Secretary of State (22 U. S. C. 1178, 1179).

§ 72.41 *Consular officer not to perform legal services or to employ counsel.* Owing to the legal restriction against engaging in foreign business or professional activity (22 U. S. C. 805), the consular officer shall not act as attorney or agent for the estate. Neither shall he employ counsel at the expense of the United States Government, or the estate, in collecting and disposing of the personal estate of a deceased citizen. If legal assistance is requested of the consular officer, he may furnish the names of several attorneys or inform the inquirer as to sources through which the names of suitable attorneys may be obtained.

§ 72.42 *Consular officer not to assume financial responsibility.* The consular officer, as provisional conservator of the personal estate of a deceased citizen, is neither authorized nor expected to assume any financial responsibility, not to incur any expense in behalf of the estate, in excess of funds available for that purpose (see § 72.39 (a)).

§ 72.43 *Conditions under which estate can be released by consular officer.* The consular officer is responsible to the United States court having probate jurisdiction over the estate and to the parties in interest for the personal estate in his possession. He must be prepared to deliver the estate to, or otherwise dispose of it according to the wishes of, the legal representative of the decedent upon the presentation of satisfactory evidence of the latter's right to receive the estate, and upon the payment of the prescribed Foreign Service fees (§ 72.52). Determination of what constitutes satisfactory evidence of a claimant's right to the personal estate of a deceased citizen is also the responsibility of the consular officer. The consular officer, therefore, must satisfy himself that the evidence which he accepts is sufficient to relieve him as provisional conservator. Friends, traveling companions, employers, and business associates are not competent to relieve the consular officer of the duties and responsibilities enumerated in the regulations in this part, unless duly authorized as legal representatives of the estate (see § 72.18). Satisfactory evidence of a claimant's right to the personal estate of a decedent may be supplied in the manner indicated in § 72.44.

§ 72.44 *Evidence of claimant's right to estate*—(a) *Letters testamentary.* A certified copy of the letters testamentary (an instrument issued by a court of law under which a person, named as executor by a will, formally takes charge of the estate and proceeds to carry out the directions in the will) is prima-facie evidence of the executor's right to take possession of the personal estate.

(b) *Letters of administration.* A certified copy of the letters of administration (an instrument issued by a court of law in intestate proceedings appointing an administrator to take charge of the property of a decedent) is prima-facie evidence of the administrator's right to take possession of the personal estate.

(c) *Affidavit of next of kin.* When a decedent dies intestate, and the personal estate consists only of clothing and similar personal effects appraised at little or no commercial value, or in cases where the consular officer is fully satisfied of the legal right of the claimant and the value of the estate does not warrant the expense of probate proceedings, he may be justified in considering as satisfactory evidence an affidavit executed by the decedent's next of kin. The affidavit of the next of kin should be corroborated by the sworn statements of two persons acquainted with the affiant and familiar with the facts of the case. In any event, the consular officer must satisfy himself of the legal right of the claimant or claimants to the decedent's effects before releasing the property that he has in his possession, and he must decide whether an affidavit is acceptable in lieu of a certified copy of the letters testamentary or the letters of administration.

§ 72.45 *Shipment of personal estate to the United States.* (a) When the consular officer is requested to ship to the United States the personal estate in his possession, he should deliver it to a forwarding company selected by the legal representative. Clearance by Customs in the United States will be facilitated if the personal estate is accompanied by a consular certificate identifying it and indicating its nature. If the entire shipment is covered by a single bill of lading, a certificate attached to the original bill of lading covering the shipment would be sufficient; otherwise, a certificate should accompany each parcel, box or case.

(b) Extra copies of the bill of lading can serve as a receipt from the forwarding company, one copy to be attached to the consular officer's final statement of account (§ 72.50), and one copy to be retained in the office files. If shipment by registered or insured parcel post, or by other safe means covered by receipt, is possible, there is no objection to forwarding the estate in this fashion, and postal or other receipts should be disposed of in the manner described above, with the original attached to the final statement of account. The personal effects of Foreign Service personnel (see § 72.27) and of personnel of other Government agencies (except Department of Defense and Coast Guard personnel) should be consigned to the United States despatch agent at the port of entry, for forwarding to the legal representative.

§ 72.46 *Consular action on disagreements between claimants.* If rival claimants or administrators (administrators may be appointed in different jurisdictions) demand the personal estate in the consular officer's possession, he should refuse to deliver the estate until an agreement has been reached, or judgment rendered, as to which claimant or administrator should receive it, and the consular officer so informed in writing. If, after one year, agreement has not been reached between rival claimants, or judgment rendered, the consular officer should notify all parties concerned and sell the entire personal estate at auction in the manner prescribed by § 72.37, with the exception of jewelry, heirlooms, and articles which may have sentimental value to relatives, regardless of intrinsic value. Should any of the personal property not have been taken into physical possession previously (see § 72.29), the consular officer should take possession of such property and, after preparing a supplementary inventory in the manner prescribed in §§ 72.35 and 72.36, include this portion of the estate with that already in his possession. The proceeds of the sale should be converted into United States dollars and, after payment of local debts (§ 72.39) and collection of the fee prescribed by § 72.52, should be transmitted, with any unsold portion

of the estate in the consular officer's possession, to the Department of State for forwarding to the General Accounting Office for safekeeping and lawful disposition as conservator of the estate (22 U. S. C. 1175).

§ 72.47 *Consular action on unproved claim to estate.* If the evidence of a claimant's right to receive the estate is not considered sufficient to relieve the consular officer of his responsibility as provisional conservator, he may elect a period of time, not less than one year from the date of the decedent's death, within which settlement must be effected, in order to obviate interminable delay in disposing of the estate. In the consular officer's discretion, he may before releasing the estate, require the claimant to give bond in an amount fixed by the officer himself and to run for such period of time as he may designate, in order to protect himself against other possible claims against the estate. If claim to the estate is still unproved at the expiration of the period set, or the claimant refuses to meet the conditions of any bond which the consular officer may require, the consular officer should dispose of the entire personal estate in the manner prescribed by § 72.46.

§ 72.48 *Consular action on unclaimed estates.* If, after the expiration of one year from the date of the decedent's death, a legal representative has not appeared to claim the estate, the consular officer should dispose of the entire personal estate in the manner prescribed by § 72.46.

§ 72.49 *Disposition of estate upon departure of responsible officer*—(a) *Responsibility vested in officer, not post.* For the purpose of the regulations in this part, the consular officer who actually takes possession and disposes of the personal estate of the deceased, i. e., the officer whose signature appears on the inventory of effects, is considered to be the responsible officer. Consequently, upon his departure from the post, either on transfer or extended leave, provision should be made for the disposition of any estate remaining unsettled at the time of his departure.

(b) *Procedure when estate held for less than one year.* When the personal estate is held less than one year, the personal effects in the departing officer's possession should be turned over to another officer at the post against a receipt therefor, in triplicate, indentifying the property and cash on hand by reference to the inventory (§§ 72.35 and 72.36) and the trust fund records of the post.

(c) *Procedure when estate held for more than one year.* When the estate has been held for more than one year, the personal effects in the departing officer's possession should be forwarded to the Department for transmission to the General Accounting Office in the manner prescribed by § 72.46 and accounted for in accordance with § 72.50 unless circumstances as described in §§ 72.46 and 72.47 warrant continuing efforts to effect agreement between rival claimants, or to establish an unproved claim. If the estate is not forwarded to the Department, it should be turned over to another officer at the post in the same manner authorized by paragraph (b) of this section.

§ 72.50 *Final statement of account.* The consular officer must account directly to the parties in interest and to the courts of law in estate matters. Consequently, he must keep an account of receipts and expenditures for the personal estate of the deceased; i. e., debit all moneys and effects which actually come into his possession, and credit all payments made on account of the estate. At such time as the consular officer is ready to deliver the estate, he should prepare his final statement of account, entering thereon the balance delivered to the legal representative or person designated by him (with name and address stipulated) or the balance forwarded to the Department for transmission to the General Accounting Office.

§ 72.51 *Preparation and disposition of final statement of account.* The final statement of account should be prepared in quadruplicate. All copies should be signed by the accountable officer and the consular impression seal impressed on each copy, and should be disposed of in the following manner:

(a) The original should be sent to the legal representative with the final balance due the estate;

(b) One copy retained in the office files; and

(c) Two copies, under cover of a despatch, submitted to the Department (one copy for transmission to the General Accounting Office).

In all cases where the residue of the personal estate is to be transmitted to the General Accounting Office for safekeeping and disposition (see §§ 72.46 to 72.48), the original should be sent to the Department, together with the two copies normally submitted, accompanied by a despatch giving detailed information concerning the efforts made by the consular officer to deliver the personal effects to a legal representative or other authorized person. Any information concerning the last known address of the decedent in the United States should also be supplied.

§ 72.52 *Fee services.* The fee prescribed by Item No. 46 of the Tariff of the United States Foreign Service Fees constitutes the first charge against the personal estate and should be assessed on the gross value of the estate in the consular officer's possession (§ 72.38). The consular officer should collect a fee of $2.00 for each $100 of the total value, or fraction thereof, for taking into possession as provisional conservator, inventorying, selling and finally disposing of the personal estate of a deceased citizen in the manner prescribed by the regulations in this part. The personal estate should not be released until the fee has been collected.

§ 72.53 *No-fee services.* Fees are not chargeable:

(a) For placing the official seal upon real or personal property or on the effects of the decedent, or for breaking or removing such seals (§ 72.29);

(b) On funds furnished by relatives or other interested persons to cover expenses incident to the death and disposition of the remains, or for the settlement of the estate (§ 72.39 (b));

(c) On securities and other instruments not negotiated (or not negotiable) by the consular officer (§ 72.28 (g)), or on bank deposits;

(d) For releasing on the spot against memorandum receipt and without occasion either for safekeeping on official accountability or for consular inventory and appraisal, to the legal representative or other authorized person in the country, of personal property taken into nominal possession for the explicit purpose of transfer of custody (§ 72.29 (a)).

§ 72.54 *Estates of Government personnel exempt from fee assessments.* The personal estates of all officers and employees of the United States who die abroad while on official duty, including military and civilian personnel of the Department of Defense and United States Coast Guard (see §§ 72.23 and 72.24) are exempt from the assessment of any Foreign Service fees.

§ 72.55 *Estates of citizens dying on the high seas exempt from fee assessments.* The personal estates of all United States citizens who have died on the high seas are exempt from the assessment of any Foreign Service fees (see § 72.25).

SUBCHAPTER I—SHIPPING AND SEAMEN

PART 81—GENERAL

Sec.

81.1 Definitions.
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AUTHORITY: §§ 81.1 to 81.14 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842.

§ 81.1 *Definitions.* (a) The term "vessel" includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation on water, but does not include seaplanes or other aircraft.

(b) "American vessel" means any United States-owned vessel which is not registered under the laws of a foreign government. American vessels are classified as American public vessels, vessels of the United States, and American undocumented vessels.

(c) "American public vessel" means any vessel owned or operated by a United States Government department or agency and engaged exclusively in official business on a non-commercial basis.

(d) "Vessel of the United States" means any vessel documented under the laws of the United States.

(e) "American undocumented vessel" means any American vessel, other than an American public vessel, which is not documented under the laws of the United States. River or inter-island craft operating in foreign waters often fall in this category.

(f) "Foreign vessel" means any foreign-owned vessel, or any vessel regardless of ownership, which is documented under the laws of a foreign country.

(g) "Master" means any person having command of a vessel.

(h) The term "crew of a vessel" includes every person employed in any capacity on a vessel in pursuance of some contract or arrangement with the owner or master, but excludes laborers or other persons hired locally for work aboard ship while the vessel is in port.

(i) "Seaman" means any person employed as a member of the crew of a vessel.

(j) "American seaman" means any seaman, regardless of nationality, who has this status (see § 81.6).

(k) "Alien seaman" means a seaman of foreign nationality who does not have status as an American seaman.

(l) "Passenger vessel" means any vessel authorized to carry more than twelve persons in addition to the master, the crew, or other persons employed or engaged on board a vessel in any capacity connected with the business of the vessel.

(m) "Classification society" means an organization for establishing safe minimum standards for the strength of the hull and the reliability of the machinery of a vessel. Classification societies are quasi-governmental. The American classification society is the American Bureau of Shipping; the British, Lloyds Register; the French, Bureau Veritas.

§ 81.2 *Status of American public vessels.* American public vessels are usually accorded the courtesies of the port, and exempted from entry and clearance requirements. If, however, a United States Government-owned vessel is manned by a merchant crew (not military or civil-service personnel) and/or carries commercial cargo or passengers, public vessel exemptions may be denied it by local authorities.

§ 81.3 *Status of vessels of the United States.* Vessels documented under the laws of the United States are entitled to privileges and subject to the obligations prescribed by the laws of the United States for merchant vessels. The type of privileges and obligations appertaining to such vessels depends upon the form and the purpose of their documentation.

§ 81.4 *Status of American undocumented vessels.* American undocumented vessels are not under the jurisdiction of the United States, and consequently are not subject to the obligations nor entitled to the protection accorded vessels of the United States abroad. However, such vessels are entitled to the same degree of protection accorded any other property abroad owned by United States citizens.

§ 81.5 *Status of foreign vessels.* Vessels under foreign registry are of no concern as such to United States consular officers except in cases where such officers are authorized to perform protective services for the vessels of a foreign power.

§ 81.6 *Status as American seamen—*(a) *Acquisition by United States citizens or nationals.* A United States citizen or national acquires status as an American seaman by shipping on a vessel of the United States. After three or more years of relatively continuous service on merchant vessels of the United States, he may retain his status as an American seaman even if not so engaged for a period of up to one year.

(b) *Acquisition by foreign citizens or nationals.* A foreign citizen or national acquires status as an American seaman only by shipping on a vessel of the United States in a port of the United States. Having once acquired this status, he may thereafter reship on any vessel of the United States either in a foreign port or in a United States port without losing this status. However, if a foreign citizen or national having status as an American seaman deserts from a vessel of the United States except as a result of cruel or unusual treatment, or ships on a foreign vessel, or definitely abandons his calling as a seaman, he forfeits this status. A foreign citizen or national who has forfeited his status as an American seaman can regain such status only by following the procedure prescribed for acquiring the status originally.

§ 81.7 *Status of Hawaiian, Puerto Rican, and Virgin Island seamen.* Hawaiian, Puerto Rican, and Virgin Island seamen, who are United States citizens or nationals, can acquire status as American seamen in accordance with the provisions of § 81.6 (a). Those who are not United States citizens or nationals must acquire this status in the same manner as any other foreign citizens or nationals (see § 81.6 (b)).

§ 81.8 *Effect of employment on American public vessels.* The master and crew of an American public vessel are usually either military or civil-service personnel and not American seamen within the meaning of § 81.1 (j), except in individual cases where this status has been previously acquired and is still retained. However, the master and crew of a vessel, owned or chartered by a United States Government agency but operated by a private concern on behalf of that agency, who sign shipping articles before a United States shipping commissioner, are American seamen within the meaning of § 81.1 (j), and their service on such vessels affords them the same rights and privileges as service on vessels of the United States.

§ 81.9 *Effect of employment on vessels of the United States.* The master and crew of a vessel of the United States are subject during the period of their employment to the jurisdiction of the United States, and are entitled to the protection of its laws in matters relating to their employment. Also as a result of this service, they may acquire and retain status as American seamen, subject to the conditions set forth in § 81.6.

§ 81.10 *Effect of employment on barges, dredges, tugs at foreign ports.* The master and crew of an American documented barge, dredge, or tug, who sign United States Coast Guard shipping articles before a shipping commissioner, are American seamen and have the same rights and privileges as seamen employed on any other vessel of the United States.

§ 81.11 *Effect of employment on American undocumented vessels.* The master and crew of an American undocumented vessel are not subject to the jurisdiction of the United States by reason of their employment, and are not as a matter of right entitled to the protection of its laws in questions affecting such employment. However, in the case of United States citizens employed on such a vessel, the master of the vessel may request a United States consular officer to ship and discharge such seamen in foreign ports in accordance with the procedure followed in the case of seamen on vessels of the United States, and the consular officer shall accede to such request. A United States consular officer has no authority over foreign nationals employed on American undocumented vessels, and consequently cannot ship or discharge such seamen.

§ 81.12 *Effect of employment on foreign vessels.* United States citizens employed on foreign vessels are, during the period of their employment, subject to the jurisdiction of the country under whose registry the vessel operates, and have no claim at foreign ports to the special protection, in matters relating to their employment, which the laws of the United States afford seamen employed on vessels of the United States.

§ 81.13 *Function of the Foreign Service*—(a) *Description.* The shipping and seamen function of the Foreign Service consists of the activities prescribed in Parts 81 through 88 of this chapter. These activities are for the protection or assistance of American vessels and American seamen in foreign ports and places.

(b) *Post responsibility.* Obviously, only Foreign Service seaport posts are required to perform many of the activities prescribed in this chapter. Inland posts are not required to perform activities attendant upon the arrival of a vessel in a foreign port. However, all posts are responsible for such activities as the relief of stranded American seamen, intervention on behalf of these seamen with local authorities, reports on the deaths of American seamen, and the conservation of their effects, etc. The responsibilities of seaport and inland consular agencies are similar to those of other seaport and inland Foreign Service posts, except that, where the settlement of a controversy or the expenditure of funds is involved in a shipping and seaman case, the consular agency shall consult with, and act under the direction of, the supervising Foreign Service post.

(c) *Post jurisdiction.* Theoretically, the consular district of a post determines its jurisdiction in a shipping and seaman case. However, as has been pointed out in paragraph (b) of this section, the actual responsibilities of posts differ.

Also, under the provisions of the Federal statutes of the United States, even a seaport post is not required to perform many activities unless the need therefor arises at the place where the post is located. For example, post employees assigned to shipping work are not required to leave the immediate locale of the post to ship or discharge a seaman, but if a vessel is wrecked along the coast, the post having jurisdiction over the territory where the wreck occurs is responsible for reporting the wreck and carrying out the owner's instructions with reference to the conservation of the wrecked vessel. The question of whether a post should perform shipping and seamen activities within the consular district, but away from the actual location of the post is one which must be decided in the light of the statute and regulations governing the performance of a particular activity.

(d) *Place in post organizational pattern.* The shipping and seamen function is a part of the consular program of a Foreign Service post. Therefore, the consular section of a post is responsible for carrying out the activities which comprise this function. This responsibility must be discharged, however, in accordance with the provisions of paragraph (e) of this section.

(e) *Employee authority and responsibility.* Under United States Federal statutes, in the Foreign Service only United States consular officers have authority to perform shipping and seamen activities prescribed by statute. Accordingly, employees assigned to shipping and seamen work at a Foreign Service post must be commissioned as consular officers of the United States and accredited in this capacity in the foreign country of assignment.

§ 81.14 *Consular responsibilities to vessels*—(a) *American public vessels.* Except as set forth in § 81.3, the welfare of the master and crew of an American public vessel as seamen is not of concern to United States consular officers. Assistance may, however, be rendered on behalf and under instructions of the Government agency concerned.

(b) *Vessels of the United States.* Responsibilities to vessels of the United States are outlined in Parts 81 through 88 of this chapter and concern the protection of both ship and crew.

(c) *American undocumented vessels.* A United States consular officer may, when requested to do so by the master of an American undocumented vessel arriving at a foreign port, render services substantially similar to those rendered masters of vessels of the United States, subject to the payment of the fees prescribed for such services in the Tariff of United States Foreign Service Fees. (See § 81.11 of this chapter.)

(d) *Foreign vessels.* United States consular officers shall furnish masters of foreign vessels clearing for ports of the United States with pertinent information concerning documents required by such vessels for entry, and shall perform such services in connection therewith as are prescribed by applicable law and by such administrative instructions as may from time to time be issued.

PART 82—VESSELS OF THE UNITED STATES IN FOREIGN PORTS

Sec.

82.1 Definition of ship's papers.
82.2 Acceptance and receipting for ship's papers.
82.3 Return of papers to master.
82.4 Withholding of papers.
82.5 Disposition of papers left at consulate.
82.6 Report regarding failure of master to deposit papers.
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82.8 Register of Shipping and Seamen.
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82.12 Marine notes of protest.
82.13 Violations of the International Load-Line Convention.
82.14 Certificates under International Convention for the Safety of Life at Sea.
82.15 Shipment of seamen.
82.16 Discharge of seamen.
82.17 Consular responsibilities for payment of wages.
82.18 Medium for payment of wages.
82.19 Desertions and failure to rejoin.

AUTHORITY: §§ 82.1 to 82.19 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 82.1 *Definition of ship's papers.* The term "ship's papers" includes the marine document of a vessel of the United States, its shipping agreement, and its crew list. "Marine document" means the certificate issued each vessel of the United States, evidencing its documentation under the laws of the United States.

§ 82.2 *Acceptance and receipting for ship's papers.* A consular officer shall accept the ship's papers proffered him by the master of a vessel of the United States, or his duly qualified subordinate, and, when requested to do so, shall give a receipt therefor. This receipt need not be returned to the consular officer.

§ 82.3 *Return of papers to master.* Except as provided in § 82.4, the consular officer shall return the ship's papers to the master of the vessel, provided the master has first fulfilled the following conditions:

(a) Produced a clearance of the vessel issued by the proper officer in the port;

(b) Complied with the provisions of law relating to the discharge of seamen;

(c) Paid to the consular officer arrears in wages and extra wages due seamen discharged at the port or issued wage vouchers to such seamen;

(d) Paid such fees and demands as are collectible under the law and the regulations in this part.

(R. S. 1718, 4309; 22 U. S. C. 1185, 46 U. S. C. 354)

§ 82.4 *Withholding of papers.* The consular officer shall withhold the ship's papers when the ship is proceeding on a voyage or carrying cargo contrary to the laws or regulations of the United States. In the event of such withholding or contemplated withholding, the consular officer shall immediately telegraph the Department of State for instructions.

§ 82.5 *Disposition of papers left at consulate.* When the master of a vessel of the United States departs from a foreign seaport, leaving the ship's papers in the possession of the consular officer, that officer may transmit the papers with covering report to the United States consular officer at the ship's next foreign port of call if circumstances make this action advisable and if no valid reason exists for withholding the papers from the master. When return of the ship's papers to the master or some other duly qualified officer is impossible, or when the ship is en route to the United States, the consular officer shall transmit the papers to the Department of State immediately, under cover of a despatch, giving a detailed statement of the facts in the case.

§ 82.6 *Report regarding failure of master to deposit papers.* If the master of a vessel of the United States persists in refusing to deposit his papers with the consular officer, or departs with his vessel without so doing and without reasonable cause for such failure, the consular officer shall execute a certificate for use in prosecuting the master for his failure to deposit the ship's papers.

§ 82.7 *Prosecution of master for failure to deposit papers.* The Department of Justice will conduct the prosecution of the master of the vessel in the name of the consular officer, who will not appear personally. Failure of the consular officer to notify the master of the vessel of the statutory provisions of law about the deposit of ship's papers will not serve as a defense in such a case.

§ 82.8 *Register of Shipping and Seamen.* Each Foreign Service seaport post, including each seaport consular agency, shall keep a complete record of transactions relating to vessels which deposit their ship's papers at the office of the post. This record shall be known as the "Register of Shipping and Seamen" and shall be maintained on Forms FS–281a, FS–281b and FS–281c.

§ 82.9 *Crew mail.* A Foreign Service post may accept mail addressed to seamen on vessels of the United States and either hold or forward it according to the circumstances. A crew member may call for his mail, or a ship's officer, when depositing the ship's papers, may pick up mail for crew. Mail may be forwarded as instructed in the Register of Shipping and Seamen. The Foreign Service post shall not use public funds to pay postage or customs charges levied against personal mail or packages of seamen.

§ 82.11 *Pilot charts and navigation notices.* United States consular officers shall post the pilot charts and notices to mariners published by the Hydrographic Office of the Navy Department, in a conspicuous place in the Foreign Service offices, and shall call the attention of shipmasters to such charts and notices.

§ 82.12 *Marine notes of protest*—(a) *Necessity for personal appearance of master.* The taking of the marine note of protest by a United States consular officer is a service for the operators of a vessel. The consular officer shall, therefore, require the master of the vessel to make the protest in person before him,

unless the operators have furnished the consular officer with a written statement authorizing the making of the protest by an officer of the vessel other than the master. Under no circumstances shall a consular officer waive personal appearance by the master without the specific authorization of the ship's operators.

(b) *Form used.* A simple note of protest and all certified copies thereof shall be executed on the face of Form FS–281d. An extended protest and all certified copies thereof shall be executed on the reverse side of Form FS–281d.

(c) *Execution of forms.* A note of protest shall be prepared in an original and as many carbon copies as necessary to permit furnishing the required number of certified copies. The form should be typed. The original shall be signed, sealed with the consular impression seal, and filed in the Register of Shipping and Seaman binder with other forms relating to the particular entry and clearance of the vessel concerned. The carbon copies of the protest shall be certified and furnished to the master of the vessel for his use and for the use of other officers and the owner of the vessel. Consular officers shall not certify any carbon copies which are illegible.

(d) *Fees charged.* No fees shall be charged for the filing of a marine note of protest by the master of a vessel of the United States. In cases of undocumented American vessels or of foreign vessels, fees in accordance with items 30 and 31 of the Tariff of Fees shall be charged. In those cases where fees are chargeable for this service, consular officers shall not charge an additional fee for certified copies of a marine protest issued at the same time as the original protest but shall charge the fee indicated in item 75 of the Tariff of Fees for copies issued subsequent to the execution of the original protest. The fees for additional copies shall be applicable to American ship operators and agents as well as to foreign shipping interests.

§ 82.13 *Violations of the International Load-Line Convention.* If a vessel of the United States in a foreign port is alleged to be loaded deeper than the draft permissible under the International Load-Line Convention, 1930 (Treaty Series 858), the enforcement authorities of the port are required to notify the consular officer as soon as possible. If the master of the vessel contends that his ship is not violating the Convention, the consular officer shall immediately investigate the matter, and if it appears that the charge is unfounded, he shall protest to the appropriate authorities. A report of every violation charge shall be made to the Department for the information of the United States Coast Guard.

§ 82.14 *Certificates under International Convention for the Safety of Life at Sea*—(a) *Issuance of certificates.* International Certificates are issued to United States vessels by the United States Coast Guard after appropriate inspections have been made by the Federal Communications Commission or the Coast Guard, or both, in ports of the United States. These certificates are valid for one year with the exception of the Safety Equipment Certificate which is valid for two years.

(b) *Extension or reissue of certificates.* When an International Certificate, issued under the terms of the International Convention for the Safety of Life at Sea, 1948, to a vessel of the United States, expires before or at the time the vessel reaches a foreign port, or will expire before the vessel reaches a port of the United States, it may be extended by the consular officer or a new certificate may be issued by authorities of a foreign Government which is a party to the Convention, according to the preference of the master. The request must come from the master. A request or preference expressed by the agent of a United States vessel should not be honored unless the agent is acting at the master's specific request.

(c) *Extension procedure abroad.* At the instance of the master of a vessel of the United States, a United States consular officer at any foreign port may extend a Convention Certificate in accordance with the provisions of Chapter I, Regulation 13 (b) and (c) of the Convention, if it appears proper and reasonable to do so. An inspection and survey is not a prerequisite for an extension, but the master of the vessel and the chief radio officer in the case of a cargo ship, or the master of the vessel, the chief engineer, and the chief radio officer in the case of a passenger ship, shall be required to furnish an affidavit that to the best of their knowledge and belief, the vessel complies with the applicable requirements of the Convention. The consular officer shall extend the certificate by typing an endorsement. The consular officer shall sign the endorsement and shall seal the document with the consular impression seal.

(d) *Issuance procedure abroad.* Upon the receipt, by a consular officer at a foreign port within the allegiance of a government which is a party to the Safety Convention, of a request from the master of a cargo vessel that a Safety Radiotelegraphy Certificate or a Safety Equipment Certificate be issued to his vessel, the officer shall, in accordance with the provisions of Chapter I, Regulation 12 of the Convention, request the appropriate local government authorities to inspect the vessel for compliance with the requirements of the Convention and to issue, under that government's own responsibility, a Safety Radiotelegraphy Certificate or a Safety Equipment Certificate or both to the vessel. The circumstances under which a passenger vessel would require a survey and the issuance of a Safety Certificate while in a foreign port are not likely to occur. Should such a situation arise, advice shall be requested from the Department, which will confer with the Coast Guard and the Federal Communications Commission and issue instructions to the consular officer. A certificate issued by a government of a country not a party to the Convention has no validity and consular officers at a foreign port within the allegiance of such a country may not request that government to issue any certificate required under the Convention.

(e) *Violations of the International Convention for the Safety of Life at Sea, 1948.* While the possession of the appropriate International Certificate(s) is evidence that the vessel was complying with the applicable provisions of the Convention at the time the certificate was issued, authorities of a foreign government at a port in which the vessel is, have a right to inspect the vessel for the purpose of determining that it is still complying substantially with these provisions. Should this inspection lead to a requirement being imposed upon the vessel, Chapter I, Regulation 18 of the Convention, requires that the consular officer be informed in writing forthwith of all the circumstances. If the master protests the requirement, the consular officer shall investigate the situation and, if the evidence warrants, shall make representations to the proper authorities. It is not expected that in matters of judgment the decisions of the local authorities shall be questioned (e. g., whether an item of required equipment is worn out or not). But where quantitative standards are prescribed by the Convention (e. g., number of life buoys), a greater number should not be required. Where a requirement is not protested as to justification but will involve delay to the vessel, the consular officer may be able to obtain permission for the ship to depart if the master gives assurance that the deficiency will be made good at the next port of call.

§ 82.15 *Shipment of seamen.* When a seaman is shipped before a United States consular officer at a foreign port, the consular officer shall see that the seaman understands all the terms of the contract and the exact nature of the work for which he is engaged. When the shipment of a seaman at another port is reported to a consular officer for certification, the officer shall, before so certifying, make sure that the seaman understands and has signed the shipping agreement as required.

§ 82.16 *Discharge of seamen.* (a) The master of a vessel of the United States cannot lawfully discharge a seaman in a foreign port without the intervention of the United States consular officer if the seaman signed the shipping agreement before a United States Shipping Commissioner or consular officer; and it is not material in such case that the discharge is made with the seaman's consent or that he has been guilty of misconduct, or is not a citizen of the United States. [7 Op. Att. Gen. 349.]

(b) A United States consular officer is authorized to discharge a seaman upon the application of the master of any vessel of the United States or upon the application of any seaman for his own discharge, if such officer is satisfied that the seaman has completed his shipping agreement or is entitled to his discharge under any act of Congress or according to the general principles or usages of maritime law as recognized in the United States. When a request is made for the discharge of a seaman, a consular officer shall inquire carefully into the facts and circumstances, and shall satisfy himself that good and substantial reasons exist for a discharge before

granting the application. The seaman must be physically present to be discharged.

(R. S. 4580, as amended; 46 U. S. C. 682)

§ 82.17 *Consular responsibilities for payment of wages*—(a) *Wages and extra wages due American seamen.* When a United States consular officer discharges a seaman in a foreign port, the officer shall collect and pay to the seaman the arrears of wages and extra wages due him at the time of discharge, unless the seaman elects to accept, instead of immediate payment of the whole or a portion of his wages, a wage voucher signed by both the master and the seaman, evidencing the amount owed the seaman to be paid in future settlement. If a United States consular officer fails to collect the wages, extra wages or wage voucher on behalf of the seaman, the consular officer becomes accountable to the United States for the full amount thereof. The consular officer is not obligated to collect and pay to a seaman wages accruing to him subsequent to the time of his discharge, and should not intervene in attempts to collect such wages from the vessel's operators.

(b) *Overtime compensation due American seamen.* Overtime paid seamen is technically a part of their wages, but is payable under the provisions of maritime collective bargaining agreements. Consular officers are not, therefore, legally responsible for the collection and payment of overtime wages, and should leave disputes in relation to overtime for settlement in the United States where bargaining machinery has been established to handle them. When such a dispute arises, a simple statement may be attached to the wage voucher by the master indicating that any overtime due will be paid by the ship operator on arrival in the United States in accordance with the collective bargaining agreement.

(c) *Bonus payments to American seamen.* Bonus payments are in a similar category to overtime payments. Such payments may be collected or deferred according to the circumstances. Since masters and consular officers frequently do not have the latest bonus decisions when a seaman is discharged, controversies over bonus payments should be left for settlement upon the seaman's arrival in the United States.

(d) *Wages due American seamen of foreign nationality.* An American seaman of foreign nationality (see §§ 81.1 (j) and 81.6 (b) of this chapter) is entitled to extra wages on his discharge at a foreign port in all cases where an American seaman who is a United States citizen would be so entitled. On the other hand, an alien seaman as defined in § 81.1 (k) of this chapter is not entitled to extra wages upon discharge. [Fed. Cas. No. 16002; 2 F. Rep. 264]

§ 82.18 *Medium for payment of wages*—(a) *Currency.* Moneys paid under the laws of the United States, by direction of United States consular officers or shipping agents, at any foreign port or place to American seamen as wages, extra or otherwise, shall be paid in United States coin or currency if permissible under the laws of the country in which payment is made; or in local currency at the current bank selling rate for sight drafts on New York prevailing on the date of collection.

(b) *Voucher.* A seaman discharged at a foreign port shall be given, if he so elects, instead of full or partial payment of his wages at the time of discharge, a wage voucher signed by the master, evidencing the amount owed the seaman to be paid in future settlement.

§ 82.19 *Desertions and failure to rejoin*—(a) *Obligation of master to report desertions.* If the desertion occurs at a foreign port, the master should report the desertion to a United States consular officer within forty-eight hours if possible. If such notification is impossible, the desertion shall be reported at the next port of call where there is a United States consular officer.

(b) *Consular responsibility.* An alleged desertion shall be carefully investigated by a consular officer. He shall exercise care in interpreting the law and regulations defining desertion from vessels of the United States and shall not consider seamen deserters who are absent without leave or who overstay their leave without intent to sever connection with their vessel. Consular officers shall take every proper measure to discourage and defeat any proceedings on the part of masters under which seamen are permitted or forced to desert and subsequently come to the Foreign Service office for relief. A consular officer shall not certify the desertion statement of any master until satisfied that the desertion was not consented to or abetted by the master or his officers or was not justified by conduct on their part toward the seamen.

(c) *Arrest of deserters.* Sections 16 and 17 of the act of March 4, 1915, known as the "La Follette Act", forbid the imprisonment of merchant seamen charged with desertion and all provisions of treaties contrary to this policy have been denounced. However, deserters are subject to the laws of the country where they may be, and not infrequently the local authorities detain deserters as persons who have not been lawfully admitted into the country under its immigration laws. In such cases, consular officers shall procure as liberal treatment as possible for the seamen detained, if they are American seamen.

(d) *Disposition of deserter's wages on sale of vessel abroad.* If the master refuses to comply with the demand, the consular officer shall report the facts by operations memorandum, together with the amount of the balance and the name of the deserter, to the Department.

(R. S. 4081, as amended; 22 U. S. C. 258)

PART 83—PROTESTS, DISPUTES AND OFFENSES

Sec.

83.1 Legal right of seamen to protest.
83.2 Seamen's rights under collective bargaining agreements.
83.3 Seamen's right to survey.
83.4 Mandatory survey upon complaint of seamen.
83.5 Consular investigation of disputes between seamen.
83.6 Consular arbitration of disputes.
83.7 Jurisdiction over offenses committed on the high seas.
83.8 Jurisdiction over offenses committed in port or territorial waters.
83.9 Jurisdiction over offenses committed ashore.
83.10 Consular responsibility for offenses within foreign government's jurisdiction.
83.11 Consular responsibility for offenses outside foreign government's jurisdiction.

AUTHORITY: §§ 83.1 to 83.11 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 83.1 *Legal right of seamen to protest.* American seamen are entitled by statute to lay before United States consular officers their complaints with regard to provisions, condition of water, the unseaworthiness of their vessel, or continuance of the voyage contrary to agreement. No seaman may be restricted by the master from coming ashore to bring his complaints to the Foreign Service office unless circumstances render this action impossible. In such case the master must advise the consular officer of the seaman's desire to see him, at the same time setting forth the reasons why the seaman is not allowed ashore. Upon receipt of such communication, the consular officer shall proceed to the vessel to hear the complaint and take whatever action is indicated.

§ 83.2 *Seamen's rights under collective bargaining agreements.* In practice, the seamen's right to complain is extended to almost any incident aboard ship. However, when seamen approach a Foreign Service office with complaints concerning failure of the master or ship's agents to extend them benefits provided by their collective bargaining agreements in such matters as lodging, repatriation, food allowances, and the like, the seamen may be informed that consular officers are authorized to protect seamen's rights under the statutes but are not authorized to inject themselves into disputes between parties signatory to collective bargaining agreements. Moreover, most of these agreements contain provisions for settlement of disputes upon completion of the voyage, both operators and unions preferring to use machinery established at domestic ports for this purpose.

§ 83.3 *Seamen's right to survey.* When complaints are received in writing in accordance with statutory requirements, concerning alleged unseaworthiness of a vessel or its improper provisioning, the consular officer must have made or make an appropriate survey.

§ 83.4 *Mandatory survey upon complaint of seamen*—(a) *Complaint that condition of vessel is unseaworthy.* When a consular officer receives a written complaint signed by the first and second officers or the majority of the crew that their vessel is unseaworthy or unsuitably provided because of its condition, equipment, crew or some other particular, the officer shall have a survey made with or without the consent of the master. In almost every port or port area, there are representatives of one or more classification societies such as

American Bureau of Shipping, Lloyds, or Veritas. The consular officer shall arrange for one of these bureaus to make a survey and to report to him on their own form. The consular officer shall certify the report and give it to the master for appropriate action. If there is no classification society in the area, the consular officer shall obtain the services of three qualified persons to make the survey, who will report their findings to him in the same manner as outlined above. In case of complaint of unseaworthiness based upon deficiency of lifesaving equipment, the Certificate of Inspection serves as a criterion.

(b) *Complaint regarding provisions or water.* When a consular officer receives a written complaint signed by three or more crew members relative to the provisions or water aboard their vessel, he shall examine the provisions or water, or cause them to be examined by competent persons. Report of the findings shall be certified by the consular officer and furnished the master for entry in the official log and for rectification of conditions if necessary. A report shall also be made to the Judge of the District Court for the district to which the vessel is returning.

(c) *Payment of expenses of survey.* Sections 659 and 663, title 46 of the United States Code, provide that if a survey reveals that the complaint of the seamen was without good and sufficient cause, the master may retain from the wages of the complainants, divided in proportion to their wages, a sufficient amount to cover costs of such survey. (Exception is made in connection with fishing or whaling vessels or yachts when the survey concerns food or water.) In those surveys where there appears to have been reasonable basis for complaint, the expenses of survey must be borne by the master.

(R. S. 4559, as amended, 4565, as amended; 46 U. S. C. 656, 662)

§ 83.5 *Consular investigation of disputes between seamen.* When a dispute arises between the master and the crew of an American vessel or between seamen shipped on such a vessel, a United States consular officer shall investigate the circumstances in any manner appropriate to the situation.

§ 83.6 *Consular arbitration of disputes.* A United States consular officer may act as arbiter in a dispute between the master and crew or between the seamen. If possible, arbitration should be conducted on an informal basis and a satisfactory solution worked out orally. However, in the more serious cases, the consular officer should take sworn statements of the parties in interest for possible future action and reference. A consular officer has no authority to try or to punish offending parties.

§ 83.7 *Jurisdiction over offenses committed on the high seas.* Under the general principles of international and maritime law, crimes and misdemeanors, committed on the high seas and out of the territorial limits of any state, are cognizable only in the courts of the country to which the vessel belongs. For the purpose of prosecuting such crimes, the vessel may be regarded as part of the country of registry. These principles are recognized and enforced by courts of the United States and they are incorporated into Federal statutes. Piracy is a notable exception to this rule since the law of nations recognizes this crime as punishable by the authorities of any nation capturing the accused persons and bringing them within the jurisdiction of its courts. Piracy should not be confused with mutiny, which is not an international crime in this sense.

§ 83.8 *Jurisdiction over offenses committed in port or territorial waters—*(a) *Offenses involving the peace of the port.* When an offense is committed aboard a merchant vessel in the port or territorial waters of a nation other than the nation of registry, and when the offense involves the peace of the port, the nation in whose waters the offense is committed has jurisdiction under an accepted principle of international law.

(b) *Offenses not involving the peace of the port.* When an offense is committed aboard a merchant vessel in the port or territorial waters of a nation other than the nation of registry, but does not involve the peace of the port, such offense is usually left by local governments to be adjusted by officers of the vessel and the diplomatic or consular representatives of the nation of registry. In the case of vessels of the United States, the right to protection against intervention by a foreign government in this class of cases is safeguarded in many areas by a treaty of friendship, commerce and navigation or by a consular convention between the United States and the foreign government concerned. Even where no treaty or convention exists, the local foreign government will usually refrain from intervening in such cases on the basis of comity between nations.

§ 83.9 *Jurisdiction over offenses committed ashore.* The courts of a country have jurisdiction over offenses against the laws of the country committed by seamen while ashore in its ports.

§ 83.10 *Consular responsibility for offenses within foreign government's jurisdiction.* When a foreign government has jurisdiction over an offense committed on board a vessel of the United States or by American seamen in its ports (see §§ 83.8 (a) and 83.9), a United States consular officer shall see that the offender is properly cared for and justly treated. However, he shall not expend any money for the defense of the accused unless he has prior specific authorization of the Department of State. Also, the authorities having jurisdiction over the offense are responsible for the punishment of the offender.

§ 83.11 *Consular responsibility for offenses outside foreign government's jurisdiction—*(a) *Assumption of jurisdiction.* When an offense is committed on board a vessel of the United States while on the high seas (see § 83.7) or in foreign port or territorial waters under the circumstances described in § 83.8 (b), a United States consular officer shall assume jurisdiction for the United States Government in every case where local authorities will permit him to do so, either by virtue of treaty arrangements or under comity between nations.

(b) *Consular investigation.* In any case of misdemeanor or crime involving seamen on board vessels of the United States or American seamen, the consular officer shall investigate the circumstances in a manner appropriate to the situation. He should question witnesses separately and obtain their signatures to their statements as soon after their giving testimony as is possible. When there is apparent conflict in testimony, a witness may be allowed to make a second affidavit to supplement his first statement if that appears desirable.

(c) *Consular action on misconduct cases.* Consular officers shall discourage insubordination by every practicable means. The master of a vessel has considerable disciplinary power under the statutes to cope with minor misdemeanors of which seamen may be guilty aboard ship. Masters should be assisted in taking authorized disciplinary measures when the evidence to support such action is considered sufficient. The consular officer may make suitable entries in the ship's log as an official record of his recommendations to the master in the premises. Seamen guilty of misconduct should not be discharged unless their acts were caused by cruel treatment, or their presence on board ship would constitute a menace to the discipline of the vessel or endanger its operation. In discharging such seamen, the consular officer will give the reason therefor on the ship's articles and official log, properly certified by him.

(d) *Consular action on criminal cases.* When seamen accused of crime come under the jurisdiction of a consular officer, he shall obtain all possible sworn testimony and on the basis of such information take appropriate action. A consular officer has discretionary authority to return a seaman to the United States for trial. If the circumstances demand that the offender be sent to the United States for trial, the consular officer may discharge the seaman and apply to the local authorities for means to secure and detain him while he remains in port. Arrangements for return of witnesses will be made by the Department of Justice at the appropriate time.

(e) *Consular action on mutiny cases.* Consular officers shall investigate promptly reports of mutinies on vessels of the United States which arrive in their districts and, when necessary, shall take measures, consistent with treaties and usage, to establish order on the vessel and to return the mutineers to the United States for trial. Consular officers have a wide discretion in deciding whether evidence justifies the detention and return to United States for trial of persons charged with mutiny.

(f) *Detention of accused aboard ship.* The accused shall be placed in the custody of the master who shall take such measures as he deems necessary to detain the seaman. The master will be given certified copies of the affidavits taken in the case to be turned over to the

authority taking custody of the accused in the continental United States.

(R. S. 4600, as amended; 46 U. S. C. 703)

PART 84—RELIEF AND REPATRIATION OF SEAMEN

Sec.

84.1 Financial responsibility of owners or operators of American vessels.
84.2 Financial responsibility of United States Government.
84.3 Consular investigation of applicants for relief.
84.4 Destitute seamen.
84.5 Shipwrecked seamen.
84.6 Ill or injured seamen.
84.7 Stragglers.
84.8 Deserters.
84.9 Relief at Government expense.
84.10 Repatriation ports.
84.11 Necessity for prompt repatriation.
84.12 Repatriation of seamen without consular authorization.

AUTHORITY: §§ 84.1 to 84.12 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 84.1 *Financial responsibility of owners or operators of American vessels.* By maritime practice, Comptroller General decisions or maritime bargaining agreements, United States owners or operators are held responsible for relief and repatriation of all seamen separated from their vessels at foreign ports for any reason except desertion or shipwreck.

§ 84.2 *Financial responsibility of United States Government.* By statute, a United States consular officer must furnish or cause to be furnished relief and repatriation to any destitute American seamen, including seamen from documented fishing vessels of the United States. He is responsible in a like manner for shipwrecked or ill or injured American seamen, and is solely responsible for certified deserters who are United States citizens. He has temporary responsibility for the relief of stranded alien seamen signed on abroad and separated from vessels of the United States because of shipwreck, illness or injury, or bankruptcy on the part of the shipowner.

§ 84.3 *Consular investigation of applicants for relief.* Before granting relief, a consular officer shall satisfy himself that the seaman is entitled to relief under the statutes, maritime usages, and Comptroller General decisions.

§ 84.4 *Destitute seamen.* The question as to whether an American seaman is destitute within the meaning of R. S. 4577 (46 U. S. C. 678) is one for determination in the first instance by the United States consular officer to whom the seaman applies for relief. The consular officer's decision, in the absence of contrary facts, is sufficient. [2 Comp. Gen. 317]

§ 84.5 *Shipwrecked seamen.* When seamen from vessels of the United States arrive after shipwreck at a port within a consular district, the consular officer concerned shall make immediate arrangements for their relief. Relief may be afforded without regard to the nationality of the seaman, whether he has status as an American seaman (see § 81.1 (j) of this chapter), or whether he has funds in his possession. In addition, American seamen, if they cannot be reshipped, should be provided with passage to the United States or to an intermediate port where employment may be had or passage obtained. Alien seamen shipped at foreign ports are not entitled to transportation to the United States or to the port of shipment. However, an alien seaman may be granted temporary relief until reshipment is possible or until arrangement can be made with representatives of the government of which the alien seaman is a citizen or subject, for his care and transportation or other relief at the expense of that government. If the owners or operators of a shipwrecked vessel assume responsibility for the relief and repatriation of survivors, consular officers should interpose no objection. This assumption of responsibility which is customary, is on a voluntary basis and is in no sense demanded by the Department of State or consular officers. Seamen from shipwrecked yachts are to be granted relief only if destitute in fact, although seamen from fishing and whaling vessels may be furnished relief as outlined above.

(R. S. 4526, as amended; 46 U. S. C. 593)

§ 84.6 *Ill or injured seamen*—(a) *Statutory responsibility of Government.* The statutes provide that when a seaman becomes ill or is injured in the service of a vessel of the United States and is formally discharged before a consular officer by reason of being incapacitated on account of such injury or illness, relief may be furnished the seaman by the consular officer, regardless of the cause of his illness or injury and regardless of whether or not the said seaman may have funds of his own sufficient for his immediate needs. Also relief may be furnished ill or injured seamen from documented fishing vessels even if not signed on shipping articles.

(b) *Responsibility of owners under maritime practice.* Maritime usage has placed upon the operator of the vessel the primary responsibility for ill or injured seamen whose disability is not the result of their own misconduct.

(c) *Responsibility according to Comptroller General.* The Comptroller General, to whom United States consular officers must account for expenditure of Government funds, has placed responsibility for all ill or injured seamen, regardless of the cause of their disability, upon the operators and has indicated that consular officers should not discharge seamen until responsibility for their care and repatriation has been assumed by the master or agent on behalf of operators. The Comptroller General has stated that notwithstanding a seaman's discharge from a vessel on account of venereal disease, a duty devolves upon a shipping company to furnish hospitalization, subsistence and repatriation to a seaman then and previously in its employ, and to furnish such reasonable medical care and treatment as may be necessary during the return voyage. Under maritime custom and as a matter of public policy, the obligation of the shipping company goes further than a mere contractual relationship with the seaman, and said obligation is not terminated on the discharge of the seaman in a foreign country. [Comp. Gen. A–17383, April 1, 1927]

(d) *Effect of failure to discharge before consular officer.* If the seaman becomes ill or is injured in the service of a vessel, whether or not through his own fault, but is not discharged before a consular officer, the consular officer is not required by law to furnish relief to the seaman from United States funds unless the said seaman is found destitute within the consular officer's district. If a seaman becomes ill or is injured while a member of the crew of a vessel and is placed in a hospital by the master of the vessel prior to his being discharged before a consular officer, the consular officer is not authorized to pay from Government funds any part of the hospital expenses incurred, either after discharge if later accomplished or prior thereto.

(e) *Emergency relief at Government expense.* Where conditions are such that United States consular officers cannot procure prompt medical and hospital treatment and subsistence for American seamen at the expense of the master or owner of the vessel upon which the seaman last served, relief may be furnished at the expense of the Government and payment made therefor from the appropriation for the relief of American seamen. Refusal on the part of a master or owner should be in writing in order that the consular officer may show basis for expenditure of funds.

(f) *Liability of shipowner.* Consular officers shall report promptly all cases where vessels or owners refuse to assume responsibility for the care and repatriation of seamen in accordance with law. 29 Op. Att. Gen. 54 states:

> An American seaman, disabled in the service of the vessel and who was left in a hospital at a foreign port, is entitled to medical expenses incident to a recovery from the injury and transportation back to the United States, and where these expenses are paid out of funds belonging to the United States, after notice to the owners of the vessel that they were liable for the same and demand made for payment, the owners of the vessel may be held liable therefor. (R. S. 4581, as amended; 46 U. S. C. 683)

§ 84.7 *Stragglers.* A seamen, who fails to rejoin his vessel but without intent to desert, is termed a "straggler". Responsibility for his maintenance and repatriation remains with the shipowner. [Comp. Gen. A–30607, Mar. 22, 1930]

§ 84.8 *Deserters*—(a) *Responsibility of the Government.* There is no obligation on the owner of a vessel from which an American seaman has deserted while the vessel was at a foreign port to transport the seaman back to the United States, and where such seaman has become destitute while abroad payment from public funds for transportation back to the United States, even though furnished on a vessel of the same company as the vessel on which the seaman originally shipped, may be made under the laws applicable to destitute American

seamen. [3 Comp. Gen. 936] (See § 82.19 of this chapter.)

(b) *Documentation of deserters.* However, the Comptroller General will not recognize desertions unless reported if possible by the master to a consular officer at the port of desertion within forty-eight hours or, where necessary, at the next port of call. The desertion must be certified by the consular officer and all desertions must conform to the definitions given in § 82.19 of this chapter. A copy of the log of a vessel certified by a United States shipping commissioner stating that a seaman had deserted the vessel in a foreign port, unsupported by evidence that the seaman was reported as a deserter to an American consular officer within forty-eight hours and by a certificate of desertion issued by the consular officer in accordance with these regulations in this part, is not sufficient to establish desertion or that the company has been relieved of liability to return the seaman to the United States. [8 Comp. Gen. 194]

§ 84.9 *Relief at Government expense*—(a) *Lodging and subsistence.* The lodging should be in a healthy locality, removed, if possible, from scenes of temptation and vice. The subsistence should be simple but sufficient. It is usual to contract for the board of seamen.

(b) *Clothing.* The clothing should be as inexpensive as is consistent with strength and durability. The quantity of clothing furnished should be limited to that necessary adequately to clothe the seaman until his arrival in the United States.

(c) *Medical attendance and medicine.* Medical attendance and medicines may be provided in emergency cases. These should be obtained at a hospital, if there is one in the place, unless special instructions to the contrary are given. If private treatment is provided, the voucher must indicate the reasons.

§ 84.10 *Repatriation ports*—(a) *Shipwrecked American seamen.* In cases of shipwreck, American seamen survivors are entitled to repatriation to the port of shipment, regardless of whether it is a foreign port or a United States port. However, shipwrecked American seamen shipped in a foreign port, may if they prefer and the circumstances are not unfavorable, be repatriated to a port in the continental United States. (See paragraphs (c) and (d) of this section.)

(b) *Destitute American seamen.* The primary purpose of repatriation at Government expense is to make the seamen available for service in the American merchant marine. Therefore, destitute American seamen, other than survivors of shipwrecks, are entitled to repatriation only to a port in the United States. The port of repatriation may be any convenient port in the continental United States to which the transporting vessel is destined. For rules governing repatriation to an insular or territorial port of the United States or to an intermediate port, see paragraphs (c) and (d) of this section.

(c) *Repatriation to United States insular or territorial ports.* Employment conditions in ports of the territorial and insular possessions of the United States do not ordinarily warrant consular officers in repatriating American seamen to such ports. Consular officers should not, therefore, arrange for the transportation of American seamen to ports of the territorial or insular possessions of the United States, except those of the Panama Canal Zone, unless the seamen reside in those ports or other special circumstances clearly warrant such action.

(d) *Repatriation to intermediate ports.* In places where opportunities for repatriating seamen seldom occur and employment on board vessels of the United States cannot be obtained, the consular officer may send destitute seamen to an intermediate port. He shall consider the relative cost of keeping the seamen where they are and at the port to which they can be sent, together with the expense of their passage there and the probability that they may obtain employment at that port or a passage home; and he shall adopt the course which may seem best, having a due regard for the interests of the United States and a proper concern for the seamen.

§ 84.11 *Necessity for prompt repatriation.* When a destitute seaman is entitled to repatriation, transportation should be furnished at the earliest possible opportunity, either directly to a United States port or to an intermediate port where he may find employment on a vessel of the United States or passage to the United States. The consular officer is the proper judge as to the vessel on which the seaman should be placed for his return to the United States. A seaman must, if he is able to travel, accept the first offer of repatriation whether as a workaway or otherwise. Refusal to accept passage deprives the seaman of his right to further assistance.

§ 84.12 *Repatriation of seamen without consular authorization*—(a) *Authorized expenditures.* Whenever distressed or destitute American seamen are transported from foreign ports where there is no United States consular officer, or from points on the high seas, to ports of the United States; or from such foreign ports or points on the high seas to a port accessible to a United States consular officer for the further relief and repatriation of such seamen, the master or owner of the transporting vessel shall be allowed such compensation as the Secretary of State determines is equitable.

(b) *Transportation direct to the United States.* Accounts and claims for transporting direct to a port of the United States distressed or destitute seamen picked up at sea or at some foreign port where there is no United States consular officer should be submitted to the Secretary of State for consideration and transmittal to the Comptroller General. Such claims should be accompanied by satisfactory evidence as to the services rendered, the length of time the seamen were on board the transporting vessel, and the arrival of the seamen in the United States.

(c) *Transportation to Foreign Service office.* When distressed or destitute American seamen picked up at sea or at a foreign port where there is no United States consular officer are transported to a port where there is a consular officer or to a port accessible to his office, the consular officer is authorized to pay the master of the transporting vessel an amount not exceeding 60 cents a day for each seaman. The master may, if he does not consider such compensation adequate, submit his claim direct to the Secretary of State. The claim will receive the administrative consideration of the Secretary of State, and will then be sent to the Comptroller General for settlement.

PART 85—DECEASED SEAMEN AND THEIR EFFECTS

Sec.

85.1 Financial responsibility for burial of seamen.
85.2 Shipment of remains.
85.3 Reports of death.
85.4 Custody of effects of American seamen.
85.5 Sale of effects.
85.6 Disposition of proceeds of sale and of unsold effects.
85.7 Defrayal of expenses.
85.8 Effects of alien seamen.
85.9 Accounting for effects.

AUTHORITY: §§ 85.1 to 85.9 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 85.1 *Financial responsibility for burial of seamen*—(a) *Owners or operators of vessels of the United States.* The owner of a vessel of the United States is responsible for the payment of burial expenses of a seaman from the vessel, if such owner would have been liable for the seaman's care, subsistence and repatriation but for the seaman's death. The burial expenses are properly chargeable to the ship and may not be deducted from the seaman's wages.

(b) *United States Government.* Burial expenses are paid by the Government only in cases where the circumstances would have warranted expenditure of Government funds for the seaman's maintenance and repatriation if he had not died. The expenses chargeable to the Government are for preparation of the remains and ordinary expenses of interment in foreign countries or in territories and possessions of the United States. A United States flag may be used to drape the casket. Although charges for flowers, religious services, and other similar items, which are not necessary for interment, are not allowable, the service should be conducted with dignity. Vouchers covering burial expenses must be fully itemized to show the cost of each item.

§ 85.2 *Shipment of remains.* No appropriation is available for the shipment of remains of seamen. [Comp. Gen. A–53494, June 14, 1934]. However, if the family of a seaman desire the return of his body at their expense, the same procedure will be followed as in returning the bodies of other American citizens.

§ 85.3 *Reports of death*—(a) *Reports to the Department.* When knowledge of the death of any American seaman or of any United States citizen serving on a foreign vessel reaches a United

States consular officer, he shall report such death promptly to the Department.

(b) *Reports to relatives.* The consular officer will when practicable, communicate information relative to the death of a United States citizen seaman or an American seaman of foreign nationality to the next of kin, or other interested persons, sending all available and proper data.

§ 85.4 *Custody of effects of American seamen—(a) Seamen dying aboard ship.* When any American seaman, belonging to or sent home on any merchant vessel whose voyage is to terminate in the United States, dies during such voyage, the master should take charge of all monies, clothes, and effects left on board by the seaman. If the ship touches or remains at a foreign port before coming to any port of the United States, the master should report the case to the consular officer there, and give such officer any information he requires as to the destination of the ship and the length of the voyage. Thereupon such officer may, if he considers it expedient, require the said effects, money and wages to be delivered and paid to him. Upon that being done he shall give the master a receipt therefor on Form FS–85. The consular officer shall also endorse and certify upon the agreement with the crew the particulars of such delivery and payment. If he does not require the delivery and payment, he shall obtain from the master a statement of the seaman's account with the vessel, and transmit a copy thereof to the Department. If the ship is sold in a foreign port and the master has in his possession the effects, money, and wages of a deceased seaman, the consular officer may require them to be delivered to him.

(b) *Seamen dying ashore.* Whenever any American seaman dies at any place outside of the United States, leaving any money or effects not on board his vessel, the United States consular officer at or nearest the place shall claim and take charge of such money and effects.

(R. S. 4538, 4539 as amended, 4541 as amended; 46 U. S. C. 621, 622, 624)

§ 85.5 *Sale of effects.* The consular officer shall, if he thinks fit, sell all or any of such effects of any seaman as may be delivered to him under the provisions of law.

§ 85.6 *Disposition of proceeds of sale and of unsold effects.* If effects are sold, the consular officer shall monthly remit to the responsible district court all moneys belonging to or arising from the sale of the effects or paid as the wages of any deceased seaman which have come into his hands and shall render such accounts thereof on the reverse side of Form FS–85 as the district court requires. The effects of deceased American seamen not sold and all wages or moneys coming into the possession of a consular officer under any of the foregoing provisions shall likewise be remitted to the district court for administration. However, certificates and identification papers issued by Government agencies should be transmitted to the Department for return to the issuing agency.

(R. S. 4541 as amended; 46 U. S. C. 624)

§ 85.7 *Defrayal of expenses.* Costs arising in connection with transmittal to the court of the monies and effects of a deceased seaman, such as a bank draft or transportation charges, are properly chargeable to the estate of the seaman and should be defrayed from such funds as are contained therein.

§ 85.8 *Effects of alien seamen.* If a deceased seaman of foreign nationality was not an American seaman as defined in § 81.1 (j) of this chapter, and the wages and effects are delivered to the consular officer, the latter should make proper inquiries to find the relatives of the deceased and may determine for himself to whom the wages and effects should be given. If no relatives are found or if the officer cannot satisfactorily determine the relatives entitled to the wages and money arising from the sale of the effects, they should be remitted to the district court as provided in § 85.6. A consular officer may not deliver the wages and effects of such a deceased seaman to an official of the foreign government of which the deceased was citizen or subject unless such official holds a valid appointment to represent the heirs. [1 Comp. Gen. 621]

§ 85.9 *Accounting for effects—(a) Statement of details to district court.* Consular officers are required, in rendering the accounts provided for by law, to make a statement of details, namely:

(1) A statement of the amount of money left by the deceased and any of his effects unsold;

(2) A description of each article sold, and the sum received for each;

(3) The sum due the deceased for wages, with dates, and the items of deduction, if any, to be made therefrom—no such deductions being allowed to the master unless verified by an entry in the official log book.

(b) *Wage account to district court.* The master shall be required to give full particulars of the wage account of the seaman, including the date of shipment, rate of wages, and time of discharge, and any deductions therefrom, to be verified by entry in the official log; such account to be verified before the consular officer by the master, and a certified copy thereof to be sent with the account to the district court, together with information regarding the names and addresses of the next of kin, or other interested persons, of the decedent.

(c) *Receipts from court.* Consular officers shall be careful to obtain from the court receipts in duplicate for all monies, wages, and effects transmitted by the Foreign Service office.

PART 86—MARITIME DISASTERS AND AWARDS

Sec.

86.1 Reports on disasters.
86.2 Consular authority over wrecked, lost, or stranded vessels of the United States.
86.3 Consular authority when interested party is present.
86.4 Consular jurisdiction in salvage cases.
86.5 Consular duties when assuming jurisdiction.
86.6 Reports on rescues and heroic conduct.
86.7 Seizures of vessels.
86.8 Claims arising out of seizures of vessels.
86.9 Certification of claim to Treasury Department.

AUTHORITY: §§ 86.1 to 86.9 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 86.1 *Reports on disasters.* When a vessel of the United States is wrecked, lost, or stranded within the jurisdiction of a United States consular officer, or when such a vessel, its cargo, or passengers and crew, are brought into his jurisdiction after a disaster at sea, the consular officer shall immediately transmit a telegraphic report to the Department of State, giving the name of the vessel, its owner and home port, the voyage on which it was bound, the circumstances attending the disaster including a statement of the nature of the disaster, the date of occurrence, and the exact location, and information concerning the safety of passengers and crew. Names of those known to be killed, injured or missing should be listed with indication concerning others known to be safe. The report shall, if possible, include information as to whether the vessel is an actual or constructive total loss. The telegraphic report should be followed by a detailed air mail report which shall state whether the ship's papers have been saved.

§ 86.2 *Consular authority over wrecked, lost, or stranded vessels of the United States—(a) Under United States statutes.* If treaty provisions, established usage, or local laws permit, a United States consular officer shall assume jurisdiction over a vessel of the United States which has been wrecked or stranded on a coast within his district or which has been brought into his district after having suffered a disaster at sea; and over any cargo or effects belonging to United States citizens which have been brought into the officer's district from a wrecked or lost vessel of the United States: *Provided,* That the captain or owner of the vessel, or the owner or consignee of the cargo, or the owner of the effects, is absent or incapable of taking possession of the property concerned: *And provided,* That no salvage claim has attached to the property.

(b) *Under treaties or custom.* A consular officer shall familiarize himself with the treaty or treaties in force between the United States and the country of assignment regarding the jurisdiction of a United States consular officer over wrecked or stranded vessels of the United States, their cargoes, and effects; and shall exercise such authority as has been granted to him to its fullest extent in the interest of those concerned. In the absence of a specific treaty provision on this subject, the consular officer shall be guided by the generally conceded custom in the country of assignment. In the case of cargo of foreign origin which is brought into a country from a wrecked or stranded vessel, the rule in the United

States is that such cargo is exempt from customs duties if it is transshipped or reloaded under customs supervision and taken out of the country. Officers shall endeavor to have similar treatment accorded in a foreign country with reference to cargo belonging to United States citizens, which is brought into the country from a wrecked or stranded vessel. If rights granted by treaty or acquired by established usage are denied or ignored, the consular officer shall submit an immediate report in the premises to the Department of State, the diplomatic mission of the United States in the country of assignment, and to the supervising consulate general, if there is one.

(c) *Under local laws.* In the absence of a treaty or an established custom giving a United States consular officer jurisdiction over wrecked or stranded vessels of the United States, their cargoes, and effects, the consular officer shall conform to local laws and regulations on this subject. However, if, under local laws, the magistrate or some other official is vested with jurisdiction over the property in question, the consular officer shall request permission to assist in proceedings relating to its disposition. If the consular officer's reasonable request in this connection is refused, he shall submit a statement of the facts involved, together with any necessary supporting evidence, to the Department of State and the diplomatic mission, by telegraph if necessary.

(R. S. 4238; 46 U. S. C. 721)

§ 86.3 *Consular authority when interested party is present.* A consular officer is prohibited from assuming jurisdiction over a wrecked or stranded vessel of the United States when a party in interest is present. He may, however, if requested, act as official adviser of the party in interest and should do everything within his power under treaty provisions, established usage, or local laws, to protect this interest.

§ 86.4 *Consular jurisdiction in salvage cases.* As a rule, when a lien for salvage has attached to a wrecked vessel, its cargo, or effects the consular officer has no jurisdiction over the vessel, cargo, or effects until the salvage claim has been adjudicated.

§ 86.5 *Consular duties when assuming jurisdiction*—(a) *Request for instruction.* In the few countries where a United States consular officer is empowered to assume jurisdiction over a salvaged vessel or cargo, he shall immediately telegraph the Department of State for authority to assume jurisdiction, request that instructions be obtained from the owners if possible relative to his course of action, and furnish an estimate of funds needed to be deposited with the Department for expenses necessarily incurred in carrying out instructions.

(b) *Safeguarding of vessel and cargo.* Pending receipt of instructions from the owners or from the Department, a consular officer may, for his own protection, post a guard at the wrecked or stranded vessel, or over the cargo and effects brought into his district from a vessel which has been wrecked or stranded at sea, to prevent pilferage. Any expenses necessarily expended in employing a guard for this purpose are chargeable against the property in question.

(c) *Collection and disposal of papers.* The consular officer will endeavor to collect the ship's papers and documents relating to the vessel, its cargo, and passengers, and, if possible, deliver them to the proper persons. In the event of the death or nonappearance of such persons, the consular officer shall transmit the papers to the Department.

(d) *Disposition of unclaimed property.* If the owners of the vessel, cargo, or effects are unknown, the consular officer shall submit a full report to the Department and await instructions before taking further action. Upon receipt of necessary authorization from the Department, a consular officer may dispose of unclaimed merchandise and effects in the manner set forth for the disposition of effects of a citizen of the United States dying abroad.

(R. S. 4238; 46 U. S. C. 721)

§ 86.6 *Reports on rescues and heroic conduct.* When a consular officer receives authentic information that the master or crew of any vessel, American or foreign, or that any person, has rescued seamen or citizens of the United States from drowning, shipwreck or some other catastrophe at sea, he shall immediately transmit to the Department a detailed report concerning the rescue and shall make recommendations with reference to the giving of rewards to persons who have distinguished themselves in effecting the rescue.

§ 86.7 *Seizures of vessels.* When a private vessel documented or certified under the laws of the United States is seized by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States, and there is no dispute of material facts with respect to the location or activity of such vessel at the time of the seizure, the Secretary of State shall take as soon as practicable such action as he deems appropriate to attend to the welfare of such vessel and its crew while it is held by such country and to secure the release of such vessel and crew. When a vessel is seized under the above conditions and a fine must be paid in order to secure the prompt release of the vessel and crew, the owners shall be reimbursed by the Secretary of the Treasury in the amount certified to him by the Legal Adviser and Deputy Legal Adviser of the Department of State as being the amount of the fine actually paid. These provisions are not applicable with respect to a seizure made by a country at war with the United States or a seizure made in accordance with provisions of any fishing convention or treaty to which the United States is a party. (68 Stat. 883; 22 U. S. C. 1971–1976, 1952 Ed., Supp. IV)

§ 86.8 *Claims arising out of seizures of vessels*—(a) *Submission of claim.* Claim arising out of seizure of a vessel for the reimbursement of a fine shall be submitted to the Secretary of State. Claim may be filed by the owner of the vessel, or by an authorized agent through the American Consulate. When filed by an agent, the claim must show the title or capacity of the person presenting the claim and be accompanied by evidence of his appointment as a duly authorized agent.

(b) *Form of claim.* Claim shall be prepared in the form of a sworn statement, in triplicate. It shall contain in narrative form a clear chronological statement of the essential facts relating to:

(1) Name and address of claimant,

(2) Citizenship status of claimant,

(3) Date and manner of the owner's acquisition of the vessel or other interest therein,

(4) Date and circumstances relating to the seizure of the vessel, including the approximate location of the vessel at the time of seizure, the maner in which such location was determined, and the activities in which it was engaged at the time of seizure,

(5) Date, amount, and circumstances relating to the payment of the fine and the release of the vessel,

(6) Identification of persons, officials or agencies involved in the seizure of the vessel, the payment of the fine, and the release of the vessel; and the dates involved,

(7) Nature, circumstances, and amount of incidental expenses incurred or other losses sustained by the owner as a consequence of the seizure.

(c) *Evidence to be submitted by claimant.* There shall be attached to the sworn statement of claim documentary evidence consisting of original documents or certified copies thereof to support every allegation in the sworn statement. The documents filed as evidence shall be numbered consecutively and cited by number in the sworn statement in support of which the documents are filed. All evidence shall be filed in triplicate. The original evidence or certified copies thereof shall be attached to the original copy of the claim. Uncertified copies may be attached to the other two copies of the affidavit of claim. All documents in other than the English language shall be accompanied by English translations. The more important documentary evidence filed in suport of the claim shall include the following:

(1) Articles of incorporation of the owner or partnership agreement of the owners and all amendments thereto,

(2) Proof of citizenship of officers and directors of the corporation or of the partners, or of a sole individual owner, as the case may be,

(3) Affidavit of an officer of the corporation as to the citizenship status of the stockholders as far as known,

(4) Receipt for payment of the fine,

(5) Proof to substantiate all other expenses for which claim is made, consisting of receipts, vouchers, etc.,

(6) Log of the vessel seized,

(7) Records of any hearings conducted by authorities of the government making the seizure relative to such seizure,

(8) Certificate of Registry, other document or certificate of the vessel seized,

(9) Convincing evidence of any available nature to bring the case within the provisions of the statute,

(10) Affidavits of officers of the seized vessel corroborating allegations upon which the claim is based.

§ 86.9 *Certification of claim to Treasury Department.* The Department of State will determine on the basis of the facts and evidence submitted whether the amount of the fines should be reimbursed. If reimbursement is considered to be warranted, the Legal Adviser and Deputy Legal Adviser of the Department of State will make the necessary certification to the Secretary of the Treasury.

PART 87—TRANSFERS OF VESSELS ABROAD

Sec.
87.1 Transfers to American ownership.
87.2 Transfers of American vessels to aliens or to foreign registry.

AUTHORITY: §§ 87.1 and 87.2 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842.

§ 87.1 *Transfers to American ownership.* When a vessel has been transferred abroad from foreign to United States ownership, a consular officer shall, when requested, perform the following services for the purchaser or purchasers of the vessel:

(a) Take an acknowledgment of the execution of the bill of sale for the vessel and make the bill of sale a matter of record in the Foreign Service office; and

(b) Either issue a Provisional Certificate of Registry (Customs Form 1266–A) for the vessel, provided the purchaser or purchasers desire to have it documented under the laws of the United States, and provided the Commissioner of Customs, Department of the Treasury, first approves the issuance of such a certificate; or if the purchaser or purchasers do not desire or intend to have the vessel documented under the laws of the United States, issue a Certificate of American Ownership for the vessel, provided approval of the Department of State is obtained in advance. A Certificate of American Ownership is prima facie proof that the vessel concerned was transferred to United States ownership, that the transfer was made in good faith, and that the owners are United States citizens.

§ 87.2 *Transfers of American vessels to aliens or to foreign registry.* A consular officer shall, upon request, inform interested parties that formal written application for the approval of the Maritime Administration must be filed, in duplicate, on Form MA–29. Upon completion by the applicants of the necessary documents for the Maritime Administration, the consular officer may transmit such documents for them to the Maritime Administration through the Department of State. A consular officer shall, upon receipt of a request to perform any services connected with the actual transfer of a vessel or an interest therein to any person not a United States citizen, ascertain whether the transaction has been approved by the Maritime Administration. If it has, the consular officer shall perform any notarial services connected with the transaction, and shall submit a complete report in the premises to the Department of State for transmittal to the Maritime Administration, accompanied by a certified copy of the bill of sale, mortgage, lease, charter, or such other evidence of the transfer as may be obtainable. If the transaction has not been approved by the Maritime Administration, the consular officer shall inform the parties in interest of the penalties attached by reason of failure to procure the required approval, and shall submit a complete report in the premises to the Department of State for transmittal to the Maritime Administration.

PART 88—FEES FOR SERVICES

Sec.
88.1 Services for American vessels.
88.3 Services for foreign vessels.

AUTHORITY: §§ 88.1 and 88.3 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842.

§ 88.1 *Services for American vessels.* No fees are chargeable for services performed for a public vessel or for a vessel regularly documented under the laws of the United States, regardless of whether such vessel was built in the United States or abroad.

§ 88.3 *Services for foreign vessels.* The fees prescribed under the caption "Services Relating to Vessels and Seamen" in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter), shall be charged and collected for services performed for foreign vessels.

SUBCHAPTER J—OTHER CONSULAR SERVICES

PART 91—IMPORT CONTROLS

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91.1 Answering inquiries regarding tariff acts and customs regulations.
91.2 Furnishing samples to collectors of customs or appraising officers.
91.3 Assistance to Customs and Tariff Commission representatives.

AUTHORITY: §§ 91.1 to 91.3 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c.

§ 91.1 *Answering inquiries regarding tariff acts and customs regulations.* In replying to inquiries received from exporters, travelers, or other interested parties, concerning tariff acts or customs regulations, consular officers shall refrain from giving, or appearing to give, decisions pertaining to matters upon which they are not competent to pass.

§ 91.2 *Furnishing samples to collectors of customs or appraising officers.* Upon the receipt of a request therefor from a collector of customs or appraising officer of the Government of the United States, a consular officer shall procure and forward samples of merchandise being imported or offered for importation into the United States from his particular district.

§ 91.3 *Assistance to Customs and Tariff Commission representatives.* Consular officers shall render all proper assistance to Customs and Tariff Commission representatives abroad to aid them in the performance of their official duties.

PART 92—NOTARIAL AND RELATED SERVICES

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92.2 Description of notarial functions of the Foreign Service; record of acts.
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AUTHORITY: §§ 92.1 to 92.95 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842. Statutory provisions and Executive orders interpreted or applied are cited to text in parentheses.

INTRODUCTION

§ 92.1 *Definitions.* (a) In the United States the term "notary" or "notary public" means a public officer qualified and bonded under the laws of a particular jurisdiction for the performance of notarial acts, usually in connection with the execution of some document.

(b) The term "notarial act" means an act recognized by law or usage as pertaining to the office of a notary public.

(c) The term "notarial certificate" may be defined as the signed and sealed statement to which a "notarial act" is almost invariably reduced. The "notarial certificate" attests to the performance of the act by the notary, and may be an independent document or, as in general American notarial practice, may be placed on or attached to the notarized document.

§ 92.2 *Description of notarial functions of the Foreign Service; record of acts.* The notarial function of officers of the Foreign Service is similar to the function of a notary public in the United States. See § 22.3 of this chapter concerning the giving of receipts for fees collected and the maintenance of a register serving the same purposes as the record which notaries are usually expected or required to keep of their official acts.

§ 92.3 *Jurisdiction of Foreign Service posts.* Where definite consular districts have been established, the geographic limits of the district determine the jurisdiction in notarial matters of the officers assigned to the Foreign Service post, i. e., the area in which notarial acts can be performed by the consular officer. (See § 92.41 (b) regarding the authentication of the seals and signatures of foreign officials outside the consular district.) As a rule, notarial services should be performed only at the office of the post. However, they may, when necessary, be performed elsewhere within the consular district, with the understanding that, in addition to the prescribed Foreign Service fees for such services, the expenses incurred by the notarizing officer in going to the place where the notarial service is performed and returning to his office will be borne by the interested party or parties. Within those national jurisdictions where no consular districts have been established, notarial services should be performed at the most accessible Foreign Service post.

§ 92.4 *Authority of officers of the Foreign Service under the Federal law.* (a) Section 1195, title 22 of the United States Code, requires every United States consular officer to perform notarial acts, upon request, "within the limits of his consulate." This provision is construed as mandatory with respect to notarial acts performed within the Foreign Service office but not with respect to notarial acts performed outside the Foreign Service office. In addition, section 1203, title 22 of the United States Code, authorizes every secretary of embassy or legation and every consular officer to perform notarial acts. Notarial acts should be performed, however, only if their performance is authorized by treaty provisions or permitted by the laws or authorities of the country wherein the consular officer is stationed.

(b) These acts may be performed for any person regardless of nationality so long as the document in connection with which the notarial service is required is for use within the jurisdiction of the Federal Government of the United States or within the jurisdiction of one of the States or Territories of the United States. (However, see also § 92.6.) Within the Federal jurisdiction of the United States, these acts, when certified under the hand and seal of office of the notarizing officer are valid and of like force and effect as if performed by any duly authorized and competent person within the United States. Documents bearing the seal and signature of the notarizing officer are admissible in evidence within the Federal jurisdiction without proof of any such seal or signature being genuine or of the official character of the notarizing officer. (R. S. 1750, sec. 3, 34 Stat. 100; 22 U. S. C. 1203.)

(c) Every secretary of embassy or legation and every consular officer may perform notarial acts for use in countries occupied by the United States or under its administrative jurisdiction, provided the officer has reason to believe that his notarial act will be recognized in the country where it is intended to be used. These acts may be performed for United States citizens and for nationals of the occupied or administered countries who reside outside such countries, except in areas where another government is protecting the interests of the occupied or administered country.

(d) Chiefs of mission, that is, ambassadors and ministers, have no authority under Federal law to perform notarial acts except in connection with the authentication of extradition papers (see § 92.40).

(e) Consular agents have authority to perform notarial services but acting consular agents do not.

§ 92.5 *Acceptability of notarial acts under State or territorial law.* The acceptability within the jurisdiction of a State or Territory of the United States of a certificate of a notarial act performed by an officer of the Foreign Service depends upon the laws of the State or Territory. Most States and Territories recognize the notarial acts of United States diplomatic or consular officers, whether such acts are performed for United States citizens or for aliens. However, some of the States and Territories have, by statute, specified the legal requirements which notarized documents or notarial certificates must meet. For this reason, before performing a notarial act for use in a State or Territory, an officer of the Foreign Service should, unless he is already certain of the provisions of the pertinent state or territorial law, consult the appropriate law digest to determine whether it may be expected that the certificate of his notarial act will be acceptable in the State or Territory. If, in a particular instance, no statutory provision on this point can be found, the applicant for the notarial service should be informed of that fact, preferably in writing, and a statement regarding the giving of this information should be entered in the Record of Fees.

§ 92.6 *Authority of officers of the Foreign Service under international practice.* Although such services are not mandatory, officers of the Foreign Service may, as a courtesy, perform notarial acts for use in countries with which the United States has formal diplomatic and consular relations. Generally the applicant for such service will be a United States citizen or a national of the country in which the notarized document will be used. The officer's compliance with a request for a notarial service of this type should be based on the reasonableness of the request and the absence of any apparent irregularity.

When an officer finds it advisable to do so, he may question the applicant to such extent as may be necessary to assure himself

(a) That his notarial certificate may reasonably be expected to satisfy the legal requirements of the country in which the notarized document will be used;

(b) That the notarial service is legally necessary and cannot be obtained otherwise than through the United States diplomatic or consular officer without loss or serious inconvenience to the applicant; and

(c) That the notarial certificate will be used solely for a well-defined purpose, as represented by the applicant for the service. (See also § 92.4 (c) regarding notarial services for use in countries occupied by the United States or under its administrative jurisdiction.)

§ 92.7 *Responsibility of officers of the Foreign Service.* As indicated in §§ 92.4, 92.5, and 92.6, the authority of secretaries of embassy or legation as well as consular officers to perform notarial acts is generally recognized. However, the function is essentially consular, and notarial powers are in practice exercised by diplomatic officers only in the absence of a consular officer. Performance of notarial acts by an officer assigned in dual diplomatic and consular capacity shall be under his consular commission, except in special circumstances. For ease of reference, the term "consular officer" is used in this part in discussing the notarial function of the Foreign Service.

GENERAL NOTARIAL PROCEDURES

§ 92.8 *Compliance with request for notarial services.* A consular officer should comply with all proper requests for the performance of notarial services within the limitations prescribed in this part. (See particularly §§ 92.3 to 92.7.) Moreover, as a representative of the United States Government, the consular officer, when acting in a notarial capacity, should take great care to prevent the use of his official seal in furthering any unlawful or clearly improper purpose. (See § 92.9 regarding refusal to perform notarial services in certain cases.)

§ 92.9 *Refusals of requests for notarial services.* (a) A consular officer should refuse requests for notarial services, the performance of which is not authorized by treaty provisions or permitted by the laws or authorities of the country in which he is stationed. (See § 92.4 (a).) Also, a consular officer should refuse to perform notarial acts for use in transactions which may from time to time be prohibited by law or by regulations of the United States Government such, for example, as regulations based on the "Trading With the Enemy Act of 1917", as amended.

(b) A consular officer is also authorized to refuse to perform a notarial act if he has reasonable grounds for believing that the document, in connection with which his notarial act is requested will be used for a purpose patently unlawful, improper or inimical to the best interests of the United States. Requests for notarial services should be refused only after the most careful deliberation.

§ 92.10 *Specific waiver in notarial certificate.* If the consular officer has reason to believe that material statements in a document presented for notarization are false, and if no basis exists for refusing the notarial service in accordance with § 92.9, he may consider the advisability of informing the applicant that he will perform the service only with a specific waiver of responsibility included in the notarial certificate. Furthermore, a consular officer may, in his discretion, add to the specific waiver in the notarial certificate a statement of verifiable facts known to him, which will reveal the falsity of material in the document. However, normally a consular officer shall exercise great caution not to limit the general privilege of a United States citizen while abroad to execute under oath any statement he sees fit to make, including mistaken, unnecessary, and even frivolous statements: *Provided,* That substantial and compelling reasons do not exist which impel restraining action on the part of the consular officer. On the other hand, experience has shown the desirability of including, as standard practice, a specific waiver of responsibility in all authentications (§ 92.38) executed in connection with divorce proceedings.

§ 92.11 *Preparation of legal documents*—(a) *By attorneys.* When a document has been prepared by an attorney for signature, a consular officer should not question the form of document unless it is obviously incorrect.

(b) *By consular officers.* A consular officer should not usually prepare for private persons legal documents for signature and notarization. (However, see the provisions in § 92.24 regarding the preparation of affidavits.) When asked to perform such a service, the consular officer should explain that the preparation of legal forms is normally the task of an attorney, that the forms used and the purposes for which they are used vary widely from jurisdiction to jurisdiction, and that he could not guarantee the legal effectiveness of any document which he might prepare. The person desiring the preparation of a legal document should be referred to such publications as Jones Legal Forms and The Lawyers Directory with the suggestion that he select or adapt the form which appears best suited to his needs. The consular officer may, in his discretion, arrange to have a member of his office staff type the document. If the document is typed in the Foreign Service office, the fee for copying shall be collected as prescribed under the caption "Copying and Recording" of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 92.12 *Necessity for certification of notarial acts.* A consular officer must execute a written certificate attesting to the performance of a notarial act. This certificate may be inserted on or appended to the notarized document (see § 92.17 regarding the fastening of sheets). The certificate evidences the performance of the notarial act. Failure to execute this certificate renders the notarial act legally ineffective. Each notarial act should be evidenced by a separate certificate; two or more distinct notarial acts should not be attested to by one certificate.

§ 92.13 *Form of notarial certificate.* The form of a notarial certificate depends on the nature of the notarial act it attests. (See §§ 92.18 to 92.48 for discussions of the various forms of notarial certificates.) Rules pertaining to venue, and signing and sealing, are common to all notarial certificates.

§ 92.14 *Venue on notarial certificates.* (a) The term "venue" means the place where the certificate is executed. The venue must be shown on all notarial certificates to establish the qualifications and sphere of authority of the notarizing officer to perform the notarial act. The items characteristic of a typical venue, in the order of their appearance in the certificate, are as follows:

(1) Name of country (or dominion, Territory, colony, island, as appropriate);

(2) Name of province or major administrative region (if none, this may be omitted);

(3) Name of local community (city, town, or village);

(4) Name of the Foreign Service post.

(b) When a notarial act is performed, and the notarial certificate executed, at a locality in a consular district other than the locality in which the Foreign Service office is situated, the venue should mention only the name of the country (or dominion, territory, colony, island, as appropriate), and the name of the consular district.

(c) The venue used at a Foreign Service post which has not been officially designated as an embassy, legation, consulate general, consulate, or consular agency should bear the notation "American Consular Service" in place of the post name.

§ 92.15 *Signing notarial certificate.* The notarizing officer should sign a notarial certificate on the lower right-hand side. The name and full official title of the consular officer should be typed, stamped with a rubber stamp, or printed in ink on two separate lines immediately below his signature. When the notarizing officer is assigned to a Foreign Service post in both a diplomatic and consular capacity, he should use his consular title in the notarial certificate. (See § 92.7.)

§ 92.16 *Sealing the notarial certificate.* The notarizing officer should seal a notarial certificate with the impression seal of the post on the lower left-hand side of the certificate. A notarial certificate executed at a Foreign Service post which has not been officially designated as an embassy, legation, consulate general, consulate, or consular agency should be sealed with an impression seal bearing the legend "American Consular Service" and the name of the locality.

§ 92.17 *Fastening of pages.* When the instrument or document to which a notarial act relates consists of more than

one sheet, or when the notarial certificate will be attached and not written on the document itself, the consular officer should bring all the sheets comprising the document together under his official seal.

SPECIFIC NOTARIAL ACTS

§ 92.18 *Oaths and affirmations defined*—(a) *Oath.* An oath is an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God. In a broad sense the word "oath" includes all forms of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truly, and in this sense it includes "affirmation".

(b) *Affirmation.* An affirmation is a solemn and formal declaration or asseveration in the nature of an oath that a statement, or series of statements, is true. When an oath is required or authorized by law, an affirmation in lieu thereof may be taken by any person having conscientious scruples against taking an oath. As a general rule, an affirmation has the same legal force and effect as an oath.

§ 92.19 *Administering an oath.* The usual formula for administering an oath is as follows: The officer administering the oath requests the person taking the oath to raise his right hand while the officer repeats the following words: "You do solemnly swear that the statements set forth in this paper which you have here signed before me are true. So help you God." Whereupon the person taking the oath answers, "I do."

§ 92.20 *Administering an affirmation.* In administering an affirmation the procedure followed is generally the same as in the case of an oath, but the formula is varied by the use of the following words: "You do solemnly, sincerely, and truly affirm and declare that ----------, and this you do under the pains and penalties of perjury".

§ 92.21 *Notarial certificate to oath or affirmation.* The written statement attesting to the administration of an oath or affirmation is known as a jurat. The jurat must be signed and sealed by the notarizing officer (see §§ 92.15 and 92.16 on signing and sealing notarial certificates).

§ 92.22 *Affidavit defined.* An affidavit is a written declaration under oath made before some person who has authority to administer oaths, without notice to any adverse party that may exist. One test of the sufficiency of an affidavit is whether it is so clear and certain that it will sustain an indictment for perjury, if found to be false. An affidavit differs from a deposition in that it is taken ex parte and without notice, while a deposition is taken after notice has been furnished to the opposite party, who is given an opportunity to cross-examine the witness.

§ 92.23 *Taking an affidavit.* The consular officer taking an affidavit should

(a) Satisfy himself, as far as possible, that his notarial act will be acceptable under the laws of the jurisdiction where the affidavit is to be used (see § 92.5);

(b) Require the personal appearance of the affiant at the time the affidavit is taken;

(c) Require satisfactory identification of the affiant; and

(d) Administer the oath to the affiant before the affiant signs the affidavit.

§ 92.24 *Usual form of affidavit.* Affidavits are usually drawn by competent attorneys or are set out in established forms. The form and substantive requirements of an affidavit depend principally upon the purpose for which it is made and the statutes of the jurisdiction where it is intended to be used. When a consular officer finds it necessary in the discharge of his official duties to prepare an affidavit, or when he assists a private person in preparing an affidavit (see § 92.11 (b)), he should, where possible, consult the pertinent statutory provisions.

§ 92.25 *Title of affidavit.* Generally an affidavit taken for use in a pending cause must be entitled in that cause so that it will show to what proceedings it is intended to apply, and may support an indictment for perjury in case it proves to be false. If there is no suit pending at the time the affidavit is taken or if the affidavit is not to be used in any cause in court, no title need be given.

§ 92.26 *Venue on affidavit.* The venue must always be given and should precede the body of the affidavit. (See § 92.14 regarding venue on notarial certificates generally.)

§ 92.27 *Affiant's allegations in affidavit*—(a) *Substance of allegations.* Although a consular officer is generally not responsible for the correctness of the form of an affidavit or the manner in which the allegations therein are set forth (see § 92.11 (a) regarding the preparation of legal documents by attorneys; § 92.11 (b) regarding the preparation of legal documents by consular officers; and § 92.24 regarding the form of an affidavit), he may, in appropriate instances, draw the affiant's attention to the following generally accepted criteria as regards the substance of the allegations:

(1) Material facts within the personal knowledge of the affiant should be alleged directly and positively. Facts are not to be inferred where the affiant has it in his power to state them positively and fully.

(2) If the matters stated in the affiant's affidavit rest upon information derived from others rather than on facts within his personal knowledge, he should aver that such matters are true to the best of his knowledge and belief.

(3) If the allegations made on information and belief are material, the sources of information and grounds of belief should be set out and a good reason given why a positive statement could not be made.

(4) If the conclusions of the affiant are drawn from the contents of documents, such contents should be set out or exhibited, so that the authority to whom the affidavit is presented may determine whether the affiant's deductions are well founded.

(b) *Veracity of allegations.* Consular officers are not required to examine into the truth of the affiant's allegations or to pass upon any contentious questions involved. In many instances the matters referred to in an affidavit will be of a technical or special nature beyond the officer's general knowledge or experience. However, he may, in certain circumstances, refuse to take an affidavit. (See § 92.9 regarding the types of situations in which an officer might properly refuse to perform a notarial service; also see § 92.10 regarding the waiver and other statements which may be included in a notarial certificate where evidence exists of falsity in the affiant's declaration.)

§ 92.28 *Signature of affiant on affidavit.* The signature of the affiant is indispensable. The affiant should always sign the affidavit in the presence of the notarizing officer.

§ 92.29 *Oath or affirmation to affidavit.* Affidavits made before consular officers must be sworn to or affirmed (see § 92.23 (d)).

§ 92.30 *Acknowledgment defined.* An acknowledgment is a proceeding by which a person who has executed an instrument goes before a competent officer or court and declares it to be his act and deed, to entitle it to be recorded or to be received in evidence without further proof of execution. An acknowledgment is almost never made under oath and should not be confused with an oath (see § 92.18 (a) for definition of oath). Moreover, an acknowledgment is not the same as an attestation, the latter being the act of witnessing the execution of an instrument and then signing it as a witness. Instruments requiring acknowledgment generally are those relating to land, such as deeds, mortgages, leases, contracts for the sale of land, and so on.

§ 92.31 *Taking an acknowledgment*—(a) *Officer's assurance of acceptability of notarial act.* A consular officer taking an acknowledgment should, if possible, ascertain the requirements of the jurisdiction in which the acknowledged document is to be used and execute the certificate in accordance with those requirements. Not all States or Territories will accept certificates of acknowledgment executed by consular officers other than consuls. Therefore consuls general, vice consuls, and consular agents who are called upon to perform this notarial act should consult the applicable state or territorial law to ascertain whether their certificates of acknowledgment will be acceptable. (See § 92.5 regarding acceptability of consular notarial acts under state or territorial law.) Furthermore, public policy generally forbids that the act of taking and certifying an acknowledgment be performed by a person financially or beneficially interested in the transaction to which the acknowledged document relates. Consular officers should keep this point in mind, especially in connec-

tion with acknowledgments by members of their families.

(b) *Personal appearance of grantor(s).* A consular officer taking an acknowledgment should always require the personal appearance of the grantor(s), i. e., the person or persons who have signed the intrument to be acknowledged. Since the officer states in his certificate that the parties did personally appear before him, failure to observe this requirement invalidates the notarial act and makes the officer liable to the charge of negligence and of having executed a false certificate. A consular officer should never take an acknowledgment by telephone.

(c) *Satisfactory identification of grantor(s).* The consular officer must be certain of the identity of the parties making an acknowledgment. If he is not personally acquainted with the parties, he should require from each some evidence of identity, such as a passport, police identity card, or the like. The laws of some States and Territories require that the identity of an acknowledger be proved by the oath of one or more "credible witnesses", and that a statement regarding the proving of identity in this manner be included in the certificate of acknowledgment. (See § 92.32 (b) regarding forms of certificates of acknowledgment generally.) Mere introduction of a person not known to the notarizing officer, without further proof of identity, is not considered adequate identification for acknowledgment purposes.

(d) *Explanation of contents of instrument.* The consular officer must assure himself that the person acknowledging an instrument understands the nature of the instrument. If the person does not understand it, the officer is legally and morally bound to explain the instrument in such a way as to make the person who has signed it realize the character and effect of his act. This duty is particularly important where the signer of a document has little or no knowledge of the language in which the document is written.

(e) *Acknowledgments of married women.* Some of the States still require that a married woman who has executed an instrument of conveyance jointly with her husband be examined separately by the notarizing officer at the time the acknowledgments of the couple are taken. Consular officers should consult the applicable statutory provisions before taking the acknowledgments of a husband and wife to a document which they have both executed.

§ 92.32 *Notarial certificate to acknowledgment*—(a) *Title.* The notarial certificate evidencing the taking of an acknowledgment is commonly known as a "certificate of acknowledgment" or sometimes simply as an "acknowledgment".

(b) *Form.* The form of a certificate of acknowledgment varies widely depending on the laws of the jurisdiction where the acknowledged document is intended to be used, the purpose for which the document is intended, and the legal position of the persons who have executed it. Instruments to be acknowledged are frequently prepared on printed forms, the entire contract or deed being on one sheet together with the certificate of acknowledgment. Often the document, including the certificate of acknowledgment, is drawn up in advance by an attorney. In these cases, the consular officer may use the certificate which is already on the document, making whatever modifications are manifestly required to show that the certificate was executed by a consular officer. However, if he finds it necessary to prepare the certificate of acknowledgment, the officer should consult the appropriate reference work for guidance as to the proper form. When no prescribed form can be found, the officer should use the language in Form FS–88, Certificate of Acknowledgment of Execution of an Instrument, inserting the certificate immediately at the close of the deed on the last page if space permits, or, if a separate sheet is necessary, using the printed Form FS–88 itself.

§ 92.33 *Execution of certificate of acknowledgment*—(a) *When certificate should be executed.* A consular officer should execute a certificate of acknowledgment immediately after the parties to the instrument have made their acknowledgment. Allowing several days or weeks to elapse between the time the acknowledgment is made and the certificate executed is undesirable, even though the officer may remember the acknowledgment act.

(b) *Venue.* The venue must be shown as prescribed in § 92.14.

(c) *Date.* The date in the certificate must be the date the acknowledgment was made. This is not necessarily the same as the date the instrument was executed. In fact, there is no reason why an instrument may not be acknowledged a year or more after the date of its execution, or at different times and places by various grantors.

(d) *Names of parties.* The name or names of the person or persons making the acknowledgment should appear in the certificate in the same form as they are set out in the acklowledged document, and in the same form as their signature on the instrument.

(e) *Additional statements.* When executing a certificate of acknowledgment on Form FS–88, the notarizing officer may include any necessary additional statements in the blank space below the body of the certificate.

(f) *Signing and sealing certificate.* The certificate of acknowledgment shall be signed and sealed as prescribed in §§ 92.15 and 92.16.

§ 92.34 *Fastening certificate to instrument.* The proper place for the certificate of acknowledgment is after the signature of the parties to the instrument. If the instrument is a printed form, the certificate will almost invariably be a part of the form. When Form FS–88 is used or when the certificate must be prepared on a sheet separate from the instrument, it should be fastened to the instrument as the last sheet. The method of fastening notarial certificates is prescribed in § 92.17.

§ 92.35 *Errors in certificate of acknowledgment.* A consular officer having taken an acknowledgment of an instrument and made a certificate of that fact, cannot afterwards amend or change his certificate for the purpose of correcting a mistake. This can be done only by the parties reacknowledging the instrument. However, typographical errors may be corrected by striking out the erroneous characters and inserting the correct ones above. Such changes should be initialed by the parties who executed the instrument and by the notarizing officer.

§ 92.36 *Authentication defined.* An authentication is a certification of the genuineness of the official character, i. e., signature and seal, or position of a foreign official. It is an act done with the intention of causing a document which has been executed or issued in one jurisdiction to be recognized in another jurisdiction. Documents which may require authentication include legal instruments notarized by foreign notaries or other officials, and copies of public records, such as birth, death, and marriage certificates, issued by foreign record keepers.

§ 92.37 *Authentication procedure.* (a) The consular officer must compare the foreign official's seal and signature on the document he is asked to authenticate with a specimen of the same official's seal and signature on file either in the Foreign Service office or in a foreign public office to which he has access. If no specimen is available to the consular officer, he should require that each signature and seal be authenticated by some higher official or officials of the foreign government until there appears on the document a seal and signature which he can compare with a specimen available to him. However, this procedure of having a document authenticated by a series of foreign officials should be followed only where unusual circumstances, or the laws or regulations of the foreign country require it.

(b) Where the State law requires the consular officer's certificate of authentication to show that the foreign official is empowered to perform a particular act, such as administering an oath or taking an acknowledgment, the consular officer must verify the fact that the foreign official is so empowered.

(c) When the consular officer has satisfactorily identified the foreign seal and signature. (and, where required, has verified the authority of the foreign official to perform a particular act), he may then execute a certificate of authentication, either placing this certificate on the document itself if space is available, or appending it to the document on a separate sheet (see § 92.17 on the fastening of notarial certificates).

§ 92.38 *Forms of certificate of authentication.* The form of a certificate of authentication depends on the statutory requirements of the jurisdiction where the authenticated document will be used (see § 92.39 regarding the provisions of Federal law). Before authenticating a document for use in a State or Territory of the United States, a consular officer should consult the pertinent law digest to ascertain what specific requirements must be met, or he should be

guided by any special information he may receive from the attorney or other person requesting the document with regard to the applicable statutory requirements. (See § 92.41 (e) regarding material which should not be in the certificate of authentication.) If no provisions relating to authentications can be found in a particular State or Territorial law digest, and in the absence of any special information from the attorney or other person requesting the document, the officer should prepare the certificate of authentication in the form which seems best suited to the needs of the case. When in his opinion the circumstances seem to warrant, and always in connection with certificates of marriage or divorce decrees, a consular officer should include in the body of his certificate of authentication a qualifying statement reading as follows: "For the contents of the annexed document I assume no responsibility."

§ 92.39 *Authenticating foreign public documents (Federal procedures).* (a) A copy of a foreign public document intended to be used as evidence within the jurisdiction of the Federal Government of the United States must be authenticated in accordance with the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 948, sec. 92 (b), 63 Stat. 103; 28 U. S. C. 1741). This provision of Federal law provides that a copy of any foreign document of record, or on file in a public office of a foreign country or political subdivision thereof, if certified by the lawful custodian thereof, may be admitted in evidence when authenticated by a certificate of a United States consular officer resident in the foreign country, under the seal of his office.

(b) The consular officer's certificate should indicate that the copy has been certified by the lawful custodian.

(c) In the absence of a consular officer of the United States as an officer resident in the State of the Vatican City, a copy of any document of record or on file in a public office of said State of the Vatican City, certified by the lawful custodian of such document may be authenticated by a consular officer of the United States resident in Rome, Italy (22 U. S. C. 1204).

§ 92.40 *Authentication of foreign extradition papers.* Foreign extradition papers are authenticated by chiefs of mission.

§ 92.41 *Limitations to be observed in authenticating documents—(a) Unknown seals and signatures.* A consular officer should not authenticate a seal and signature not known to him. See § 92.37 (a) regarding the necessity for making a comparison with a specimen seal and signature.

(b) *Foreign officials outside consular district.* A consular officer should not authenticate the seals and signatures of foreign officials outside his consular district.

(c) *Officials in the United States.* Consular officers are not competent to authenticate the seals and signatures of notaries public or other officials in the United States. However, diplomatic and consular officers stationed at a United States diplomatic mission may certify to the seal of the Department of State (not the signature of the Secretary of State) if this is requested or required in particular cases by the national authorities of the foreign country.

(d) *Photostat copies.* Consular officers should not authenticate facsimiles of signatures and seals on photographic reproductions of documents. They may, however, authenticate original signatures and seals on such photographic reproductions.

(e) *Matters outside consular officer's knowledge.* A consular officer should not include in his certificate of authentication statements which are not within his power or knowledge to make. Since consular officers are not expected to be familiar with the provisions of foreign law, except in a general sense, they are especially cautioned not to certify that a document has been executed or certified in accordance with foreign law, nor to certify that a document is a valid document in a foreign country.

(f) *United States officials in foreign countries.* An authentication by a United States consular officer is performed primarily to cause the official characters and positions of foreign officials to be known and recognized in the United States. Consular officers should not, therefore, undertake to authenticate the seals and signatures of other United States officials who may be residing in their consular districts.

(g) *Officers of the Foreign Service in other countries.* An officer of the Foreign Service stationed in one country is not expected to authenticate the signature or seal of an officer of the Foreign Service stationed in another country. When it is necessary for the seal and signature of an officer of the Foreign Service to be authenticated, such authentication will be done in the Department of State. An official of a foreign government requesting the authentication of the seal and signature of an officer of the United States Foreign Service who is, or was, stationed in another country should be informed that the document to be authenticated will have to be sent to the Department for this purpose. Any document bearing the seal and signature of an officer of the Foreign Service which is received at a Foreign Service post from a person in the United States with the request that it be further authenticated should be referred to the Department of State.

§ 92.42 *Certification of copies of foreign records relating to land titles.* In certifying documents of the kind described in Title 28, section 1742, of the United States Code, diplomatic and consular officers of the United States will conform to the Federal procedures for authenticating foreign public documents (§ 92.39), unless otherwise instructed in a specific case.

§ 92.43 *Fees for notarial services and authentications.* The fees for administering an oath or affirmation and making a certificate thereof, for the taking of an acknowledgment of the execution of a document and executing a certificate thereof, for certifying to the correctness of a copy of or an extract from a document, official or private, for authenticating a foreign document, or for the noting of a bill of exchange, certifying to protest, etc., are as prescribed under the caption Notarial Services and Authentications in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter), unless the service is performed under a "no fee" item of the same Tariff. If an oath or affirmation is administered concurrently to several persons and only one consular certificate (jurat) is executed, only one fee is collectible. If more than one person joins in making an acknowledgment but only one certificate is executed, only one fee shall be charged.

§ 92.44 *Fees for protesting nonpayment of bills of exchange.* The fee chargeable under item 55 of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter) is the same for each bill of exchange protested by the consular officer, regardless of the number of parties (drawer or maker, and endorsers) to whom "notice of protest" is sent at the request of the person requiring the service. In addition to the fixed fee, the consular officer should charge under item 85 for time spent outside the office in presenting the negotiable instrument for acceptance or payment.

§ 92.48 *No-fee services.* The services at Foreign Service posts for which no fee is chargeable are these designated by "no fee" entries in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

DEPOSITIONS AND LETTERS ROGATORY

§ 92.49 *Deposition defined.* A deposition is the testimony of a witness taken in writing under oath or affirmation, before some designated or appointed person or officer, in answer to interrogatories, oral or written. (For the distinction between a deposition and an affidavit see § 92.22.)

§ 92.50 *Use of depositions in court actions.* Generally depositions may be taken and used in all civil actions or suits. In criminal cases in the United States, a deposition cannot be used, unless a statute has been enacted which permits a defendant in a criminal case to have a deposition taken in his own behalf, or unless the defendant consents to the taking of a deposition by the State for use by the prosecution. (For exception in connection with the proving of foreign documents for use in criminal actions, see § 92.65.)

§ 92.51 *Methods of taking depositions in foreign countries.* Rule 28 (b) of the Rules of Civil Procedure for the District Courts of the United States provides that depositions may be taken in foreign countries by any of the three following methods:

(a) On notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States;

(b) By commission, before such person or officer as may be appointed by the commission;

(c) Under letters rogatory, before an appropriate foreign court.

Rule 15 of the Federal Rules of Criminal Procedure provides that depositions may be taken in the same manner as in civil cases, but only upon order of court. The statutes of the States define the methods which may be employed for taking depositions in foreign countries for use in State courts and the provisions vary from one jurisdiction to another. However, provision is usually made for one or all of the aforementioned methods.

§ 92.52 *"Deposition on notice" defined.* A "deposition on notice" is a deposition taken before a competent official after reasonable notice has been given in writing by the party or attorney proposing to take such deposition to the opposing party or attorney of record. Under the Federal law, diplomatic and consular officers are defined as competent officials for taking depositions on notice in foreign countries (see § 92.51). This method of taking a deposition does not necessarily involve the issuance of a commission or other court order.

§ 92.53 *"Commission to take depositions" defined.* A "commission to take depositions" is a written authority issued by a court of justice, or by a quasi-judicial body, or a body acting in such capacity, giving power to take the testimony of witnesses who cannot appear personally to be examined in the court or before the body issuing the commission. In Federal practice, a commission to take depositions is issued only when necessary or convenient, on application and notice. The commission indicates the action or hearing in which the depositions are intended to be used, and the person or persons required to take the depositions, usually by name or descriptive title (see § 92.55 for manner of designating consular officers). Normally a commission is accompanied by detailed instructions for its execution.

§ 92.54 *"Letters rogatory" defined.* In its broader sense in international practice, the term "letters rogatory" denotes a formal request from a court in which an action is pending, to a foreign court to perform some judicial act. Examples are requests for the taking of evidence, the serving of a summons, subpoena, or other legal notice, or the execution of a civil judgment. In United States usage, letters rogatory have been commonly utilized only for the purpose of obtaining evidence. Requests rest entirely upon the comity of courts toward each other, and customarily embody a promise of reciprocity. The legal sufficiency of documents executed in foreign countries for use in judicial proceedings in the United States, and the validity of the execution, are matters for determination by the competent judicial authorities of the American jurisdiction where the proceedings are held, subject to the applicable laws of that jurisdiction. See § 92.66 for procedures in the use of letters rogatory requesting the taking of depositions in foreign jurisdictions.

§ 92.55 *Consular authority and responsibility for taking depositions*—(a) *Requests to take depositions or designations to execute commissions to take depositions.* Any United States consular officer may be requested to take a deposition on notice, or designated to execute a commission to take depositions. A commission or notice should, if possible, identify the officer who is to take the depositions by his official title only as in the following manner: "Any Consul or Vice Consul of the United States of America at (name of locality)". The consular officer responsible for the performance of notarial acts at a post should act on a request to take a deposition on notice, or should execute the commission, when the documents are drawn in this manner, provided local law does not preclude such action. However, when the officer (or officers) is designated by name as well as by title, only the officer (or officers) so designated may take the depositions. In either instance, the officer must be a disinterested party. Rule 28 (c) of the Rules of Civil Procedure for the District Courts of the United States prohibits the taking of a deposition before a person who is a relative, employee, attorney, or counsel of any of the parties, or who is a relative or employee of such attorney or counsel, or who is financially interested in the action.

(b) *Authority in Federal law.* For the basic provisions of law controlling the taking of all depositions for use in either State or Federal courts, for a statement of the necessity to charge the appropriate fee, and for a statement of the penalty for the giving of false evidence, see Title 22, sections 1195 and 1203, of the United States Code. For the more detailed provisions which control particularly the taking of depositions for courts of the United States (i. e., for the Federal courts) see the Rules of Civil Procedure for the District courts of the United States, which appear in Title 28 of the United States Code, following section 2072 thereof. See also Rules of the Court of Claims of the United States, following section 2071 of Title 28. For the provisions of law which govern particularly the taking of depositions to prove the genuineness of foreign documents which it is desired to introduce in evidence in any criminal action or proceeding in a United States (i. e., Federal) court, see Title 18, sections 3491 through 3496, of the United States Code.

(c) *Procedure where laws of the foreign country do not permit the taking of depositions.* In countries where the right to take depositions is not secured by treaty, consular officers may take depositions only if the laws or authorities of the national government will permit them to do so. Consular officers in countries where the taking of depositions is not permitted who receive notices or commissions for taking depositions should return the documents to the parties from whom they are received explaining why they are returning them, and indicating what other method or methods may be available for obtaining the depositions, whether by letters rogatory or otherwise.

§ 92.56 *Summary of procedure for taking depositions.* In taking a deposition on notice or executing a commission to take depositions, a consular officer should conform to any statutory enactments on the subject in the jurisdiction in which the depositions will be used. He should also comply with any special instructions which accompany the request for a deposition on notice or a commission. Unless otherwise directed by statutory enactments or special instructions, the officer should proceed as follows in taking depositions:

(a) Request the witnesses, whose testimony is needed, to appear before him; or, at the request of any party to the action or proceeding, request designated persons to supply him or the requesting party with needed records or documents in their possession, or copies thereof;

(b) When necessary, act as interpreter or translator, or see that arrangements are made for some qualified person to act in this capacity;

(c) Before the testimony is taken, administer oaths (or affirmations in lieu thereof) to the interpreter or translator (if there is one), to the stenographer taking down the testimony, and to each witness;

(d) Have the witnesses examined in accordance with the procedure described in §§ 92.57 to 92.60;

(e) Either record, or have recorded in his presence and under his direction, the testimony of the witnesses;

(f) Take the testimony, or have it taken, stenographically in question-and-answer form and transcribed (see § 92.58) unless the parties to the action agree otherwise (rules 30 (c) and 31 (b), Rules of Civil Procedure for the District Courts of the United States);

(g) Be actually present throughout the examination of the witnesses, but recess the examination for reasonable periods of time and for sufficient reasons;

(h) Mark or cause to be marked, by identifying exhibit numbers or letters, all documents identified by a witness or counsel and submitted for the record.

§ 92.57 *Oral examination of witnesses.* When a witness is examined on the basis of oral interrogatories, the counsel for the party requesting the deposition has the right to conduct a direct examination of the witness without interruption except in the form of objection by opposing counsel. The opposing counsel has the same right on cross-examination. Cross-examination may be followed by redirect and recross-examinations until the interrogation is complete. The consular officer taking the deposition should endeavor to restrain counsel from indulging in lengthy colloquies, digressions, or asides, and from attempts to intimidate or mislead the witness. The consular officer has no authority to sustain or overrule objections but should have them recorded as provided in § 92.59. Instead of taking part in the oral examination of a witness, the parties notified of the taking of a deposition may transmit written interrogatories to the consular officer. The consular officer should then question the witness on the basis of the written interrogatories and should record the answers verbatim. (Rules 30

(c) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§ 92.58 *Examination on basis of written interrogatories.* Written interrogatories are usually divided into three parts:

(a) The direct interrogatories or interrogatories in chief;

(b) The cross-interrogatories; and

(c) The redirect interrogatories.

Recross-interrogatories sometimes follow redirect interrogatories. The consular officer should not furnish the witness with a copy of the interrogatories in advance of the questioning, nor should he allow the witness to examine the interrogatories in advance of the questioning. Although it may be necessary for the officer, when communicating with the witness for the purpose of asking him to appear to testify, to indicate in general terms the nature of the evidence which is being sought, this information should not be given in such detail as to permit the witness to formulate his answers to the interrogatories prior to his appearance before the consular officer. The officer taking the deposition should put the interrogatories to the witness separately and in order. The written interrogatories should not be repeated in the record (unless special instructions to that effect are given), but an appropriate reference should be made thereto. These references should, of course, be followed by the witness' answers. All of the written interrogatories must be put to the witness, even though at some point during the examination the witness disclaims further knowledge of the subject. When counsel for all of the parties attend an examination conducted on written interrogatories, the consular officer may, all counsel having consented thereto, permit oral examination of the witness following the close of the examination upon written interrogatories. The oral examination should be conducted in the same manner and order as if not preceded by an examination upon written interrogatories.

§ 92.59 *Recording of objections.* All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings must be noted in the deposition. Evidence objected to will be taken subject to the objections. (Rules 30 (c) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§ 92.60 *Examination procedures*—(a) *Explaining interrogatory to witness.* If the witness does not understand what an interrogatory means, the consular officer should explain it to him, if possible, but only so as to get an answer strictly responsive to the interrogatory.

(b) *Refreshing memory by reference to written records.* A witness may be permitted to refresh his memory by referring to notes, papers, or other documents. The consular officer should have such occurrence noted in the record of the testimony together with a statement of his opinion as to whether the witness was using the notes, papers, or other documents to refresh his memory or for the sake of testifying to matters not then of his personal knowledge.

(c) *Conferring with counsel.* When the witness confers with counsel before answering any interrogatory, the consular officer should have that fact noted in the record of the testimony.

(d) *Examining witness as to personal knowledge.* The consular officer may at any time during the examination of a witness propound such inquiries as may be necessary to satisfy himself whether the witness is testifying from his personal knowledge of the subject matter of the examination.

(e) *Witness not to leave officer's presence.* The consular officer should request the witness not to leave his presence during the examination, except during the recesses for meals, rest, etc., authorized in § 92.56 (g). Failure of the witness to comply with this request must be noted in the record.

§ 92.61 *Transcription and signing of record of examination.* After the examination of a witness is completed, the stenographic record of the examination must be fully transcribed and the transcription attached securely to any document or documents to which the testimony in the record pertains. (See § 92.63 regarding the arrangement of papers.) The transcribed deposition must then be submitted to the witness for examination and read to or by him, unless such examination and reading are waived by the witness and by the parties to the action. Any changes in form or substance desired by the witness should be entered upon the deposition by the consular officer with a statement of the reasons given by the witness for making the changes. The witness should then sign the transcript of his deposition and should initial in the margin each correction made at his request. However, the signature and initials of the witness may be omitted if the parties to the action by stipulation waive the signing or if the witness is ill, refuses to sign, or cannot be found. If the deposition is not signed by the witness, the consular officer should sign it and should state on the record the reason for his action, i. e., the waiver of the parties, the illness or absence of the witness, or the refusal of the witness to sign, giving the reasons for such refusal. The deposition may then be used as though signed by the witness, except when, on the motion to suppress, the court holds that the reasons given for the refusal to sign require the rejection of the deposition in whole or in part. (Rules 30 (e) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§ 92.62 *Captioning and certifying depositions.* The consular officer should prepare a capition for every deposition; should certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness; and should sign and seal the certification in the manner prescribed in §§ 92.15 and 92.16. Rules 30 (f) (1) and 31 (b), Rules of Civil Procedure for the District Courts of the United States.)

§ 92.63 *Arrangement of papers.* Unless special instructions to the contrary are received, the various papers comprising the completed record of the depositions should usually be arranged in the following order from bottom to top:

(a) Commission to take depositions (or notice of taking depositions), with interrogatories, exhibits, and other supporting documents fastened thereto.

(b) Statement of fees charged, if one is prepared on a separate sheet.

(c) Record of the responses of the various witnesses, including any exhibits the witnesses may submit.

(d) Closing certificate.

All of these papers should be fastened together with ribbon, the ends of which should be secured beneath the consular officer's seal affixed to the closing certificate.

§ 92.64 *Filing depositions*—(a) *Preparation and transmission of envelope.* The notice or commission, the interrogatories, the record of the witnesses' answers, the exhibits, and all other documents and papers pertaining to the depositions should be fastened together (see § 92.63 regarding the arrangement of papers) and should be enclosed in an envelope sealed with the wax engraving seal of the post. The envelope should be endorsed with the title of the action and should be marked and addressed. The sealed envelope should then be transmitted to the court in which the action is pending.

(b) *Furnishing copies.* The original completed depositions should not be sent to any of the parties to the action or to their counsel. However, the consular officer may furnish a copy of a deposition to the deponent or to any party to the action upon the payment of the copying fee and if certification is desired under official seal that the copy is a true copy, the certification fee prescribed in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 92.65 *Depositions to prove genuineness of foreign documents*—(a) *Authority to execute commission.* Under the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U. S. C. 3492), a diplomatic or consular officer may be commissioned by an United States court to take the testimony of a witness in a foreign country either on oral or written interrogatories, or partly on oral and partly on written interrogatories, for the purpose of determining the genuineness of any foreign document (any book, paper, statement, record, account, writing, or other document, or any portion thereof, of whatever character and in whatever form, as well as any copy thereof equally with the original, which is not in the United States) which it is desired to introduce in evidence in any criminal action or proceeding in any United States court under the provisions of section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 945; 28 U. S. C. 1732). Such testimony may also be taken to determine whether the foreign document was made in the regular course of business and whether it was

the regular course of business to make such document. The term "business" includes business, profession, occupation, and calling of every kind. (Sec. 1, 62 Stat. 945, 28 U. S. C. 1732.)

(b) *Disqualification to execute commission.* Any diplomatic or consular officer to whom a commission is addressed to take testimony, who is interested in the outcome of the criminal action or proceeding in which the foreign documents in question are intended to be used or who has participated in the prosecution of such action or proceeding, whether by investigations, preparation of evidence, or otherwise, may be disqualified on his own motion or on that of the United States or any other party to such criminal action or proceeding made to the court from which the commission issued at any time prior to the execution thereof. If, after notice and hearing, the court grants the motion, it will instruct the diplomatic or consular officer thus disqualified to send the commission to any other diplomatic or consular officer of the United States named by the court, and such other officer should execute the commission according to its terms and will for all purposes be deemed the officer to whom the commission is addressed. (Sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U. S. C. 3492.)

(c) *Execution and return of commission.* (1) Commissions issued in criminal cases under the authority of the act of June 25, 1948, as amended, to take testimony in connection with foreign documents should be executed and returned by officers of the Foreign Service in accordance with section 1 of that act, as amended (sec. 1, 62 Stat. 835; 18 U. S. C. 3493, 3494), and in accordance with any special instructions which may accompany the commission. For details not covered by such section or by special instructions, officers of the Foreign Service should be guided by such instructions as may be issued by the Department of State in connection with the taking of depositions generally. (See §§ 92.55 to 92.64.)

(2) Section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 835; 18 U. S. C. 3493) provides that every person whose testimony is taken should be cautioned and sworn to testify the whole truth and should be carefully examined. The testimony should be reduced to writing or typewriting by the consular officer, or by some person under his personal supervision, or by the witness himself in the presence of the consular officer, and by no other person. After it has been reduced to writing or typewriting, the testimony must be signed by the witness. Every foreign document with respect to which testimony is taken must be annexed to such testimony and must be signed by each witness who appears for the purpose of establishing the genuineness of such document.

(3) When counsel for all of the parties attend the examination of any witness whose testimony will be taken on written interrogatories, they may consent that oral interrogatories, in addition to those accompanying the commission, be put to the witness. The consular officer taking the testimony should require an interpreter to be present when his services are needed or are requested by any party or his attorney. (Sec. 1, 62 Stat. 835, 18 U. S. C. 3493.)

(4) Section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 835; 18 U. S. C. 3494) provides that the consular officer, who executes any commission authorized under the same section, as amended (sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U. S. C. 3492), and who is satisfied, upon all the testimony taken, that a foreign document is genuine, should certify such document to be genuine under the seal of his office. This certification must include a statement that the officer is not subject to disqualification under the provisions of section 1 of the act of June 25, 1948, as amended (sec. 1, 62 Stat. 834, sec. 53, 63 Stat. 96; 18 U. S. C. 3492). For purposes of assessment of fees, the issuance of this certificate shall be regarded as a part of the consular service of executing the commission, and no separate fee shall be charged for the certificate.

(5) The consular officer should then forward such foreign documents, together with the record of all testimony taken and the commission which has been executed, to the Department of State for transmission to the clerk of the court from which the commission issued. (Sec. 1, 62 Stat. 835; 18 U. S. C. 3494). (See § 92.64 regarding the filing of depositions generally.)

(Sec. 303, 60 Stat. 1002, 62 Stat. 836; 22 U. S. C. 843, 18 U. S. C. 3496, E. O. 10307, 16 F. R. 11907, 3 CFR, 1951 Supp.)

§ 92.66 *Depositions taken before foreign officials or other persons in a foreign country*—(a) *Customary practice.* Under the Federal law (rule 28 (b), Rules of Civil Procedure for the District Courts of the United States) and under the laws of some of the States, a commission to take depositions can be issued to a foreign official or to a private person in a foreign country. However, this method is rarely used; commissions are generally issued to United States consular officers. In those countries where American consular officers are not permitted to take testimony (see § 92.55 (c)) and where depositions must be taken before a foreign authority, letters rogatory are usually issued to a foreign court. In Federal practice letters rogatory to request the taking of evidence are issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate (Rule 28 (b), Rules of Civil Procedure for the District Courts of the United States). When the name of the foreign court is not known, letters rogatory are usually addressed "To the Appropriate Judicial Authority in [here name the country]."

(b) *Transmission of letters rogatory to foreign officials.* Letters rogatory may often be sent direct from court to court. However, some foreign governments require that these requests for judicial aid be submitted through the diplomatic channel (i. e., that they be submitted to the Ministry for Foreign Affairs by the American diplomatic representative). A usual requirement is that the letters rogatory as well as the interrogatories and other papers included with them be accompanied by a complete translation into the language (or into one of the languages) of the country of execution. Another requirement is that provision be made for the payment of fees and expenses. Inquiries from interested parties or their attorneys, or from American courts, as to customary procedural requirements in given countries, may be addressed direct to the respective American embassies and legations in foreign capitals, or to the Department of State, Washington 25, D. C.

(c) *Return of letters rogatory executed by foreign officials.* (1) Letters rogatory executed by foreign officials are returned through the same channel by which they were initially transmitted. When such documents are returned to a United States diplomatic mission, the responsible officer should endorse thereon a certificate stating the date and place of their receipt. This certificate should be appended to the documents as a separate sheet. The officer should then enclose the documents in an envelope sealed with the wax engraving seal of the post and bearing an endorsement indicating the title of the action to which the letters rogatory pertain. The name and address of the American judicial body from which the letters rogatory issued should also be placed on the envelope.

(2) If the executed letters rogatory are returned to the diplomatic mission from the Foreign Office in an envelope bearing the seals of the foreign judicial authority who took the testimony, that sealed envelope should not be opened at the mission. The responsible officer should place a certificate on the envelope showing the date it was received at his office and indicating that it is being forwarded in the same condition as received from the foreign authorities. He should then place that sealed envelope in a second envelope, sealed with the wax engraving seal of the post, and bearing the title of the action and the name and address of the American judicial body from which the letters rogatory issued.

(3) Charges should be made for executing either of the certificates mentioned in subparagraphs (1) and (2) of this paragraph, as prescribed by item 66 of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1), unless the service is classifiable in a no-fee category under the exemption for Federal agencies and corporations (item 83 of the same Tariff).

(4) The sealed letters rogatory should be transmitted by appropriate means to the court in which the action is pending. See Title 28, section 1781, of the United States Code concerning the manner of making return to a court of the United States (Federal court).

(d) *Transmission of commissions to foreign officials or other persons.* A commission to take depositions which is addressed to an official or person in a foreign country other than a United States diplomatic or consular officer may be sent directly to the person designated. However, if such a commission is sent to the United States diplomatic mission in the country where the depositions are intended to be taken, it should be forwarded to the Foreign Office for trans-

mission to the person appointed in the commission. If sent to a United States consular office, the commission may be forwarded by that office direct to the person designated, or, if the consular officer deems it more advisable to do so, he may send the commission to the United States diplomatic mission for transmission through the medium of the Foreign Office.

§ 92.67 *Execution of letters rogatory in the United States*—(a) *Answering inquiries.* A person who inquires regarding the execution of letters rogatory in the United States should be given the information which appears in paragraphs (b) and (c) of this section and in § 92.71.

(b) *Authority and procedure.* So far as the Federal Government is concerned, the deposition of any witness within the United States for use in any judicial proceeding pending in any court in a foreign country with which the United States is at peace, may be taken before a person authorized to administer oaths, who is designated by the district court of the United States of any district where the witness resides or may be found. The practice and procedure in taking such depositions conforms generally to the practice and procedure for taking depositions for use in United States courts. (Sec. 1, 62 Stat. 749, sec. 93, 63 Stat. 103; 28 U. S. C. 1782.) The procedure for taking depositions is covered in rules 26 through 37, Rules of Civil Procedure for the District Courts of the United States. The taking of depositions in State courts for use in the courts of foreign countries is governed by the laws of the individual States.

(c) *Addressing letters rogatory.* Letters rogatory for execution in the United States should generally be directed as follows: "To Any Judge or Justice Having Civil Jurisdiction at (name of locality)". Letters rogatory in civil actions will usually be executed in the State courts, and those in criminal actions, in the District Courts of the United States. However, the District Courts of the United States may execute letters rogatory in any judicial proceeding, whether criminal or civil. Such letters rogatory should be directed to:

The United States District Court for the

---------- District of ----------,

----------, ----------

(City) (State)

Letters rogatory should request the district court to take or cause to be taken the testimony of the witnesses whose testimony is desired, stating whether the testimony is intended to be taken upon oral or written interrogatories. If the party on whose behalf the testimony is intended to be taken will not be represented by counsel, written interrogatories should accompany the letters rogatory. Letters rogatory and interrogatories in a foreign language should be accompanied by English translations.

(d) *Transmitting letters rogatory to courts in the United States.* Although most foreign countries require the presentation of letters rogatory through the foreign office, this practice is not followed in the United States. Letters rogatory for execution in a court in the United States should be forwarded directly to the court by the appropriate diplomatic or consular officer of the country in which the depositions are intended to be used. The Department of State does not act as intermediary in such instance. Letters rogatory directed to a district court of the United States should be sent in an envelope addressed to the clerk of the district court.

§ 92.68 *Foreign Service fees and incidental costs in the taking of evidence.* The fees for the taking of evidence by officers of the Foreign Service are as prescribed by the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter), under the caption "Services Relating to the Taking of Evidence," unless the service is performed for official use, which comes under the caption "Exemption for Federal Agencies and Corporations" of the same Tariff. See § 22.6 of this chapter concerning the requirement for advance deposit of estimated fees. When the party on whose behalf the evidence is sought or his local representative is not present to effect direct payment of such incidental costs as postage or travel of witnesses, the advance deposit required by the officer shall be in an amount estimated as sufficient to cover these in addition to the fees proper. The same rule shall apply to charges for interpreting or for the taking and transcribing of a stenographic record when performed commercially rather than by staff members at Tariff of Fee rates.

§ 92.69 *Charges payable to foreign officials, witnesses, foreign counsel, and interpreters*—(a) *Execution of letters rogatory by foreign officials.* Procedures for payment of foreign costs will be by arrangement with the foreign authorities.

(b) *Execution of commissions by foreign officials or other persons abroad.* Procedures for the payment of foreign costs will be as arranged, by the tribunal requiring the evidence, with its commissioner.

(c) *Witness fees and allowances when depositions are taken pursuant to commission from a Federal court.* A witness attending in any court of the United States, or before a United States commissioner, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who are not salaried employees of the Government and who are not in custody and who attend at points so far removed from their respective residence as to prohibit return thereto from day to day shall be entitled to an additional allowance of $8 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance (28 U. S. C. 1821, Supp. IV). Witnesses giving depositions before consular officers pursuant to a commission issued by the Federal court are entitled to these fees and allowances, and the officer shall make payment thereof in the same manner as payment is made of other expenses involved in the execution of the commission, charging the advance deposit provided by the party at whose request the depositions are taken (see § 92.68). In any case to which the Government of the United States, or an officer or agency thereof, is a party, the United States marshal for the district will pay all fees of witnesses on the certificate of the United States Attorney or Assistant United States Attorney, and in the proceedings before a United States Commissioner, on the certificate of such commissioner (28 U. S. C. 1825).

§ 92.70 *Special fees for depositions in connection with foreign documents*—(a) *Fees payable to witnesses.* Each witness whose testimony is obtained under a commission to take testimony in connection with foreign documents for use in criminal cases shall be entitled to receive compensation at the rate of $15 a day for each day of attendance, plus 8 cents a mile for going from his place of residence or business to the place of examination, and returning, by the shortest feasible route (18 U. S. C. 3495 and 3496, and E. O. 10307, 3 CFR 1951 Supp.). When, however, it is necessary to procure the attendance of a witness on behalf of the United States or an indigent party, an officer or agent of the United States may negotiate with the witness to pay compensation at such higher rate as may be approved by the Attorney General, plus the mileage allowance stated above (5 U. S. C. 341). The expense of the compensation and mileage of each witness will be borne by the party, or parties, applying for the commission unless the commission is accompanied by an order of court (18 U. S. C. 3495 (b)) that all fees, compensations, and other expenses authorized by these regulations are chargeable to the United States (18 U. S. C. 3495).

(b) *Fees payable to counsel.* Each counsel who represents a party to the action or proceeding in the examination before the commissioner will receive compensation for each day of attendance at a rate of not less than $15 a day and not more than $50 a day, as agreed between him and the party whom he represents, plus such actual and necessary expenses as may be allowed by the commissioner upon verified statements filed with him. If the commission is issued on application of the United States, the compensation and expenses of counsel representing each party are chargeable to the United States under section 3495 (b) of Title 18 of the United States Code (18 U. S. C. 3495 and 3496, and E. O. 10307, 3 CFR, 1951 Supp.).

(c) *Fees payable to interpreters and translators.* Each interpreter and translator employed by the commissioner under these regulations shall receive an allowance of $10 a day, plus 8 cents a mile for going from his place of residence or business to the place of examination and returning, by the shortest feasible route. The compensation and mileage of interpreters and translators shall be chargeable to the United States.

(d) *Time for paying fees.* Witnesses, counsel, interpreters, and translators

will be paid, in accordance with the foregoing regulations, by the commissioner at the conclusion of their services. Other expenses authorized by these regulations will be paid by the commissioner as they are incurred.

(e) *Payment of fees by the United States.* When it appears that the commission was issued on application of the United States or when the commission is accompanied by an order of court that all fees, compensation, and other expenses authorized by these regulations are chargeable to the United States under section 3495 (b) of Title 18 of the United States Code, the commissioner shall execute the commission without charge for his service as commissioner in connection therewith. The commissioner shall pay witnesses, counsel, interpreter, or translator, and other expenses authorized by these regulations through the disbursing officer in his area in accordance with instructions which will be issued in each case.

(f) *Payment of fees by other parties.* When fees, compensation, and other expenses authorized by this section are chargeable to any party other than the United States, the commissioner shall undertake the execution of the commission only if such party deposits with the Department of State or with the appropriate Foreign Service post, in advance, an amount to be set by the court as apparently adequate to defray all fees, compensation, and other expenses authorized by this part. If the amount of the deposit is later found to be insufficient, the depositor shall be so notified, and the commissioner shall retain the commission and other papers until a sufficient supplemental amount has been deposited. If the amount of the deposit exceeds the aggregate amount of fees, compensation, and other expenses authorized by this part, the excess shall be returned to the party, or parties, entitled thereto. The commissioner shall pay witnesses, counsel, interpreter, or translator, and other expenses authorized by this section, from the proceeds of a check which the disbursing officer for his area will be authorized to draw on the Treasurer of the United States.

§ 92.71 *Fees for letters rogatory executed by officials in the United States.* Arrangements for the payment of fees should be made directly with the court in the United States by the party in the foreign country at whose request the depositions are taken, either through his legal representative in the United States or through the appropriate diplomatic or consular officer of his country in the United States. (See § 92.67 regarding the execution of letters rogatory in the United States.)

MISCELLANEOUS NOTARIAL SERVICES

§ 92.72 *Services in connection with patents and patent applications*—(a) *Affidavit of applicant.* The form of the affidavit of an applicant for a United States patent depends on who is making the application, the type of invention, and the circumstances of the case. Officers of the Foreign Service are not responsible for the correctness of form of such affidavits, and should not endeavor to advise in their preparation. Persons who inquire at a Foreign Service post regarding the filing of patent applications may be referred to the pamphlet entitled "General Information Concerning Patents", if copies thereof are available at the post.

(b) *Oath or affirmation of applicant*—(1) *Authority to administer oath or affirmation.* When an applicant for a patent resides in a foreign country, his oath or affirmation may be made before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by certificate of a diplomatic or consular officer of the United States (35 U. S. C. 115). See paragraph (c) of this section regarding authentication of the authority of a foreign official. A notary or other official in a foreign country who is not authorized to administer oaths is not qualified to notarize an application for a United States patent.

(2) *Form of oath or affirmation.* See §§ 92.19 and 92.20 for usual forms of oaths and affirmations.

(3) *Execution of jurat.* In executing the jurat, the officer should carefully observe the following direction with regard to ribboning and sealing: When the oath is taken before an officer in a country foreign to the United States, all the application papers, except the drawings, must be attached together and a ribbon passed one or more times through all the sheets of the application, except the drawings, and the ends of said ribbon brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath is taken. If the papers as filed are not properly ribboned or each sheet impressed with the seal, the case will be accepted for examination but before it is allowed, duplicate papers, prepared in compliance with the foregoing sentence, must be filed. (Rule 66, Rules of Practice of the United States Patent Office.)

(c) *Authentication of authority of foreign official*—(1) *Necessity for authentication.* When the affidavit required in connection with a patent application has been sworn to or affirmed before an official in a foreign country other than a diplomatic or consular officer of the United States, an officer of the Foreign Service must authenticate the authority of the official administering the oath or affirmation (35 U. S. C. 115). If the officer of the Foreign Service cannot authenticate the authority of the official administering the oath or affirmation, the document should be authenticated by a superior foreign official, or by a series of superior foreign officials if necessary. The seal and signature of the foreign official who affixes the last foreign authentication to the document should then be authenticated by the officer of the Foreign Service.

(2) *Use of permanent ink.* All papers which will become a part of a patent application filed in the United States Patent Office must be legibly written or printed in permanent ink. (Rule 52, Rules of Practice of the United States Patent Office.) Consular certificates of authentication executed in connection with patent applications should preferably be prepared on a typewriter; they should not be prepared on a hectograph machine.

(d) *Authority of foreign executor or administrator acting for deceased inventor.* Legal representatives of deceased inventors and of those under legal incapacity may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor (35 U. S. C. 117). The rules of the Patent Office require proof of the power or authority of the legal representative. See paragraph (c) of this section for procedure for authenticating the authority of a foreign official.

(e) *Assignments of patents and applications for patents.* An application for a patent, or a patent, or any interest therein, may be assigned in law by an instrument in writing. The applicant, or the patentee, or his assigns or legal representatives, may grant and convey an exclusive right under the application for patent, or under the patent, to the whole or any specified part of the United States. Any such assignment, grant, or conveyance of any application for patent, or of any patent, may be acknowledged, in a foreign country, before "a diplomatic or consular officer of the United States or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States" (35 U. S. C. 261). See § 92.37 regarding authentication of the authority of a foreign official.

(f) *Fees.* The fee for administering an oath, taking an acknowledgment, or supplying an authentication, in connection with patent applications is as prescribed in item 49 of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 92.73 *Services in connection with trademark registrations*—(a) *Authority and responsibility.* Acknowledgments and oaths required in connection with applications for registration of trademarks may be made, in a foreign country, before any diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign country whose authority must be proved by a certificate of a diplomatic or consular officer of the United States (15 U. S. C. 1061). The responsibility of officers of the Foreign Service in this connection is the same as that where notarial services in connection with patent applications are involved (see § 92.72 (a)). (See § 92.72 (c) regarding the authentication of the authority of a foreign official who performs a notarial service in connection with a patent application.)

(b) *Fees.* The fee for administering an oath, taking an acknowledgment, or supplying an authentication, in connection with an application for registration of a trademark, or with the assignment or transfer of rights thereunder, is as prescribed in item 49 of the Tariff of

Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 92.74 *Services in connection with United States securities or interests therein*—(a) *Authority and responsibility.* Assignments or requests for payment of United States securities, or securities for which the Treasury Department acts as transfer agent, or powers of attorney in connection therewith where authorized by the Treasury Department, should, in a foreign country, be executed before a United States consular or diplomatic officer. However, if they are executed before a foreign official having power to administer oaths, the Treasury Department requires that the official character and jurisdiction of the foreign official be certified by a United States diplomatic or consular officer. (See §§ 92.36 to 92.41 on authentications.)

(b) *Fees.* Officers of the Foreign Service should charge no fees for notarial services they perform in connection with the execution of documents, including the certification or authentication of documents where necessary, which affect United States securities or securities for which the Treasury Department acts as transfer agent, or which may be required in the collection of interest thereon. Items 58 (b) of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter) applies in cases of this nature.

§ 92.75 *Services in connection with income tax returns*—(a) *Responsibility.* Officers of the Foreign Service are authorized to perform any and all notarial services which may be required in connection with the execution of Federal, state, territorial, municipal, or insular income tax returns. Officers should not give advice on the preparation of tax returns.

(b) *Fees.* No charge under the caption "Notarial Services and Authentications" should be made for services performed in connection with the execution of tax returns for filing with the Federal or State Governments or political subdivisions thereof. When requested, see item 58 (d) of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

COPYING, RECORDING, TRANSLATING AND PROCURING DOCUMENTS

§ 92.76 *Copying documents* — (a) *Consular authority.* The consular officer is authorized to have documents, or abstracts therefrom, copied at a Foreign Service post, if he deems it advisable and it is practicable to do so. This service frequently is necessary in connection with the performance of certain notarial acts, such as the certification of copies of documents.

(b) *Fees.* The charges for making copies of documents are as prescribed by the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter), under the caption "Copying and Recording", unless the service is performed for official use, which comes under the caption Exemption for Federal Agencies and Corporations of the same Tariff.

§ 92.77 *Recording documents* — (a) *Consular authority.* Consular officers may, at their discretion, accept for recording in the Miscellaneous Record Book of the office concerned unofficial documents such as deeds, leases, agreements, wills, and so on. The object of this service is primarily to afford United States citizens and interests the means of preserving, in official custody, records of their business and other transactions where other suitable facilities are not available locally for making such records. The recording of unofficial documents is not a notarial service, strictly speaking; however, the certifying of copies of documents thus recorded is a notarial service.

(b) *Recording procedure.* Generally, before accepting a document for recording the consular officer should require satisfactory proof of its genuineness. The document should be copied, word for word, in the Miscellaneous Record Book. At the close of the record a statement that it is a true copy of the original should be entered and signed by the consular officer who copies or compares the record. In the margin of the first page where the document is recorded, the consular officer should note the following data:

(1) By whom the document is presented for recording;

(2) On whose behalf the service is requested;

(3) Date and hour of presentation for recording;

(4) How the authenticity of the document was proved (where appropriate); and

(5) The name of the person by whom recorded (in his proper signature) and the name of the consular officer with whom compared (in his proper signature).

(c) *Certificate of recording.* Ordinarily, a certificate of recording need not be issued. The original document may simply be endorsed: "Recorded at (name and location of consular office) this _____ day of _____, 19__, in (here insert appropriate reference to volume of Miscellaneous Record Book)". Below the endorsement should appear the notation regarding the service number, the Tariff item number, and the amount of the fee collected. When a certificate of recording is requested, the consular officer may issue it, if he sees fit to do so. The certificate may be either entered on the document, if space permits, or appended to the document as a separate sheet in the manner prescribed in § 92.17.

(d) *Fees.* The fee for recording unofficial documents at a Foreign Service post is as prescribed under the caption "Copying and Recording" of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter). For purposes of assessment of fees, the issuance of certificates of recording, when requested, shall be regarded as part of the consular service of recording unofficial documents, and no separate fee shall be charged for the certificate.

§ 92.78 *Translating documents.* Officers of the Foreign Service are not authorized to translate documents or to certify to the correctness of translations. (However, see § 92.56 with regard to interpreting and translating services which may be performed in connection with depositions.) They are authorized to administer to a translator an oath as to the correctness of a translation; to take an acknowledgment of the preparation of a translation; and to authenticate the seal and signature of a local official affixed to a translation. Separate fees should be charged for each of these services, as indicated under the caption "Notarial Services and Authentications" of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 92.79 *Procuring copies of foreign public documents*—(a) *Nature of services.* When requested to do so by United States citizens or by persons acting in behalf of United States citizens, a consular officer should endeavor to obtain from foreign officials copies of birth, death, and marriage certificates, or copies of other public records, such as divorce decrees, probated wills, and so on. The interest of the party requesting the document should be clearly indicated, and there should be good reason for asking for the consular officer's assistance. Persons requesting documents for use in the preparation of family trees or in the compilation of genealogical studies should be referred to a local attorney or to a genealogical research bureau if one is available.

(b) *Payment of expenses involved*—(1) *Official funds not to be used.* The use of official funds to pay for copies of or extracts from foreign public records obtained at the request of private persons is prohibited.

(2) *Payment of costs by Federal Government.* In instances of requests emanating from departments or agencies of the Federal Government for copies of or extracts from foreign public records, the Department will issue to Foreign Service posts concerned appropriate instructions with respect to the payment of whatever local costs may be entailed if the documents cannot be obtained gratis from the local authorities.

(3) *Payment of costs by State or municipal governments.* Should State, county, municipal or other authorities in the United States besides the Federal Government request the consular officer to obtain foreign documents, and express willingness to supply documents gratis in analogous circumstances, the consular officer may endeavor on that basis to obtain the desired foreign documents gratis. Otherwise, such authorities should be informed that they must pay the charges of the foreign officials, as well as any fees which it may be necessary for the consular officer to collect under the provisions of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

(4) *Payment of costs by private persons.* Before a consular officer endeavors to obtain a copy of a foreign public document in behalf of a private person, the person requesting the document should be required to make a deposit of funds in an amount sufficient to defray any charges which may be made by the foreign authorities, as well as the Foreign

Service fee for authenticating the document, should authentication be desired.

§ 92.80 *Obtaining American vital statistics records.* Individuals who inquire as to means of obtaining copies of or extracts from American birth, death, marriage, or divorce records may be advised generally to direct their inquiries to the Vital Statistics Office at the place where the record is kept, which is usually in the capital city of the State or Territory. Legal directories and other published works of reference at the post may be of assistance in providing exact addresses, information about fees, etc. An inquirer who is not an American citizen may write directly to the diplomatic or appropriate consular representative of his own country for any needed assistance in obtaining a desired document.

QUASI-LEGAL SERVICES

§ 92.81 *Performance of legal services*—(a) *Legal services defined.* The term "legal services" means services of the kind usually performed by attorneys for private persons and includes such acts as the drawing up of wills, powers of attorney, or other legal instruments.

(b) *Performance usually prohibited*—(1) *General prohibition; exceptions.* Officers of the Foreign Service should not perform legal services except when instructed to do so by the Secretary of State, or in cases of sudden emergency when the interests of the United States Government might be involved, or in cases in which no lawyer is available and refusal to perform the service would result in the imposition of extreme hardship upon a United States citizen. There is no objection, however, to permitting persons to use the legal references in the Foreign Service office giving specimen forms of wills, powers of attorney, etc.

(2) *Specific prohibitions and restrictions.* See § 72.41 of this chapter for prohibition of performance of legal services by consular officers in connection with decedents' estates. See § 92.11 restricting the preparation for private parties of legal documents for signature and notarization.

(3) *Acceptance of will for deposit prohibited.* Wills shall not be accepted for safekeeping in the office safe. If a person desires to have his last will and testament made a matter of record in a Foreign Service establishment, the officer to whom application is made shall have the will copied in the Miscellaneous Record Book (§ 92.77) and charge the prescribed fee therefor.

(c) *Refusal of requests.* In refusing requests for the performance of legal services, an officer of the Foreign Service should cite these regulations and should state clearly his reasons for refusing to act. In appropriate cases, the officer may furnish the inquirer with a copy of the annual list of attorneys (see § 92.83) practicing in the consular district or he may refer the inquirer to the Department for a list of attorneys.

(d) *Waiver of responsibility.* When an officer of the Foreign Service accedes to a request for the performance of a legal service, he should inform the applicant that the service is performed at the latter's risk and without any responsibility on the part of the United States Government or the officer performing the service.

(e) *Fees.* No fee should be charged for any legal services which may be performed under these regulations, beyond the fees or charges for specific services enumerated in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 92.82 *Recommending attorneys or notaries*—(a) *Assistance in selecting American lawyers.* When any person in the district of a Foreign Service post desires to have the name of an attorney in the United States, the officer at the post may refer him to American law directories or other published references at his disposal, but he shall refrain from recommending any particular attorney.

(b) *Assistance in selecting foreign attorneys or notaries.* Persons applying to a Foreign Service post for services of a legal or fiduciary character or for assistance in selecting an attorney or notary capable of rendering the services in view, may be furnished the names of several attorneys or notaries in the district, or referred to the lists to be found in American or foreign law directories or other published references. Alternatively, they may be referred to bar associations or, where applicable, to the organization charged by local law with the responsibility for providing legal assistance.

(c) *Agreements for referral of legal business prohibited.* Officers of the Foreign Service shall not recommend particular attorneys or notaries to persons who apply to a Foreign Service post for legal assistance, nor shall they make agreements with attorneys or notaries for the referral to them of inquiries for legal assistance.

§ 92.84 *Legal process defined.* Legal process means a writ, warrant, mandate, or other process issuing from a court of justice. The term includes subpoenas, citations, and complaints.

§ 92.85 *Service of legal process usually prohibited.* The service of legal process is not normally a Foreign Service function. Except as specifically provided by Federal statute or regulation (see §§ 92.86 to 92.91), officers of the Foreign Service are prohibited from serving legal process or appointing other persons to do so.

§ 92.86 *Consular responsibility for serving subpoenas.* Unless such action is prohibited by the law of the foreign country, officers of the Foreign Service are required to serve subpoenas issued by courts of the United States (i. e., by Federal courts) upon citizens or residents of the United States who have been personally notified in a foreign country to appear to give testimony in answer to letters rogatory issued from the said United States court and who have failed or neglected to do so, or who, having appeared, have refused to give testimony. Officers of the Foreign Service are also required, unless doing so would be contrary to the law of the foreign country, to serve subpoenas issued by courts of the United States upon citizens of residents of the United States who are beyond the jurisdiction of the United States and whose testimony in a criminal proceeding is desired by the Attorney General. (Sec. 1, 62 Stat. 949; 28 U. S. C. 1783.)

§ 92.87 *Consular responsibility for serving orders to show cause.* Officers of the Foreign Service are required to serve orders to show cause issued in contempt proceedings on a person who has failed or neglected to appear in answer to a subpoena served in accordance with the provisions of § 92.86. (Sec. 1, 62 Stat. 949; 28 U. S. C. 1784.)

§ 92.88 *Consular procedure.* With regard to the serving of subpoenas and orders to show cause referred to in §§ 92.86 and 92.87, section 1 of the act of June 25, 1948 (sec. 1, 62 Stat. 819, 28 U. S. C. 1783), provides that the subpoena shall designate the time and place for appearance before the court of the United States, and shall issue to any consular officer of the United States in the foreign country. The consular officer is required to make personal service of the subpoena and any order to show cause, rule, judgment or decree on the request of the Federal court or its marshal, and to make return thereof to such court after tendering to the witness his necessary travel and attendance expenses, which will be determined by the court and sent with the subpoena. When the subpoena or order is forwarded to the officer, it is usually accompanied by instructions directing exactly how service should be made and how the return of service should be executed. These instructions should be followed carefully.

§ 92.89 *Fees for service of legal process.* No charge should be made for serving a subpoena or order to show cause issuing out of Federal court under the procedures set forth in §§ 92.86 and 92.87. The taking of the affidavit of the officer effecting the service, or the performance of any other notarial act which may be involved in making the return, should be without charge, under the caption "Exemption for Federal Agencies and Corporations" of the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter).

§ 92.90 *Delivering documents pertaining to the revocation of naturalization.* Officers of the Foreign Service shall deliver, or assist in delivering, to designated persons, documents relating to proceedings in the cancellation of certificates of naturalization when such documents are forwarded by duly authorized officials of the Federal courts. The responsibility for furnishing detailed instructions on the procedure to be followed in delivering such documents rests with the court or with the United States attorney concerned, and officers should follow such instructions carefully.

§ 92.91 *Service of documents at request of Congressional committees.* Officers of the Foreign Service have no authority to serve upon persons in their consular districts legal process such as subpoenas or citations in connection with Congressional investigations. All re-

quests for such service should be referred to the Department of State.

§ 92.92 *Service of legal process under provisions of State law.* It may be found that a State statute purporting to regulate the service of process in foreign countries is so drawn as to mention service by an American consular officer or a person appointed by him, without mention of or provision for alternate methods of service. State laws of this description do not operate in derogation of the laws of the foreign jurisdiction wherein it may be sought to effect service of legal process, and such State laws do not serve to impose upon American consular officers duties or obligations which they are unauthorized to accept under Federal law, or require them to perform acts contrary to Federal regulations (see § 92.85).

§ 92.93 *Notarial services or authentications connected with service of process by other persons.* An officer of the Foreign Service may administer an oath to a person making an affidavit to the effect that legal process has been served. When an affidavit stating that legal process has been served is executed before a foreign notary or other official, an officer of the Foreign Service may authenticate the official character of the person administering the oath. The fee for administering an oath to a person making an affidavit or for an authentication, as the case may be, is as prescribed under the caption "Notarial Services and Authentications" in the Tariff of Fees, Foreign Service of the United States of America (§ 22.1 of this chapter), unless the case is of such nature as to fall under the caption, "Exemption for Federal Agencies and Corporations" of the same Tariff.

§ 92.94 *Replying to inquiries regarding service of process or other documents.* Officers should make prompt and courteous replies to all inquiries regarding the service of legal process or documents of like nature, and should render such assistance as they properly can to the court and to interested parties. Such assistance could include furnishing information as to the standard procedure of the locality for service of legal papers, with the name and address of the local office having a bailiff authorized to effect and make return of service; it could include furnishing a list of local attorneys capable of making necessary arrangements; or it could, where appropriate, include a suggestion that the request of the American court might be presented to the foreign judicial authorities in the form of letters rogatory (see definition, § 92.54, and procedures, § 92.66 (b)). If the person upon whom the process is intended to be served is known to be willing to accept service, or if it is clear that it would be in his interest at least to be informed of the matter, the consular officer may suggest to the interested parties in the United States the drawings up of papers for voluntary execution by such person, such as a waiver of service or a document which would be acceptable to the American court to signify the person's entering an appearance in the action pending therein.

§ 92.95 *Transportation of witnesses to the United States.* Officers of the Foreign Service may at times be called upon to assist in arranging for the transportation to the United States of persons in foreign countries whose testimony is desired by the Attorney General in a case pending in a Federal court. Requests that the travel of such persons be facilitated originate in the Department of Justice, and special instructions in each case are transmitted to the appropriate Foreign Service post by the Department of State.

SUBCHAPTER K—ECONOMIC, COMMERCIAL AND CIVIL AVIATION FUNCTIONS

PART 101—ECONOMIC AND COMMERCIAL FUNCTIONS

Sec.

101.1 Protection of American interests.
101.2 Promotion of American interests.
101.3 Services for American businessmen and organizations.
101.4 Economic and commercial reporting.

AUTHORITY: §§ 101.1 to 101.4 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842.

§ 101.1 *Protection of American interests.* Officers of the Foreign Service shall protect the rights and interests of the United States in its international agricultural, commercial, and financial relations. In pursuance of this duty, they shall:

(a) Guard against the infringement of rights of American citizens in matters relating to commerce and navigation which are based on custom, international law, or treaty.

(b) Observe, report on, and, whenever possible, endeavor to remove discriminations against American agricultural, commercial, and industrial interests in other countries.

(c) Protect the national commercial reputation of the United States.

§ 101.2 *Promotion of American interests.* Officers of the Foreign Service shall further the agricultural and commercial interests of the United States:

(a) By carefully studying and reporting on the potentialities of their districts as a market for American products or as a competitor of American products in international trade.

(b) By investigating and submitting World Trade Directory Reports on the general standing and distributing capacity of foreign firms within their districts.

(c) By preparing and submitting upon request trade lists of commercial firms within their districts.

(d) By keeping constantly on the alert for and submitting immediate reports on concrete trade opportunities.

(e) By endeavoring to create, within the scope of the duties to which they are assigned, a demand for American products within their districts.

(f) By facilitating and reporting on proposed visits of alien business men to the United States.

(g) By taking appropriate steps to facilitate the promotion of such import trade into the United States as the economic interests of the United States may require.

§ 101.3 *Services for American businessmen and organizations.* Officers of the Foreign Service shall perform the following-enumerated services for American citizens and business organizations in connection with the conduct of foreign trade, subject to such rules and limitations thereon as may be prescribed by the Secretary of State:

(a) Answering trade inquiries.

(b) Lending direct assistance to American citizens and business firms.

(c) Encouraging the establishment of, and supporting, American chambers of commerce.

(d) Preparing themselves for and, upon instructions, performing trade conference work when in the United States on leave, or otherwise.

§ 101.4 *Economic and commercial reporting.* Officers of the Foreign Service shall prepare and submit reports in connection with their duties of protecting and promoting American agricultural commercial interests and for the purpose of providing general information on economic developments within their respective districts for the Departments of State, Agriculture, and Commerce, and for other governmental departments and agencies, in accordance with such rules and regulations as the Secretary of State may prescribe.

PART 102—CIVIL AVIATION

UNITED STATES AIRCRAFT ACCIDENTS ABROAD

Sec.

102.8 Reporting accidents.
102.9 Arranging for entry and travel of investigating and airline representatives.
102.10 Rendering assistance at the scene of the accident.
102.11 Arranging for the payment of expenses attendant upon an accident.
102.12 Protective services for survivors.
102.13 Protective services with respect to deceased victims of accident.
102.14 Salvage of mail and other property.
102.15 Protection and preservation of wreckage.
102.16 Records and reports in connection with investigation.

FOREIGN AIRCRAFT ACCIDENTS INVOLVING UNITED STATES PERSONS OR PROPERTY

102.17 Reports on accident.
102.18 Protection of United States citizens involved.
102.19 Protection of United States property.

AUTHORITY: §§ 102.8 to 102.19 issued under sec. 302, 60 Stat. 1001; 22 U. S. C. 842.

UNITED STATES AIRCRAFT ACCIDENTS ABROAD

§ 102.8 *Reporting accidents*—(a) *To airline and Civil Aeronautics Administration representatives.* If a scheduled United States air carrier is involved, the airline representative concerned will probably be the first to be informed of the accident, in which event he will be expected to report the accident to the Foreign Service post, to the nearest Civil Aeronautics Administration office, and to his home office in the United States. If this is not the case, the Foreign Service post should report promptly to the nearest office of the airline concerned, and to the nearest office of the Civil Aeronautics Administration, any acci-

dent occurring to a scheduled civil air carrier of United States registry within its consular district. To be properly prepared, each post should obtain and have on file for ready reference, the address and telephone number of representatives of any United States airline engaged in scheduled operations within or over the post district.

(b) *To Department and supervisory Foreign Service offices.* A Foreign Service post should report promptly to the Department accidents to any United States civil aircraft occurring in the post district. The report should summarize all available information and, in the case of a scheduled United States air carrier, should state whether the airline has taken over the responsibility of notifying the nearest Civil Aeronautics Administration field office. This report should be submitted by the most expeditious means possible (priority telephone or telegraph message) at Government expense. If the accident involves a private plane or non-scheduled air carrier, these circumstances should be reported, also whether the nearest office of the Civil Aeronautics Administration has been informed. In the latter case, the Department will ascertain from the Civil Aeronautics Board whether it desires to investigate the case, and inform the Foreign Service post accordingly. Consular posts should submit a similar report to their supervisory missions or to their supervisory consular offices in territories where there are no United States missions. Supplementary reports should be supplied the Department and the supervisory Foreign Service office whenever considered appropriate. A final report, after the urgency has diminished and when the post's role is negligible should cover the post's activities in connection with the accident (see § 102.16 (b)).

§ 102.9 *Arranging for entry and travel of investigating and airline representatives.* Representatives of the Civil Aeronautics Board, the Civil Aeronautics Administration and the United States airline involved may not have the documents necessary for entry into the country where the accident occurred. The local Foreign Service post should lend all assistance possible in obtaining the entry of such representatives into the country where the accident occurred and in expediting their travel to the scene of the accident.

§ 102.10 *Rendering assistance at the scene of the accident.* Always in the case of a scheduled United States air carrier and whenever necessary in the case of a non-scheduled carrier or private plane, a local Foreign Service post should dispatch a member of its staff to the scene of the accident in order to insure that proper protection is afforded United States citizens and property involved in the accident and that any evidence as to the cause of the accident is preserved until the arrival of United States Government investigating personnel. (For steps to be taken when the aircraft was carrying a courier or diplomatic pouches, see § 102.14 (b).) In the absence of an airline representative, the Foreign Service representative should lend the competent local authorities all possible assistance compatible with the provisions of § 102.11 in caring for the survivors, identifying and disposing of the remains of victims, salvaging and protecting property and preserving wreckage pending an investigation. If an airline representative is already at the scene of the accident or if one arrives shortly thereafter, the Foreign Service representative should assist him in the discharge of his recognized responsibilities in connection with passengers and cargo. However, the Foreign Service representative is also obligated to assist investigating personnel of the United States Government by preserving evidence as to the cause of the accident. Any attempt on the part of the airline representative to exceed his recognized sphere of activity should be called to the attention of the airline involved and the competent local authorities.

§ 102.11 *Arranging for the payment of expenses attendant upon an accident.* (a) The Department of State has no funds from which expenses attendant upon an accident to United States aircraft can be paid. In emergencies involving scheduled carriers and in the absence of airline representatives, or other authority, the Foreign Service post should request a deposit from the airline (through the Department if desired) with specific authorization to incur whatever financial obligations the airline is willing to assume for the hiring of guards (in case local police protection is considered inadequate), the provision of accommodations, medical care, and onward transportation for survivors and for other expenses resulting from the accident. In accidents involving a private plane or non-scheduled carrier, the Foreign Service post is not in a position to expend any funds without prior authorization from the Department. In such cases, and in extreme cases involving scheduled carriers, when airline and investigation personnel may be delayed in reaching the scene, the Foreign Service representative, as the representative of all segments of the United States Government in the area, should endeavor to protect and promote the interests of the Government, the airline, and the individual citizen by any means available to him that are consistent with these regulations, and should request funds and instructions as required from the Department.

(b) The local Foreign Service post is not authorized to expend any funds for guarding the wreckage to preserve evidence as to the cause of the accident unless the Civil Aeronautics Board or the Civil Aeronautics Administration authorizes in advance the expenditure of such funds on a reimbursable basis. In the absence of such advance authorization, the Foreign Service post can arrange only for such protection as local authorities are willing to furnish gratuitously.

(c) Voluntary services and personal services in excess of those authorized by law may be accepted and utilized in the case of an aircraft accident since the law which normally prohibits such acceptance (31 U. S. C. 665) does not apply "in case of sudden emergency involving the loss of human life or the destruction of property".

§ 102.12 *Protective services for survivors*—(a) *Medical care and hospitalization.* The Foreign Service representative should lend any assistance possible (see §§ 102.10 and 102.11) in arranging for the best medical and hospital attention available for injured survivors of the accident. If a scheduled United States carrier is involved in an accident, the primary responsibility for providing medical care for passengers and crew rests with the airline, and in such situations the Foreign Service representative should assist the airline in every way that is feasible (see §§ 102.10 and 102.11).

(b) *Accommodation and onward transportation.* If a scheduled United States carrier is involved in an accident, primary responsibility for providing accommodation and onward transportation for passengers and crew rests with the airline, and in such situations the Foreign Service representative should assist the airline in every way that is feasible (see §§ 102.10 and 102.11). If the accident involves a private plane or non-scheduled carrier, he should assist passengers and members of the crew who do not require hospitalization in any way compatible with §§ 102.10 and 102.11 in obtaining appropriate comfortable accommodations accessible from the scene of the accident. If practicable, surviving passengers should remain in the vicinity of the accident until the United States Government investigating personnel can obtain from them all information pertaining to the accident. Surviving passengers leaving the vicinity should furnish addresses at which they can be reached later. The Foreign Service representative should assist the passengers, in so far as he can under the provision of §§ 102.10 and 102.11, in obtaining necessary clearances from local authorities and in getting onward transportation by the most expeditious means of common carrier transportation available. The surviving aircraft crew will be expected to remain in the vicinity of the accident until otherwise instructed by the investigating personnel.

§ 102.13 *Protective services with respect to deceased victims of accident*—(a) *Interim disposition of remains.* Generally, local authorities will assume custody of the remains of deceased victims of the accident and consign them to a mortuary until final disposition can be made.

(b) *Identification of remains.* When necessary, the local Foreign Service post should assist in identifying the remains of United States citizens who are victims of the accident by requesting the Department to procure dental charts, passport application data and photographs, fingerprints, or other United States records.

(c) *Reports on deaths of United States citizens.* The local Foreign Service post shall report the deaths of United States citizens occurring in an aircraft accident in accordance with the procedure prescribed in §§ 72.1 to 72.8 of this chapter.

(d) *Disposition of remains.* When a

scheduled United States air carrier meets with an accident, the United States airline concerned will usually transport the identifiable remains of victims of the accident to the place of final interment designated by the next of kin. If the Foreign Service post is requested, or finds it necessary, to dispose of identifiable remains, it shall follow the procedure prescribed in §§ 72.9 to 72.14 of this chapter. Where remains are unidentifiable, the local authorities may be expected to make final disposition of these remains locally in accordance with the health requirements of the country concerned, usually by common burial or by cremation, and without regard to the disposition desired by possible next of kin.

§ 102.14 *Salvage of mail and other property*—(a) *Mail.* Article 3, sections 6 and 7, of the Air Mail Provisions annexed to the Universal Postal Union Convention, Paris, 1947, provide that the personnel who survive the aircraft accident shall, when possible, deliver the mail to the post office nearest the place of the accident or to the one best-qualified to reforward the mail. If the aircraft personnel are unable to do this, the local post office concerned shall make every effort, without delay, to take delivery of the mail and to forward it to the offices of designation by the most rapid means, after determining the condition of the correspondence and reconditioning it if damaged. Most post offices are familiar with these provisions, but if in any case the mail is not being properly cared for, the local Foreign Service post should bring the proper procedure to the attention of the nearest post office.

(b) *Diplomatic pouches.* Immediately upon arriving at the scene of the accident, the Foreign Service representative should ascertain whether the aircraft was carrying a courier or diplomatic pouches. If a courier is found to be aboard, the same personal arrangements should be made for him as are made for other passengers (see §§ 102.10 to 102.13). An immediate search should also be made for whatever diplomatic pouches the courier may have been carrying and for any pouches that may have been carried as regular cargo. Usually, the cargo manifest will list diplomatic pouches carried as air freight or cargo. The passenger manifest normally will list the total number of pieces of luggage or pouches checked by a courier (if one is aboard), but since he usually carries his pouches with him into the cabin of the plane, the pouch invoices on his person or in his briefcase will offer positive proof of the number of pouches he has in his custody. If any are found, they should be cleared through appropriate government officials of the country and taken to the nearest United States Foreign Service office to await disposition instructions. If it is learned that the postal authorities have already recovered United States diplomatic pouches that may have been involved, these pouches should be obtained from the postal authorities and taken to the nearest United States Foreign Service office to await disposition instructions. A telegraphic message should be dispatched to the Department and to the regional courier office having jurisdiction over that area, giving a description of the pouches recovered. This description should include the office of addressor and addressee and the classification indicator (C, A, or S). The Department and the regional courier office will coordinate instructions to the office for the disposition of these pouches.

(c) *Baggage, personal effects and cargo.* The Foreign Service representative should request the local authorities to arrange for the security storage and protection of such baggage, personal effects and cargo as is recoverable from the aircraft until the property can be released to its owners by local customs and accident investigating authorities, or by the courts. When released, the personal effects of United States citizens, who died in the accident, should be taken into possession and disposed of by the local Foreign Service post in accordance with the procedure prescribed in §§ 72.15 to 72.55 of this chapter.

§ 102.15 *Protection and preservation of wreckage.* In so far as local law permits, the Foreign Service representative should see that arrangements are made (by the airline representative with the local authorities, if a scheduled carrier is involved) for the protection of the wrecked aircraft and its property contents against further damage, pilferage, and access by unauthorized persons, until the arrival of the accident investigation personnel. The prior removal of any of the wreckage or the contents of the aircraft should be prevented unless such action is necessitated by very compelling reasons, such as the need for treating the injured or for removing bodies, or when the wreckage constitutes a public hazard. When under the latter conditions the wreckage and contents of the aircraft must be moved or disturbed in any way, if possible, a record should be made or photographs taken showing the position and condition of the wreckage prior to disturbance. In the case of a private aircraft or non-scheduled carrier, protection should be arranged for the wrecked aircraft and its contents pending the receipt of information from the Department as to whether the Civil Aeronautics Board will investigate the case, and until final disposition is made of the property. If the owner of a private aircraft is killed in the wreck and is a United States citizen, the aircraft constitutes part of his personal estate and should be disposed of in accordance with the provisions of §§ 72.15 to 72.55 of this chapter. For rules governing the payment of expenses in connection with the protection and preservation of wrecked United States aircraft, see § 102.11.

§ 102.16 *Records and reports in connection with investigation*—(a) *Records.* The Foreign Service representative should maintain a record of the various transactions taking place prior to the arrival of airline, Civil Aeronautics Board and Civil Aeronautics Administration representatives. This record should include all pertinent details with respect to the disposition of persons and property, obligations assumed, arrangements made, et cetera, and should also include any statements made by witnesses.

(b) *Reports.* Reports should be submitted to the Department for its information and the information of aviation authorities and other interested parties in the United States regarding the progress of any investigation which is held and its final outcome when known.

FOREIGN AIRCRAFT ACCIDENTS INVOLVING UNITED STATES PERSONS OR PROPERTY

§ 102.17 *Reports on accident.* When an accident occurs to a foreign aircraft in the district of a Foreign Service post and United States citizens or property are involved, the local Foreign Service post shall report the disaster fully to the Department and to the supervisory mission (or the supervisory consular office where there is no mission).

§ 102.18 *Protection of United States citizens involved.* The local Foreign Service post shall follow substantially the procedures prescribed in §§ 102.11 to 102.13 in protecting United States citizens (whether alive or dead) involved in a foreign aircraft accident.

§ 102.19 *Protection of United States property.* The local Foreign Service office shall follow substantially the procedures set forth in §§ 102.11 and 102.14 in protecting United States mail and baggage, personal effects and cargo belonging to United States citizens.

SUBCHAPTER L—ENEMIES AND REPARATIONS

PART 111—REMOVAL OF ALIEN ENEMIES BROUGHT TO THE UNITED STATES FROM OTHER AMERICAN REPUBLICS

Sec.

111.1 Removal from the United States of alien enemies from other American republics.
111.2 Order of the Secretary of State.
111.3 Service of removal order on alien enemy.
111.4 Thirty-day period for voluntary departure.
111.5 Involuntary removal from the United States.

AUTHORITY: §§ 111.1 to 111.5 issued under R. S. 4067, as amended; 50 U. S. C. 21.

§ 111.1 *Removal from the United States of alien enemies from other American republics.* The proclamation of the President of the United States, No. 2685, dated April 10, 1946, 3 CFR, 1946 Supp., provides in part:

1. All alien enemies within the continental limits of the United States brought here from other American republics after December 7, 1941, who are within the territory of the United States without admission under the immigration laws, shall, if their continued residence in the Western Hemisphere is deemed by the Secretary of State to be prejudicial to the future security or welfare of the Americas, be subject upon the order of the Secretary of State to removal from the United States and may be required to depart therefrom in accordance with such regulations as the Secretary of State may prescribe.

2. In all cases in which the Secretary of State shall have ordered the removal of an alien enemy under the authority of this Proclamation or in which the Attorney General shall have ordered the removal of an alien enemy under the authority of Proclamation No. 2655 of July 14, 1945, thirty days

shall be considered, and is hereby declared to be, a reasonable time for such alien enemy to effect the recovery, disposal, and removal of his goods and effects, and for his departure.

§ 111.2 *Order of the Secretary of State.* When a determination has been made by the Secretary of State that the continued residence in the Western Hemisphere of an alien enemy, brought to the United States from another American republic after December 7, 1941, who is within the territory of the United States without admission under the immigration laws, would be prejudicial to the future security or welfare of the Americas, an order will be signed by the Secretary of State directing that the said alien enemy depart from the United States within thirty days after notification of the order and that, if he fails or neglects so to depart, the Commissioner of Immigration and Naturalization is to provide for the alien enemy's removal to the territory of the country of which he is a native, citizen, denizen, or subject.

§ 111.3 *Service of removal order on alien enemy.* A copy of the Secretary of State's order of removal will be delivered to the alien enemy at the place where he is interned.

§ 111.4 *Thirty-day period for voluntary departure.* An alien enemy who is the subject of a removal order shall have thirty (30) days after receiving notification of the removal order to depart from the United States. Unless the public safety otherwise requires, the Commissioner of Immigration and Naturalization is authorized to release such alien enemy from internment under appropriate parole safeguards in order that the alien enemy may settle his personal and business affairs, provide for the recovery, disposal, and removal of his goods and effects, and make arrangements to depart from the United States.

§ 111.5 *Involuntary removal from the United States.* In the event that an alien enemy, who is the subject of a removal order, fails or neglects to depart from the United States within the abovementioned thirty-day period, the Commissioner of Immigration and Naturalization will take the alien enemy into custody and will provide for his removal to the territory of the country of which he is a native, citizen, denizen, or subject, as soon as transportation is available.

PART 112—REPARATIONS: WORLD WAR II

Sec.
112.1 Authority to accept reparations payment.
112.2 Redelegation of authority to accept reparations payment.

AUTHORITY: §§ 112.1 to 112.2 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c.

§ 112.1 *Authority to accept reparations payment.* The Director of the Office of European Regional Affairs under the general direction of the Assistant Secretary for European Affairs, and in accordance with current general policies of the Department, shall be responsible for accepting on behalf of the United States Government funds allocated to the United States as reparations payments. Funds received will be deposited in a special account in the United States Treasury.

§ 112.2 *Redelegation of authority to accept reparations payment.* The authority granted to the Director of the Office of European Regional Affairs under § 112.1 may be redelegated to appropriate officials of the United States Government.

SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS

PART 121—ARMS, AMMUNITIONS, AND IMPLEMENTS OF WAR

GENERAL PROVISIONS

Sec.
121.1 General.

DEFINITIONS

121.5 Definition of aircraft.
121.6 Definition of major aircraft components.
121.7 Definition of helium.
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ENUMERATION OF ARTICLES

121.21 United States Munitions List.

INTERPRETATIONS

121.22 Military fuel thickeners.
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121.24 Propellants and explosives.
121.25 Quartz crystals.
121.26 Specialized military equipment.
121.27 Vessels of war.
121.28 Forgings, castings, and machined bodies.

AUTHORITY: §§ 121.1 to 121.28 issued under sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR 1954 Supp.

GENERAL PROVISIONS

§ 121.1 *General.* (a) The list of articles designated as arms, ammunition, and implements of war pursuant to the authority of the Mutual Security Act of 1954 and Executive Order No. 10575 cited *supra* shall be named the United States Munitions List.

(b) The term "article" shall mean any of the arms, ammunition, and implements of war enumerated in the United States Munitions List.

DEFINITIONS

§ 121.5 *Definition of aircraft.* As used in § 121.21, Category X, the term "aircraft" shall include piloted, pilotless, and robot aircraft and non-expansible balloons in excess of 3,000 cubic feet capacity.

§ 121.6 *Definition of major aircraft components.* The articles listed below shall be considered as major components of aircraft:

(a) Air frames and components thereof:

Fuselages or hulls.
Wings, wing panels, and sections.
Rudders and fins.

(b) Complete engines and superchargers including jet engines and afterburners.

(c) Propellers:

Complete assemblies.
Propeller blades.

(d) Landing gears:

Complete assemblies.
Wheels.
Tires and tubes.
Brakes.

(e) Automatic pilots.

(f) Aircraft radio:

Transmitters.
Receivers.

(g) Aircraft radar.

(h) Components, instruments, accessories and attachments peculiarly military in nature which are installed in or attached to tactical aircraft shall be considered as major components.

§ 121.7 *Definition of helium.* The word "helium" shall be understood to mean "contained helium" at standard atmospheric pressure (14.7 pounds per square inch) and 70° Fahrenheit. The term "contained helium" means the actual quantity of the element helium (i. e. 100 percent pure helium) in terms of cubic feet present in a mixture of helium and other gases. Purity determinations shall be made by usually recognized methods.

§ 121.8 *Unclassified technical data.* (a) The term "technical data" refers to any professional, scientific, or technical information, including any model design, photographic negative, document or other article or material, containing a plan, specification, or descriptive or technical information of any kind which can be used or adapted for use in connection with any process, synthesis, or operation in the production, manufacture, or reconstruction of articles or materials.

(b) As used in Category XVIII of the of the United States Munitions List the term "technical data" refers to any unclassified technical data relating to arms, ammunition and implements of war.

§ 121.9 *Classified technical data.* Classified technical data is included under Category XVII, and refers to any material or information which has been officially assigned a security classification, i. e., "top secret", "secret", or "confidential" by any officer or agency of the United States Government.

§ 121.10 *Advanced technical data material.* Unclassified technical data as used in §§ 125.22 and 125.23 of this chapter is considered to contain advanced plans, specifications, design, processing and manufacturing techniques when it has not been reviewed by competent technical personnel of the United States Government with respect to its possible military implications.

ENUMERATION OF ARTICLES

§ 121.21 *United States Munitions List.* Pursuant to the authority cited *supra*, the following articles are hereby designated as arms, ammunition, and implements of war.

CATEGORY I—SMALL ARMS AND MACHINE GUNS

(a) Rifles, carbines, revolvers, pistols, machine pistols and machine guns using ammunition of caliber .22 or over except weapons using only caliber .22 rim-fire ammunition.

(b) The following accessories and attachments for such arms: bayonets, slings, straps,

gun mounts, belts, links and magazines. All components and parts for machine guns. Barrels and breech mechanisms for rifles, carbines, pistols and revolvers.

CATEGORY II—ARTILLERY AND PROJECTORS

(a) Guns, howitzers, cannon, mortars, tank destroyers, rocket launchers, military flame throwers, military smoke projectors and recoilless rifles.

(b) Components and parts and the following accessories and attachments: mounts and carriers.

CATEGORY III—AMMUNITION

(a) Ammunition of caliber .22 or over for the arms enumerated in Categories I and II hereof except caliber .22 rim-fire ammunition.

(b) The following components, parts, accessories and attachments: cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun), projectiles, boosters, percussion caps, fuses or fuses and components thereof, primers, and other detonating devices for such ammunition.

CATEGORY IV—BOMBS, TORPEDOES, ROCKETS, AND GUIDED MISSILES

(a) Bombs, torpedoes, grenades (including smoke grenades), smoke canisters, rockets, mines, guided missiles, depth charges, fire bombs, and incendiary bombs.

(b) Apparatus and devices for the handling, control, activation, discharge, detonation, or detection of items enumerated in paragraph (a) of this category.

(c) Military fuel thickeners (see § 121.22).

(d) Components and parts including but not limited to fuses or fuses and components thereof; bomb racks and shackles; bomb shackle release units; bomb ejectors; torpedo tubes; torpedo and guided missile boosters; launching racks, projectors; control mechanisms and control systems; pistols (exploders); igniters; detonators; mine detectors; fuse or fuse arming devices; and the following items related thereto: intervalometers and components thereof; bomb lift trucks; bomb and torpedo handling trucks; trailers, hoists, and skids for handling bombs; guided missile launchers.

CATEGORY V—FIRE CONTROL EQUIPMENT AND RANGE FINDERS

(a) Fire control, gun tracking and infrared and other nightsighting equipment; range, position, and height finders, and spotting instruments; aiming devices (electronic, gyroscopic, optic and acoustic); bomb sights, gun sights, and periscopes for the arms, ammunition, and implements of war enumerated herein.

(b) Components, parts, accessories and attachments specifically designed for the articles enumerated in this category.

CATEGORY VI—TANKS AND ORDNANCE VEHICLES

(a) Tanks, military type armed or armored vehicles, ammunition trailers, and amphibious vehicles (land vehicles capable of limited endurance in water), military half tracks, military type tank recovery vehicles, gun carriers, and automotive vehicles or chassis embodying all-wheel drive and equipped with one or both of the following features to meet special military requirements: adaptation features for deep water fording and sealed electrical systems.

(b) Components, parts, accessories and attachments specifically designed for the tanks and ordnance vehicles enumerated in this category.

CATEGORY VII—CHEMICAL AND BIOLOGICAL AGENTS

(a) Chemical or biological agents adapted for use in war to produce death or disablement in human beings or animals or to damage crops.

(b) Equipment for the dissemination, detection, and identification of, and defense against, the items described in paragraph (a) of this category.

(c) Components, parts, attachments, and accessories specifically designed for equipment for the dissemination, detection, identification of and defense from the chemical toxicological agents defined in § 121.23 and of biological toxicological agents.

CATEGORY VIII—PROPELLANTS AND EXPLOSIVES

Propellants for the articles enumerated in Categories III, IV, and VI hereof; military high explosives (see § 121.24).

CATEGORY IX—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT

(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels, service craft, floating dry docks, and experimental types of naval ships. Turrets and gun mounts, submarine storage batteries, catapults and other components, parts, attachments and accessories specifically designed for the following types of combatant vessels: battle ships, command ships, cruisers, aircraft carriers, destroyers and submarines.

(b) Equipment for the laying, detection, detonation, and sweeping of mines. Components, parts, attachments, and accessories specifically designed for mine laying, mine detection and detonation, and mine sweeping equipment.

(c) Submarine and torpedo nets. Components, parts, attachments and accessories specifically designed for these articles.

CATEGORY X—AIRCRAFT

(a) Aircraft and airborne equipment.

(b) All components, parts and accessories for aircraft. This does not include ground handling and maintenance equipment and bulk materials, such as dopes, paints, oils, cable, wire, tubing, hose, aluminum sheets (see § 121.6).

CATEGORY XI—MISCELLANEOUS ARTICLES

(a) Military electronics. (1) Electronics equipment specially designed for military use; (2) radar of all types, including guidance systems and airborne or ground equipment therefor; (3) electronic countermeasure and jamming equipment; (4) underwater sound equipment; (5) military communications-electronics equipment bearing a military designation; (6) electronic navigational aids specially designed for military use such as radio direction finding equipment; (7) radio distance measuring systems such as Shoran, and hyperbolic grid systems, such as Raydist, Loran, and Decca; (8) components, parts, accessories and attachments specially designed for use with equipment enumerated in Category XI (a).

(b) Aerial cameras and special purpose military cameras and specialized processing equipment therefor; military photointerpretation, stereoscopic plotting and photogrammetry equipment.

(c) Armor plate, armored railway trains, military steel helmets, body armor, and flak suits. Components and parts specifically designed for use in military steel helmets, body armor, and flak suits.

(d) Specialized military mobile repair shops specially designed to service military equipment.

(e) Pressurized breathing equipment and partial pressure suits for use in aircraft, anti "G" suits, military crash helmets, aircraft liquid oxygen converters, and complete parachutes utilized for personnel, cargo, or deceleration purposes. Components and parts specifically designed for pressurized breathing equipment, partial pressure suits, anti "G" suits, aircraft crash helmets, and liquid oxygen converters.

(f) Military pyrotechnics including projectors therefor.

(g) Specialized military training equipment. Components, parts, attachments and accessories for specialized military training equipment as defined in § 121.26.

(h) Tear gas and equipment for dissemination thereof.

(i) Helium gas.

(j) Cryptographic devices (encoding and decoding).

(k) Landing mats.

CATEGORY XII—CLASSIFIED MATERIAL

All material not enumerated herein which is classified from the standpoint of military security.

CATEGORY XIII—TECHNICAL DATA

Technical data relating to the articles herein designated as arms, ammunition, and implements of war.

INTERPRETATIONS

§ 121.22 *Military fuel thickeners.* As used in § 121.21 Category IV, these are liquids or solids in granular forms (commonly metallic salts of fatty acids such as the aluminum salt of octoic acid) which when mixed with petroleum products produce a gel-type mixture. The burning characteristics of such gel can be controlled by the type of thickener used and the quantity added such as napalm and octal. The following are included:

(a) Aluminum soaps of fatty acids containing 12–18 carbon atoms and mixtures thereof;

(b) Aluminum soaps of oleic acids;

(c) Aluminum soaps of 2-ethylhexoic acid;

(d) Aluminum soaps of cocoanut fatty acids;

(e) Aluminum soaps of naphthenic acids;

(f) Any mixtures of the substances set out in paragraphs (a) to (e) of this section.

§ 121.23 *Chemical toxicological agents.* The term "chemical toxicological agents" as used in § 121.21, Category VII, shall include but not be limited to: cyanogen chloride, hydrogen cyanide, diphosgene, fluorine (but not fluorene), Lewisite gas, mustard gas (dichlorodiethyl sulfide), phenylcarbylamine chloride, phosgene, adamsite (diphenylaminochloroarsine), dibromodimethyl ether, dichlorodimethyl ether, diphenylchloroarsine, diphenylcyanarsine, ethyldibromoarsine, ethyldichloroarsine, methyldichloroarsine, phenyldibromoarsine, phenyldichloroarsine, cyanodimethylaminoethyloxyphosphine oxide, fluoroisopropoxymethylphosphine oxide, fluoromethylpinaeolyloxyphosphine oxide, and related compounds.

§ 121.24 *Propellants and explosives.* (a) As used in § 121.21, category VIII, the term "propellant" shall include but not be limited to propellant powders, hydrazine, unsymmetrical dimethylhydrazine, hydrogen peroxide in excess of 85 percent concentration, and nitro guanadine or picrite. The term "military high explosives" shall include ammonium picrate, black soda powder, potassium nitrate powder, hexanitrodiphenylamine, pentaerythritetranitrate (penthrite, pentrite or PETN), nitrocellulose having a nitrogen content of more than 12.20 percent, tetryl (trinitrophenylmethylnitromine or "tetranitromethylaniline") trimethylenetrinitramine (RDX, Cyclonite, Hexogen or T4),

trinitroanisol, trinitronaphthalene, dinitronaphthalene, tetranitronaphthalene, trinitrotoluene, trinitroxylene.

(b) Explosive mixtures or devices which are not listed above but which contain minor quantities of the types of explosives listed here are not considered to be arms, ammunition, and implements of war.

§ 121.25 *Quartz crystals.* Quartz crystals are subject to the licensing jurisdiction of the Secretary of State only when intended for use with military electronics equipment and shipped with such items.

§ 121.26 *Specialized military equipment.* As used in § 121.21, category XI (g), specialized military equipment shall include but not be limited to link-type trainers, attack trainers, operational flight trainers, radar target generators, gunnery training devices, anti-submarine warfare trainers, flight simulators, radar trainers, instrument flight trainers, navigation trainers, target equipment, armament trainers, pilotless aircraft trainers, and mobile training units.

§ 121.27 *Vessels of war*—(a) *All combatant vessels and craft, including the following.* Battleships (BB), command ships (CBC, CLC); cruisers (CA, CAG, CB, CL, CLAA, CLG); aircraft carriers (CVA, CVL, CVE); destroyers (DD, DL, DDE, DDR); submarines (SS, SSN, SSG, SSK, SSR, SST, ASSA, ASSP). Amphibious force flag ship (ACC); cargo ship attack (AKA); transports (APA, APD); fire support ship (IFS); landing ships (LSFF, LSTL, LSSL, LSD, LSM, LSMR, LST, LSV); landing craft (LOC, LCI, LCM, LCP, LCP-G, LCB-S, LCV, LCVP, LVT-A, LCT-A, LVT); landing vessels (LVW, DUEV, LCU); mine vessels (MMA, MSF, MSO, MHC, MSC, MSC(O), MM, MMC, DM, DMS, MSA, MSB, XMAP, YMP, YMS, YNG); patrol vessels (PY, XP); motor torpedo boat (PT); escort vessels (DE, DEC, DER, PCE, PCER, PCEC); subchasers (PCC, PCSC, SCC, SC, PC, PCS); frigate (PF); motor gun boats (PGM, PR).

(b) *Naval auxiliary and service vessels and craft.* Destroyer tender (AD); degaussing vessel (ADG); ammunition ship (AE); store ship (AF); ice breaker (AGB); motor torpedo boat tender (AGP); surveying ships (AGS, AGSC); auxiliary submarine (AGSS); net laying ship (AN); oilers and tankers (AO, AOG, AOR); transports (AP, APC); barrack ships (APB, APL); repair ships (AR, ARB, ARG, ARH, ARL, ARV, ARVA, ARVE); cable repairing or laying ship (ARC); salvage vessels (ARS, ARSD, ARST); submarine tenders and rescue vessels (AS, ASH, X); tugs (ARA, ATF, ATR, YTB, YTL, YTM); guided missle ship (AVM); tenders (AV, AVP, YDT); crane and service vessels (AB, YD, YSD); miscellaneous (AG, AW, PYC, YAG, YHB, YPD); aviation supply ship (AVS); floating dry dock and shop craft (AFDB, AFDL, AFDM, ARD, YFD, YRDH, YRDM); naval lighters (AVC, YC, YCK, YCV, YCF, YF, YFB, YFN, YFNG, YFNX, YFP, YFR, YFRN, YFT, YG, YGN, YFND, YFNB, YVO, YRL); naval barges (YO, YOG, YOGN, YON, YOS, YDK, YR, YRB, YRS, YTT, YW, YAN); naval dredge (YN).

(c) *Coast Guard patrol and service vessels and craft.* Submarine repair and berthing barge (YRB); labor transportation barracks ship (APL); Coast Guard cutter (CGC); gun boat (WPG); patrol craft (WPC, WSC, WPG); sea plane tender (WAVP); ice breaker (WAGB); cargo ship (WAK); buoy tenders and boats (WAGL, WD); cable layer (WARC); lightship (WAL); CG tugs (WAT, WYT); radio ship (WAGR); special vessel (WIX); auxiliary vessels (WAG, WAGE). Other Coast Guard patrol or rescue craft over 300 horsepower capacity.

(d) *Air Force crash rescue boat.*

(e) *Army vessels and craft.* Transportation Corps tug—100 ft. (LT), 65 ft. (ST), T-boat, Q-boat, J-boat, B-boat; barges (BG, BC, BR, BK, BSP, BSPI, BKI, BCF, BBL, BARC); cranes, floating (BD); dry dock, floating (FDL); repair ship, floating (FMS); trainer, amphibious 20 ton wheeled tow boat, inland waterway (LTI, STI).

§ 121.28 *Forgings, castings, and machined bodies.* Forgings, castings, extrusions and machined bodies of any of the articles enumerated in the United States Munitions List which have reached such a stage in manufacture that they are identifiable as such articles are considered to constitute arms, ammunition, and implements of war for the purposes of section 414 of the Mutual Security Act.

PART 122—REGISTRATION

Sec.
122.1 Persons required to register.
122.2 Production for experimental or scientific purposes.
122.3 Application for registration.
122.4 Certificate of registration.
122.5 Notification of changes in information furnished by registrants.
122.6 Maintenance of records by persons required to register as manufacturers, importers or exporters of United States Munitions List articles.

AUTHORITY: §§ 122.1 to 122.6 issued under sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR 1954 Supp.

§ 122.1 *Persons required to register.* Persons engaged in the business, within the United States, its territories or possessions, of manufacturing or exporting or importing articles enumerated in the United States Munitions List are required to register with the Secretary of State.

§ 122.2 *Production for experimental or scientific purposes.* The fabrication of arms, ammunition, and implements of war for experimental or scientific purposes including research and development is not considered as manufacture for the purposes of section 414 of the Mutual Security Act.

§ 122.3 *Application for registration.* (a) Applications for registration shall be submitted to the Secretary of State on forms prescribed by him and shall be accompanied by a registration fee in the form of a postal money order or a check payable to the Department of State.

(b) Registration can be effected for periods of one year or four years upon payment of a fee of $75 or $300, respectively, at the option of the registrant.

§ 122.4 *Certificate of registration.* (a) Upon receipt of an application for registration properly executed, accompanied by the registration fee, the Secretary of State shall issue to the applicant a certificate of registration valid for one year if $75 is paid or for four years if $300 is paid. Certificates of registration are not transferable. Certificates of registration are renewable for a further period of one year if a renewal fee of $75 is paid or for four years if a renewal fee of $300 is paid and the fee payment is accompanied by an application for registration properly executed on the prescribed form.

(b) Registration certificates issued prior to April 1, 1955, shall remain in effect during the period of validity indicated therein, without any additional fee being required.

(c) A refund of the registration fee covering a single year or a part thereof cannot be made by reason of changed conditions or new facts developed subsequent to the issuance of the registration certificate.

§ 122.5 *Notification of changes in information furnished by registrants.* Registered persons shall notify the Secretary of State of any change in the information set forth in their applications for registration. Upon receipt of such information an amended certificate of registration including this information will be issued if appropriate. An amended certificate of registration will be issued without charge in such cases and will remain valid until the date of expiration of the original certificate.

§ 122.6 *Maintenance of records by persons required to register as manufacturers, importers or exporters of United States Munitions List articles.* (a) Persons required to register shall maintain, subject to the inspection of the Secretary of State or any person designated by him, records for a period of six years on the importation and exportation of articles enumerated in the United States Munitions List. The Secretary may prescribe a longer or shorter period in individual cases, as he deems necessary. Records of imports shall contain information on the consignor and the country of origin. Records of exports shall contain information as to the source of supply, consignee, purchaser, and the initial and ultimate destination of the shipments. Retention records for both import and export shipments shall, in addition, include statistics on quantities shipped and the estimated values thereof.

(b) Special agents of the Department of State and United States Customs agents are hereby designated as the representatives of the Secretary of State for the purpose of this section.

PART 123—LICENSING CONTROLS

LICENSE PROCEDURES

Sec.
123.1 Application for license.
123.2 Export licenses.
123.3 Import licenses.
123.4 Intransit licenses.

Sec.
123.5 Validity and terms of licenses.
123.6 Amendments and alterations.
123.7 Ports of exit or entry.
123.8 Licenses filed with collectors of customs.
123.9 Shippers' export declaration.
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COUNTRY OF DESTINATION

123.21 Country of ultimate destination.
123.22 Shipments to or from certain countries.
123.23 Canadian shipments.
123.24 Exportation of arms, ammunition and implements of war to Cuba.

EXEMPTIONS

123.31 Authorization to collectors of customs to waive presentation of license document under prescribed conditions.
123.32 United States aircraft on temporary sojourn abroad.
123.33 United States scheduled transports.
123.34 Aircraft of foreign registry entering the United States.
123.35 Articles returned to the United States for repair or overhaul and re-export.
123.36 Antique arms and implements of war.
123.37 Arms carried on person or in baggage.
123.38 Ammunition for personal use of consignee.
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UNITED STATES GOVERNMENT SHIPMENTS

123.51 Shipments by or to the United States Government.
123.52 Aircraft parts and components to Armed Services.

MISCELLANEOUS PROVISIONS

123.61 National Firearms Act; Federal Firearms Act; Federal Explosives Act.
123.62 Foreign trade zones.
123.63 Export of vessels of war.
123.64 Repairs or alterations of vessels.
123.65 Cathode ray tubes being shipped with radar.
123.66 Certain helium gas exports for medical purposes.

AUTHORITY: §§ 123.1 to 123.66 issued under sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR 1954 Supp.

LICENSE PROCEDURES

§ 123.1 *Application for license.* Persons who intend to export from or import into the United States, its territories or possessions any of the articles enumerated in the United States Munitions List shall make application for license to the Secretary of State on the forms prescribed by him. No exportation or importation of any shipment shall be made until the application has been approved and the license issued unless an exemption from these requirements is authorized by this part. Applications for license to export helium gas should show the quantity to be exported in terms of cubic feet; the approximate net value of the helium gas; the number and type of containers and the approximate gross weight. Applications for license to export technical data are required in accordance with the provisions of §§ 125.1 to 125.4 of this chapter.

§ 123.2 *Export licenses.* Licenses to export articles on the United States Munitions List including helium gas and related unclassified technical data must be applied for on form DSP–5. The Secretary of State will not issue export licenses if a proposed exportation is considered contrary to security and/or foreign policy interests of the United States. Prior to the issuance of an export license the Secretary of State may also require documentary evidence pertinent to the proposed transaction. Licenses are valid only if the article to be exported is physically within the territorial jurisdiction of the United States.

§ 123.3 *Import licenses.* Licenses to import articles on the United States Munitions List must be applied for on form DSP–38. The Secretary of State will not issue import licenses if a proposed importation is considered contrary to security and/or foreign policy interests of the United States. Prior to the issuance of an import license the Secretary of State may also require documentary evidence pertinent to the proposed transaction.

§ 123.4 *Intransit licenses.* (a) When articles are to be moved intransit through the United States, its territories or possessions, an intransit license must be obtained except as indicated in paragraphs (b) and (c) of this section, and an application for license must be submitted on form DSP–61. The Secretary of State will not issue intransit licenses if the proposed shipment is considered contrary to the security and/or foreign policy of the United States.

(b) Collectors of customs are authorized on presentation of satisfactory evidence, to permit arms, ammunition, and implements of war to enter or leave the United States without the presentation of an import, export or intransit license if such articles are consigned from any place in a foreign country whose territory is contiguous to that of the United States to any other place in the same country.

(c) Collectors of customs may permit intransit shipments of sporting arms and ammunition, and of pistols and revolvers not larger than caliber .38, to enter and leave the United States without a license if such shipments are valued at not more than $300.

§ 123.5 *Validity and terms of licenses.* Licenses are valid for six months from the date of issuance unless a different period of validity is stated thereon. No extensions may be granted on licenses which have expired or are about to expire. If shipment cannot be made during the period of validity of a license, a new license may be applied for to authorize its exportation or importation. Licenses are not transferable and are subject to revocation, suspension, or revision without notice. Licenses which have expired or have been revoked must be returned immediately to the Secretary of State.

§ 123.6 *Amendments and alterations.* No amendment or alteration of a license may be made except by the Secretary of State, or by collectors of customs or postmasters when specifically authorized to do so by the Secretary of State.

§ 123.7 *Ports of exit or entry.* Applications for license should show the proposed port or ports of exit or entry. If shipping arrangements subsequent to the issuance of the license necessitate a change of ports, no amendment of the license in such case is necessary but the Secretary of State should be notified of this change.

§ 123.8 *Licenses filed with collectors of customs.* (a) Export or import licenses shall be filed prior to exportation or importation with the collector of customs at the port through which the shipment authorized is being made. Shippers' export declarations (United States Department of Commerce Form 7525–V) must also be filed with and authenticated by the collector before the commodities are exported. (See also § 123.10.)

(b) Photostatic copies of licenses shall not be made unless this is specifically authorized on the face of the license or otherwise authorized by the Department of State.

§ 123.9 *Shippers' export declaration.* The shippers' export declaration (United States Department of Commerce Form 7525–V), covering arms, ammunition, and implements of war for which an export license is required, must contain the same information in regard to the description, destination and value of the articles to be exported as that which appears on the application for license. If the person designated on the export declaration as the actual shipper of the goods is not the person to whom the export license has been issued by the Secretary of State, the name of this shipper should appear on the export license as that of the consignor in the United States.

§ 123.10 *Shipment by mail.* Export licenses for articles which are being transported by mail shall be filed with the postmaster at the post office where the article is mailed. Import licenses shall be filed with the collector of customs at the port of entry. (See also § 123.8.)

COUNTRY OF DESTINATION

§ 123.21 *Country of ultimate destination.* (a) The country designated on an application for license to export as the country of ultimate destination must be the country wherein the articles being exported are to be used or consumed, not a country receiving the shipment in transit. If it is the intention of the exporter that the articles being exported and consigned to one country are to be transshipped to another country or are to pass through the hands of an intermediate consignee in a foreign country, this fact must be clearly indicated on the license application, and the Secretary of State must be informed prior to shipment of all the relevant facts pertaining to such transshipment.

(b) United States Munitions List articles which have been exported from the United States may not be sold, diverted, transferred, transshipped, reshipped or re-exported to, or used in, any of the following countries without the specific prior approval of the Department of State or its authorized agent: Soviet Union, Soviet bloc countries, Communist China, North Korea, and that part of Viet-Nam which lies north of the 17th

parallel and any of the territories of free Viet-Nam or Laos which are under de facto control of the Communists, or any other area that may come under Communist control.

§ 123.22 *Shipments to or from certain countries.* The exemptions provided by §§ 123.32 and 123.34 to 123.38 do not apply to shipments destined for or originating in the Soviet Union, Soviet bloc countries, Communist China, North Korea, and that part of Viet-Nam which lies north of the 17th parallel and any of the territories of free Viet-Nam or Laos which are under de facto control of the Communists, or any other area that may come under Communist control.

§ 123.23 *Canadian shipments.* (a) Collectors of customs may release shipments of arms, ammunition, and implements of war to or from Canada without a license or UAC Release Certificate.

(b) The provisions of paragraph (a) of this section do not apply to intransit shipments through the United States to or from Canada or intransit shipments through Canada to or from the United States.

(c) The provisions of paragraph (a) of this section do not apply to shipments of helium gas. Applications for license to export helium gas to Canada shall be made in accordance with the provisions of § 123.1.

(d) The provisions of paragraph (a) of this section do not apply to shipments of arms, ammunition, and implements of war which were imported into Canada from a third country within one year.

§ 123.24 *Exportation of arms, ammunition and implements of war to Cuba.* (a) Article II of the convention between the United States and Cuba to suppress smuggling, signed at Habana, March 11, 1926, reads in part as follows (Treaty Series 739; 44 Stat., Pt. 3,2403):

> The High Contracting Parties agree that clearance of shipments of merchandise by water, air, or land, from any of the ports of either country to a port of entry of the other country, shall be denied when such shipment comprises articles the importation of which is prohibited or restricted in the country to which such shipment is destined, unless in this last case there has been a compliance with the requisites demanded by the law of both countries.

(b) The Secretary of State will permit the exportation to Cuba of the articles listed in the proclamation only when applications for license to export these articles bear the stamp of approval of the Cuban Embassy in Washington. In such cases, the original, duplicate, and triplicate of the application shall be forwarded to the Cuban Embassy by the applicant for stamping and transmission to the Department by the Cuban Embassy.

EXEMPTIONS

§ 123.31 *Authorization to collectors of customs to waive presentation of license document under prescribed conditions.* Customs officers are authorized in their discretion to permit arms, ammunition, and implements of war to enter and depart from the United States without requiring the presentation of a license under certain conditions as set forth in §§ 123.23 and 123.32–123.37, provided the prescribed conditions are met and there is satisfactory evidence that all other requirements are being or will be adhered to. In case of doubt as to compliance with any of the exemptions, collectors of customs should refer the matter to the Office of Munitions Control, Department of State, for determination as to whether such exemption applies.

§ 123.32 *United States aircraft on temporary sojourn abroad.* (a) Collectors of customs may permit aircraft flown or shipped from the United States for a temporary sojourn abroad of not to exceed six months' duration to depart from the United States without requiring the presentation of an export license issued by the Secretary of State, provided the collector of customs at the port of exit is satisfied that the conditions set forth in paragraph (b) of this section have been met. The provisions of this section are not applicable to military combat aircraft, such as fighters or bombers, whether or not they are equipped with armament.

(b) Owners or operators of aircraft departing from the United States for temporary sojourn abroad under the provisions of paragraph (a) of this section shall file an affidavit in the form indicated below and must satisfy the collector of customs that: (1) The aircraft will not be sold or disposed of; (2) the aircraft will be returned to the United States within six months; (3) it will be operated only by a United States licensed pilot, except on demonstration flights; (4) it will remain under United States registry while abroad.

(c) The requirement of an affidavit may be waived for personal type aircraft (one to five-seaters) and executive type aircraft (privately owned non-revenue), provided the owner-operator of such aircraft submits a statement with evidence satisfactory to the collector of customs that paragraph (b) (1) through (4) of this section will be complied with. Such aircraft may then be permitted to leave the United States for a temporary sojourn abroad not to exceed six (6) months' duration without the necessity of submitting an individual license or affidavit therefor.

(d) When an affidavit is required, it must be submitted in the following form:

AFFIDAVIT OF TEMPORARY SOJOURN

COUNTY OF }
STATE OF } ss.

The undersigned, being duly sworn, says that he is the (owner) (operator) of an aircraft identified as a _____; bearing markings _____; that it is departing from the United States on a temporary sojourn abroad not to exceed six (6) months; that he is the holder of CAA letter of registration for this aircraft dated _____; that the aircraft's ultimate destination outside the United States is _____; that it will reenter the United States through the port of _____ on or about _____; that he will not dispose of the aircraft, its parts, components, or accessories in any foreign country nor permit its use in military activities; that it will be operated by a United States licensed pilot (except in demonstration flights) while abroad; that he will not change its United States registration while abroad; that if the aircraft or any of its parts is to be sold or disposed of in a foreign country, it will be immediately returned to the United States and an export license obtained; that he will not transport in such aircraft arms, ammunition, or implements of war enumerated in the United States Munitions List unless authorized by the Secretary of State; and that the purpose of the temporary sojourn abroad is as follows:

_____

This statement is given to United States Customs authority at _____ or the Secretary of State pursuant to regulations of the Secretary of State, Title 22, Code of Federal Regulations, § 123.32, in support of claim for exemption from the Department of State requirements relating to licenses to export aircraft enumerated in the United States Munitions List.

Signed _____
(Owner-operator)
Address _____
_____

Subscribed and sworn to before me at _____ this _____ day of _____, 19 ____.

_____
(Signature and title of officer)

(e) When a copy of the affidavit of temporary sojourn (the form shown in paragraph (d) of this section) is accepted by the customs officer at the port of exit it shall be endorsed by him and returned to the owner or operator prior to the departure of the airplane. Upon the return of the aircraft to the United States, the endorsed copy of the affidavit must be surrendered to the collector of customs at the port of reentry. If the port of reentry is not the same as that from which the aircraft departed the customs officer shall forward the surrendered copy of the affidavit to the customs authority at the port from which the aircraft originally departed, noting thereon the date of reentry. The affidavits shall be retained by the collectors of customs for possible future examination.

§ 123.33 *United States scheduled transports.* Customs officers are authorized to permit civil aircraft operated by commercial airlines and used on regular schedules between the United States and foreign countries under certificates of public convenience and necessity to depart from and enter into the United States without a license.

§ 123.34 *Aircraft of foreign registry entering the United States.* (a) Collectors of customs are authorized to permit aircraft of foreign registry to enter and depart from the United States without requiring the presentation of an individual license, provided it is established to their satisfaction that the country of ultimate destination is the same as the country of origin and that the airplane will not be sold or disposed of in the United States and will not remain in the United States in excess of a period of six months.

(b) This section does not apply to aircraft returning to the United States for major overhaul or the installation of major components and re-export. The provisions of § 123.35 are applicable to such aircraft.

§ 123.35 *Articles returned to the United States for repair or overhaul and re-export.* (a) Collectors of customs are

authorized on presentation of satisfactory evidence to permit arms, ammunition, and implements of war, which have been legally exported from the United States and which are returned to the United States worn or damaged for repair and re-export to the country of origin, to enter the United States without requiring the presentation of an import license (subject to the provisions § 123.22). An individual export license however, is required before such articles may be re-exported.

(b) In the case of aircraft, however, an export license is required for its re-export only when it has undergone a major overhaul or major components were installed thereon during its stay in the United States.

§ 123.36 *Antique arms and implements of war.* Collectors of customs are authorized on presentation of satisfactory evidence to permit antique arms and implements of war, components, parts, accessories and attachments therefor, designated in the United States Munitions List, which are more than one hundred years old to enter the United States or to depart therefrom without requiring the presentation of a license (subject to the provisions of § 123.22).

§ 123.37 *Arms carried on person or in baggage.* Collectors of customs are authorized to permit rifles, carbines, revolvers, or pistols, and ammunition therefor, to enter the United States or depart therefrom without requiring the presentation of a license (subject to the provisions of § 123.22) when these articles enter or leave the United States on the person of an individual or in his baggage, and are intended exclusively for the personal use of that individual for sporting or scientific purposes or for personal protection. No more than three arms and no more than five hundred cartridges shall in any case be carried from or into the United States by an individual under the provisions of this section.

§ 123.38 *Ammunition for personal use of consignee.* Licenses will not be required for the exportation or importation of ammunition for rifles, carbines, revolvers, or pistols, provided the quantity does not exceed five hundred rounds in any shipment and the ammunition is for the personal use of the consignee and not for resale (subject to the provisions of § 123.22). A license is required, however, for the exportation of such ammunition to Bahrein, Kuwait, Qatar, the Trucial States, and Muscat-and-Oman.

§ 123.39 *Arms for the individual use of members of the Armed Forces.* (a) Collectors of customs are authorized to permit members of the United States Armed Forces presenting written authorization from their commanding officers to ship or bring into the United States war trophies and souvenirs consisting of rifles, carbines, revolvers, pistols, and ammunition therefor without requiring the presentation of an individual license.

(b) Collectors of customs are authorized to permit rifles, carbines, revolvers, pistols, and parts of such weapons to leave the United States without a license, provided they are consigned to servicemen's clubs overseas or to individual members of the Armed Forces of the United States, accompanied by a written authorization from the commanding officer and the parcel is plainly marked as to content.

(c) Collectors of customs are authorized to permit parts, components, and accessories of rifles, carbines, pistols, and revolvers to enter or leave the United States without a license when the shipment does not exceed $25 in value, is consigned to individual members of the Armed Forces of the United States, is for the consignee's own use and not for resale, and the parcel is plainly marked as to content.

UNITED STATES GOVERNMENT SHIPMENTS

§ 123.51 *Shipment by or to the United States Government.* The exportation or importation of arms, ammunition, and implements of war by the United States Government is not subject to the provisions of section 414 of the Mutual Security Act. A license to import and export such articles is not required, therefore, when the United States Government or an agency thereof is the consignor or consignee unless a private individual or firm is involved in the shipping procedures.

§ 123.52 *Aircraft parts and components to Armed Services.* Collectors of Customs are authorized to permit the exportation of aircraft spare parts and components without a license on presentation of satisfactory evidence that the shipment is being made to the United States Armed Services abroad.

MISCELLANEOUS PROVISIONS

§ 123.61 *National Firearms Act; Federal Firearms Act; Federal Explosives Act.* (a) The provisions of this part shall be considered as binding in addition to and not in lieu of those established under the provisions of the National Firearms Act, approved by the President June 26, 1934, as amended, now known as ch. 53, Internal Revenue Code of 1954 (26 U. S. C. 5801–5862); under the provisions of the Federal Firearms Act, approved by the President June 30, 1938 (52 Stat. 1250; 15 U. S. C. sections 901–909), as amended March 10, 1947 (61 Stat. 11), August 6, 1939 (53 Stat. 1222), and February 7, 1950 (64 Stat. 3); and under the provisions of the Federal Explosives Act, approved by the President October 6, 1917 (40 Stat. 385; 50 U. S. C. ch. 8), as amended December 26, 1941 (55 Stat. 863; 50 U. S. C. ch. 8).

(b) The National Firearms Act imposes certain taxes upon manufacturers, importers, and dealers in certain firearms; taxes upon the making of certain firearms, and taxes on transfers of certain firearms. The term "firearm", as used in this act, includes "a shotgun or rifle having a barrel of less than eighteen inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition, but does not include any rifle which is within the foregoing provisions solely by reason of the length of its barrel if the caliber of such rifle is .22 or smaller and if its barrel is sixteen inches or more in length."

(c) The Federal Firearms Act applies to manufacturers and dealers who are engaged in interstate or foreign commerce in firearms and ammunition. The term "firearm", as used in this act, means "any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive and a firearm muffler or firearm silencer, or any part or parts of such weapon"; and the term "ammunition" includes "all pistol or revolver ammunition. It shall not include shotgun shells, metallic ammunition suitable for use only in rifles, or any .22 caliber rim fire ammunition."

(d) The Federal Explosives Act is applicable to the manufacture, distribution, storage, use, and possession of explosives in time of war. The term "explosives", as used in this act, means "gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and any chemical compounds or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound or mixture or any part thereof may cause an explosion".

(e) Rules and regulations for the enforcement of the National Firearms Act and the Federal Firearms Act are prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Rules and regulations for the enforcement of the Federal Explosives Act are prescribed by the Director of the Bureau of Mines, Department of the Interior.

§ 123.62 *Foreign trade zones.* For the purpose of this part, the foreign trade zones of the United States are considered as an integral part of the United States. Accordingly, persons who intend to ship articles into foreign trade zones of the United States (established pursuant to 19 U. S. C. 81c, supp. 5) shall submit an application for import license described in § 123.1 and obtain a license prior to the entry of such articles. Persons who intend to ship such articles from foreign trade zones to foreign destinations shall submit an application for export license, as described in § 123.1, and obtain a license prior to shipment. The provisions of § 123.4 with respect to intransit licenses are applicable to intransit shipments through a foreign trade zone.

§ 123.63 *Export of vessels of war.* (a) The transfer of a vessel of war, as defined in § 121.27 of this chapter, from United States registry to foreign registry or the registration of an undocumented vessel of war under a foreign flag shall be considered an exportation for which an approval or license from the Secretary of State shall be requested. An export license must be obtained if the vessel to be exported is physically located in the

United States. If the vessel is located abroad, the Department's written approval in the form of a letter must be obtained prior to its transfer of registry.

(b) The provisions of the regulations in this part shall be considered as binding in addition to and not in lieu of the provisions of the United States Shipping Act of 1916, as amended (46 U. S. C. 835). United States Maritime Administration approval is required prior to the sale and/or transfer to alien ownership, registry, and/or flag of vessels of war. United States registry of a documented vessel is cancelled under the regulations of the United States Maritime Administration where such vessel is sold to a purchaser for use under foreign registry.

§ 123.64 *Repairs or alterations of vessels.* Operators of foreign vessels entering the territorial waters of the United States for repairs or alterations shall obtain an export license for articles enumerated in the United States Munitions List and further defined and interpreted by the regulations in this part which are required in connection with such repairs or alterations.

§ 123.65 *Cathode ray tubes being shipped with radar.* Applications for license to ship radar equipment may include cathode ray tubes installed in or intended for use in such equipment, provided the tubes are being shipped with such equipment. (If shipped separately, information concerning licensing requirements for cathode ray tubes should be obtained from the Bureau of Foreign Commerce, Department of Commerce.)

§ 123.66 *Certain helium gas exports for medical purposes.* Collectors of customs are authorized to permit shipments of miniature cylinders containing helium gas in fractional cubic foot quantities mixed with other gases without requiring the presentation of an individual export or import license provided:

(a) The ultimate destination is not a country named in § 123.22;

(b) The company has arranged with the Department of State to furnish it with periodic reports of such shipments;

(c) The shipment to any consignee does not exceed ten cubic feet of "contained helium", as defined in § 121.7 of this chapter;

(d) The gas is being exported for medical use.

PART 124—LICENSING AGREEMENTS, TRANSMISSION OF INFORMATION

LICENSING AGREEMENTS

Sec.
124.1 Manufacturing license agreements.
124.2 Technical service and assistance agreements.
124.3 Required provisions in agreements.

TRANSMISSION OF INFORMATION

124.11 Transmission of technical information.

AUTHORITY: §§ 124.1 to 124.11 issued under sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR 1954 Supp.

LICENSING AGREEMENTS

§ 124.1 *Manufacturing license agreements.* Agreements entered into between U. S. and foreign manufacturers or agents for the manufacture abroad of articles designated as arms, ammunition, and implements of war by the United States Munitions List do not constitute authorization for the exportation without a license of technical data relating to such articles unless the Department of State has indicated in writing that it has no objection to the agreement. (See, however, § 125.26 of this chapter.) In order to be eligible for any special exemptions provided by the regulations with respect to such agreements, persons or firms desiring to enter into agreements of this kind are advised to communicate with the Secretary of State at the inception of preliminary negotiations. In any case, negotiations should not be concluded until the matter has been reviewed by the Department of State.

§ 124.2 *Technical service and assistance agreements.* Agreements entered into between persons or companies resident in the United States and persons or companies resident abroad for the servicing abroad of equipment manufactured in the United States or for the furnishing of technical assistance relating to articles designated as arms, ammunition, and implements of war or for the sale of such articles do not constitute authorization for the exportation without a license of technical data relating thereto unless the Department has indicated in writing that it has no objection. (See, however, § 125.26 of this chapter.) In order to take full advantage of any special provisions set forth in the regulations with respect to such agreements, persons or firms desiring to enter into agreements of this kind are advised to communicate with the Secretary of State at the inception of preliminary negotiations, and negotiations should not be concluded until the matter has been reviewed by the Department of State.

§ 124.3 *Required provisions in agreements.* (a) Proposed technical assistance or manufacturing license agreements which may involve the transfer or interchange of technical data (see § 121.9) should set out in detail the terms and conditions of such transfer or interchange and define in precise terms the following:

(1) The equipment and technology involved.

(2) The scope of the information to be furnished.

(3) The period of duration of the agreement.

(b) Licensing agreements will provide that (1) the licensee may not include as a cost factor in the sale of articles produced under the agreement a charge for technical data furnished or developed at the expense of the United State Government, and (2) new designs, processes or manufacturing techniques derived from such data will be made available on an unrestricted basis to the United States Government at reasonable cost by the licensee.

TRANSMISSION OF INFORMATION

§ 124.11 *Transmission of technical information.* The export controls established under the provisions of section 414 of the Mutual Security Act of 1954 relating to technical data cover the exportation of technical information on articles designated as arms, ammunition, and implements of war in the United States Munitions List, regardless of whether the actual transmission of such information is accomplished by mail, by hand, through American technical personnel sent abroad or through release to foreign nationals in the United States.

PART 125—TECHNICAL DATA

EXPORTATION OF TECHNICAL DATA

Sec.
125.1 General.
125.2 Special exceptions.
125.3 Written approval.
125.4 Classified information.
125.5 Shipment by or to the United States Government.

SPECIAL PROVISIONS

125.11 Importation of technical data.
125.12 Canadian shipments.
125.13 Exportation of technical data with patent applications.

EXEMPTIONS

125.21 Unclassified technical data relating to sales bulletins, operational manuals, etc.
125.22 Unclassified technical data relating to civil aircraft equipment.
125.23 Unclassified technical data on small arms and ammunition.
125.24 Technical data imported from abroad.
125.25 Contracts with other Government agencies.
125.26 Special licensing agreements.
125.27 Written approval.

STATEMENTS AND CERTIFICATIONS

125.41 Certification requirement.
125.42 Destination.
125.43 Sales bulletins, etc.
125.44 Aircraft and small arms.
125.45 Imports.
125.46 Government contracts.
125.47 Licensing agreements.
125.48 Written approval.

MAILING AND SHIPPING PROCEDURES

125.51 Presentation of license.
125.52 Certification.

AUTHORITY: §§ 125.1 to 125.52 issued under sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR 1954 Supp.

EXPORTATION OF TECHNICAL DATA

§ 125.1 *General.* Written approval by the Department of State is required in all cases for the exportation of unclassified technical data to any of the destinations referred to in § 125.42 (see also §§ 121.8 and 121.10 of this chapter).

§ 125.2 *Special exceptions.* Written approval by the Department of State is also required for the exportation of such data to all other destinations except when otherwise exempted by §§ 125.5 to 125.52 or when it is in published form and:

(1) Sold at newsstands or bookstores;

(2) Available by subscription or purchase to any individual without restriction;

(3) Granted second class mailing privilege by the United States Government; or

(4) Consists of unclassified informational media on aviation equipment freely available at symposia attended by the general public, provided such releases have ben approved by the United States Government.

§ 125.3 *Written approval.* The written approval may take the form of a Department of State license or letter. An application form (Form DSP–5) should be used if Customs clearance is required. The request for a written approval whether by letter or application must be submitted in triplicate.

§ 125.4 *Classified information.* Classified military information, including classified technical data, may only be transferred or exported on a government-to-government basis or under other procedures established by the cognizant military agency. Should classified data be involved in any proposed commercial transaction, the matter must be taken up with the Department of State by letter. Such a letter should contain full details of the proposed transaction and be accompanied by additional documents to assist in the consideration of the proposal. The letter and documents submitted for this purpose should be in triplicate.

§ 125.5 *Shipment by or to the United States Government.* The exportation of technical data relating to arms, ammunition, and implements of war by a defense agency of the United States Government is not subject to the provisions of section 414 of the Mutual Security Act of 1954. A written approval or an export license is not required when the United States Government or an agency thereof is the consignee unless a private individual or firm is involved in the shipping or mailing procedures.

SPECIAL PROVISIONS

§ 125.11 *Importation of technical data.* No written approval is required for technical data imports.

§ 125.12 *Canadian shipments.* Collectors of customs or postal authorities may permit unclassified technical data to be exported to Canada without the presentation of written approval or release certificate.

§ 125.13 *Exportation of technical data with patent applications.* The exportation of technical data relating to arms, ammunition and implements of war with any patent application for foreign patents is subject to the jurisdiction of the Secretary of State. A Department of State written approval or export license is required for the exportation of unclassified technical data included as part of or with an application for a foreign patent. The written approval of the Secretary of State is in addition to the specific licensing requirement of the Patent Office during the first six months after the filing of the application with that office. If the subject matter is covered by a secrecy order, the provisions of § 125.4 are applicable.

EXEMPTIONS

§ 125.21 *Unclassified technical data relating to sales bulletins, operational manuals, etc.* (a) Collectors of customs or postal authorities may permit the exportation without written approval to any destination other than those listed in § 125.42 of unclassified technical data in the form of sales bulletins, operational, maintenance and sales promotion manuals which relate to equipment previously approved for commercial export.

(b) Collectors of Customs or postal authorities may permit the exportation without a new written approval or license to any destination other than those listed in § 125.42 of unclassified technical data in the form of sales bulletins, operational maintenance and sales promotion manuals previously approved for export to those destinations.

§ 125.22 *Unclassified technical data relating to civil aircraft equipment.* Collectors of Customs or postal authorities may permit the exportation without a license (subject to the provisions of § 125.41) of unclassified technical data relating to civil aircraft in the form of sales brochures, sales promotion manuals, and publications except when advanced plans, performance data, designs, processes and manufacturing techniques are included.

§ 125.23 *Unclassified technical data on small arms and ammunition.* Collectors of customs or postal authorities may permit the exportation without written approval (subject to the provisions of §§ 125.41 to 125.47) of unclassified technical data relating to small arms and machine guns not in excess of caliber .50 and ammunition for such weapons except unclassified technical data containing advanced design, processes and manufacturing techniques.

§ 125.24 *Technical data imported from abroad.* Collectors of customs or postal authorities are authorized to permit exportation without written approval of unclassified technical data which has been imported from abroad and is being returned to the country of origin.

§ 125.25 *Contracts with other Government agencies.* Collectors of customs or postal authorities may permit the exportation of unclassified technical data without written approval when such shipment is directly in furtherance of a contract with an agency of the United States Government or a contract between an agency of the United States Government and a foreign manufacturer or other foreign entity, provided the contract specifically calls for transmission of relevant technical data.

§ 125.26 *Special licensing agreements.* (a) Collectors of customs or postal authorities may permit exportation without specific Department of State written approval or license of unclassified technical data being exported directly in futherance of a licensing agreement, covering specific items, which has been submitted to the Department of State for review and to which the Department of State has, in writing, expressed no objection, unless a new design, process or manufacturing technique is involved.

(b) Collectors of customs and postal authorities may permit the exportation without specific Department of State written approval or license of unclassified technical data being exported directly in furtherance of a licensing agreement covering specific items effective prior to February 1, 1954, whether or not previously submitted to the Department of State, unless a new design, process or manufacturing technique is involved.

§ 125.27 *Written approval.* Collectors of Customs or postal authorities may release for export unclassified technical data relating to arms, ammunition and implements of war when covered by a letter of approval from the Department of State.

STATEMENTS AND CERTIFICATIONS

§ 125.41 *Certification requirement.* If the exporter wishes to claim the benefit of an exemption from the requirement for a specific written approval in accordance with the provisions of §§ 125.21 to 125.27, he is required to certify that he has complied with the conditions set forth in §§ 125.42 to 125.48. He may so certify by marking the package or letter "22 CFR 125.41 complied with."

§ 125.42 *Destination.* Under any of the exemptions provided in this part the exporter must certify that the technical data is not intended for the Soviet Union, Soviet bloc countries, Communist China, North Korea, and that part of Viet-Nam which lies north of the 17th parallel and any of the territories of free Viet-Nam or Laos which are under de facto control of the Communists, or any other area that may come under Communist control. Certification as to these facts may be made in accordance with the provisions of § 125.41.

§ 125.43 *Sales bulletins, etc.* Under the exemption provided by § 125.21 the exporter must certify that the exportation consists of unclassified sales bulletins, operational, maintenance and sales promotion manuals which relate to equipment previously approved for commercial export or have been previously approved for export to these destinations. Upon certifying as to these facts and complying with the provisions of § 125.41, the exporter may be exempted from the requirement that he present a written approval from the Department of State.

§ 125.44 *Aircraft and small arms.* Under the exemptions provided by §§ 125.22 and 125.23 the exporter must certify that the sales literature being exported contains no advanced plans, performance data, designs, processes, manufacturing techniques or specifications. Certification as to these facts may be made in accordance with the provisions of § 125.41.

§ 125.45 *Imports.* Under the exemption provided by § 125.24 the exporter must certify that the technical data being exported was imported from abroad and is being returned to the country of origin. Certifications as to these facts may be made in accordance with the provisions of § 125.41.

§ 125.46 *Government contracts.* Under the exemption provided by § 125.25 the exporter must certify that the technical data is being shipped directly in

furtherance of a contract with an agency of the United States Government or a contract between an agency of the United States Government and a foreign manufacturer. Certification as to these facts may be made in accordance with the provisions of § 125.41.

§ 125.47 *Licensing agreements.* Under the exemption provided by § 125.26 the exporter must certify that the technical data is being shipped directly in furtherance of a licensing agreement to which the Department of State has, in writing, expressed no objection and which does not pertain to a more recent design, process or manufacturing technique. Certification as to these facts may be made in accordance with the provisions of § 125.41.

§ 125.48 *Written approval.* Under the exemption provided by § 125.27 the exporter must certify that he has a letter of approval from the Department of State by marking the letter or package as set forth in § 125.41.

MAILING AND SHIPPING PROCEDURES

§ 125.51 *Presentation of license.* If written approval is required in connection with the exportation of technical data, such written approval must be presented to the customs or post office at the time of mailing or shipping.

§ 125.52 *Certification.* If the exemptive provisions apply, the exporter may comply with the special requirements as to certification by plainly marking the package or envelope "22 CFR 125.41 to 125.47 complied with". This would mean that he certified that one of the exemptions referred to in § 125.41 applies and that he has complied with the conditions set forth therein.

PART 126—VIOLATIONS AND PENALTIES

Sec.
126.1 Violations in general.
126.2 Penalties for violation.
126.3 Authority of collectors of customs.
126.4 Seizure and forfeiture.

AUTHORITY: §§ 126.1 to 126.4 issued under sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7252, 3 CFR 1954 Supp. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 126.1 *Violations in general.* It shall be unlawful for any person to export or attempt to export from the United States any of those articles des-List or regulations as arms, ammunition, ignated by the United States Munitions and implements of war or to import or attempt to import such articles into the United States without first having obtained a license therefor unless an exemption from this requirement is authorized by this part.

§ 126.2 *Penalties for violation.* Any person who willfully violates any provision of section 414 of the Mutual Security Act of 1954 or any rule or regulation issued under that section, or who willfully, in a registration or license application, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $25,000 or imprisoned not more than two years, or both.

§ 126.3 *Authority of collectors of customs.* (a) Collectors of customs are authorized to take appropriate action to insure observance of this part as to the importation, or attempt to import, or exportation, or attempt to export, arms, ammunition, and implements of war, whether or not authorized by the licenses issued under this part, including but not limited to inspection and loading or unloading from carriers.

(b) When a license is presented to a collector of customs authorizing the exportation or importation of arms, ammunition, and implements of war, together with such other documents as may be required by customs regulations, the collector may require the production of other documents and information relating to the proposed exportation or importation, including invoices, orders, packing lists, shipping documents, correspondence, instructions, and other relevant information and documents.

(Sec. 1, 40 Stat. 223, as amended, R. S. 3062, as amended, secs. 510–512, 595, 46 Stat. 733, 734, 752, sec. 1, 62 Stat. 716; 22 U. S. C. 401, 19 U. S. C. 483, 1510–1512, 1595, 18 U. S. C. 545)

§ 126.4 *Seizure and forfeiture.* Whenever an attempt is made to import, or bring into the United States, or to export, or ship from, or take out of the United States, any arms, ammunition, and implements of war, in violation of law, the several collectors of customs may seize and detain any such arms, ammunition, and implements of war, and the vessel or vehicle containing the same, and retain possession thereof until released or disposed of as directed by law.

(Sec. 1, 40 Stat. 223, as amended, R. S. 3062, as amended, sec. 1, 62 Stat. 716; 22 U. S. C. 401, 19 U. S. C. 483, 18 U. S. C. 545)

PART 127—FOREIGN MILITARY AIRCRAFT FLIGHTS

Sec.
127.1 Foreign military flight clearances.
127.2 Use of military installations.
127.3 Required information.
127.4 Reciprocal arrangements.

AUTHORITY: §§ 127.1 to 127.4 issued under sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR 1954 Supp.

§ 127.1 *Foreign military flight clearances.* Foreign governments desiring to overfly or land on United States territory are required to obtain written authorization to do so in advance from the Department of State. As a minimum requirement the request for such an authorization should state the purpose of the flight, identify the aircraft, name the crew and give the scheduled itinerary.

§ 127.2 *Use of military installations.* Requests by foreign governments for authorization to land their military aircraft at United States military installations should have the approval of the defense agency owning or leasing the military installations in addition to the required authorization of the Secretary of State. Requests for authorization to visit a military installation should be made to the defense agency concerned as far in advance as possible and no later than 72 hours in advance of the arrival date. It should contain information outlined in § 127.3. The request to the Department of State should be made at about the same time furnishing it with the same information.

§ 127.3 *Required information.* Foreign governments requesting permission for military aircraft to land at military installations in the United States should support the request with the following information:

(a) The purpose of the flight,
(b) The type and identity of the aircraft,
(c) Names of crew,
(d) Names and nationality of passengers,
(e) Dates of arrival and departure at each point,
(f) Special services and facilities desired.

§ 127.4 *Reciprocal arrangements.* Reciprocal arrangements have been entered into with certain countries concerning military flights. Such arrangements have the effect of modifying or eliminating the necessity of obtaining prior clearances under the conditions set forth in the agreements.

PART 128—ADMINISTRATIVE PROCEDURES

Sec.
128.1 Functions in section 414 of Mutual Security Act of 1954 excluded.
128.2 Functions in section 6A of Air Commerce Act of 1926 excluded.

AUTHORITY: §§ 128.1 and 128.2 issued under sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR 1954 Supp.

§ 128.1 *Functions in section 414 of Mutual Security Act of 1954 excluded.* The functions conferred by section 414 of the Mutual Security Act of 1954 are excluded from the operation of the Administrative Procedures Act (60 Stat. 237), as contemplated by section 1003 thereof.

§ 128.2 *Functions in section 6A of Air Commerce Act of 1926 excluded.* The functions conferred by section 6A of the Air Commerce Act of 1926 as amended are excluded from the operations of the Administrative Procedures Act as contemplated by section 1003 thereof.

SUBCHAPTER N—MISCELLANEOUS

PART 131—CERTIFICATES OF AUTHENTICATION

Sec.
131.1 Certification of documents.
131.2 Refusal of certification for unlawful purpose.

AUTHORITY: §§ 131.1 and 131.2 issued under R. S. 203, 62 Stat. 946, sec. 4, 63 Stat. 111, as amended, secs. 104, 332, 66 Stat. 174, 252; 5 U. S. C. 151c, 158, 28 U. S. C. 1733, 5 U. S. C. 151c, 8 U. S. C. 1104, 1443.

§ 131.1 *Certification of documents.* The Authentication Officer or the Acting Authentication Officer may, and is hereby authorized to, sign and issue certificates of authentication under the seal of the Department of State for and in the

name of the Secretary of State or the Acting Secretary of State. The form of authentication shall be as follows:

In testimony whereof, I, ----------, Secretary of State have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at ----------, in ----------, this ---------- day of ----------, 19----.

(Secretary of State)

By ----------
(Authentication Officer, Department of State)

§ 131.2 *Refusal of certification for unlawful purpose.* The Department will not certify to a document when it has good reason to believe that the certification is desired for an unlawful or improper purpose. It is therefore the duty of the Authentication Officer to examine not only the document which the Department is asked to authenticate, but also the fundamental document to which previous seals or other certifications may have been affixed by other authorities. The Authentication Officer shall request such additional information as may be necessary to establish that the requested authentication will serve the interests of justice and is not contrary to public policy.

PART 132—BOOKS, MAPS, NEWSPAPERS, ETC.

§ 132.1 *Purchase.* The purchase by the Department of State of books, maps, newspapers, periodicals, and other publications shall be made without regard to the provisions of the act approved March 3, 1933 (sec. 2, 47 Stat. 1520; 41 U. S. C. 10a), since determination has been made by the Secretary, as permitted by the provisions of the act, that such purchase is inconsistent with the public interest.

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

PART 133—STUDY AND RESEARCH IN THE DEPARTMENT OF STATE

Sec.

133.1 Definition.
133.2 Availability of classified and administratively controlled materials.
133.3 Requests for use of records by officials of the United States Government other than officers of the Department of State.
133.4 Use of records by persons who are not officials of the United States Government.

AUTHORITY: §§ 133.1 to 133.4 issued under sec. 4, 63 Stat. 111, as amended; 5 U. S. C. 151c. Interpret or apply No. 8, 27 Stat. 395, as amended; 20 U. S. C. 91.

§ 133.1 *Definition.* The term records is construed in accordance with the act of July 7, 1943 (57 Stat. 380; 44 U. S. C. 366). These records include classified, administratively controlled and unclassified materials.

§ 133.2 *Availability of classified and administratively controlled materials.* Materials classified or bearing an administrative control designation will not be made available outside the Department, except under the conditions outlined in the Security Regulations of the Department.

§ 133.3 *Request for use of records by officials of the United States Government other than officers of the Department of State.* Request from other Federal agencies for access to and use of Departmental records for official purposes shall generally be received and coordinated by the appropriate liaison or functional office concerned. For example, all requests from congressional committees or individual Members of Congress for documents, regardless of subject matter, should be referred to the Office of the Assistant Secretary for Congressional Relations; requests for information on personnel records should be referred to the Office of Personnel; and security questions to the Office of Security.

§ 133.4 *Use of records by persons who are not officials of the United States Government*—(a) *Chronological periods with respect to research use of records*—(1) *Records of the open period.* The records of the Department prior to January 1, 1930, with certain exceptions such as records relating to the citizenship of individuals, unsettled claims, and Foreign Service inspection and personnel records, are open for inspection by the general public at the National Archives, subject to its regulations.

(2) *Records of the limited-access period.* Use of records of the Department between the open period and January 1, 1942, shall be confined to qualified researchers and other persons demonstrating a legitimate need for information contained in such records.

(3) *Records of the closed period.* Records of the Department dated January 1, 1942 or later will be regarded as closed and the larger portion will not be made available to non-official researchers. Some exceptions, however, may be made for:

(i) Qualified researchers undertaking broad studies regarded by the Department as desirable in the national interest; and studies of more limited scope involving non-sensitive and generally unclassified materials.

(ii) Inquirers seeking specific information of a non-sensitive nature.

(b) *Restrictions on use of records of limited-access and closed periods.* (1) Classified and administratively controlled telegrams less than 10 years old may be reviewed only in paraphrased versions by persons who are not employees of the Executive Branch of the Federal Government.

(2) Certain types of documents will be withheld if their publication would be contrary to the public interest, such as: (i) Materials which might tend to embarrass the United States Government in its conduct of foreign relations; (ii) Materials embodying opinions or comments which might give needless offense to other nationalities or to individuals at home or abroad; and (iii) Materials which would violate the confidence reposed in the Department or in the Foreign Service.

(3) Records relating to the citizenship of individuals and to unsettled claims, Foreign Service inspection reports, personnel records, and a few other categories are not generally available for nonofficial research.

(4) Classified documents originating with Federal agencies other than the Department of State or those of interagency committees or working groups may not be used by a private researcher unless the Historical Division has obtained the approval of the originating agency or agencies concerned.

(5) Papers, with the possible exception of captured enemy or ex-enemy documentation, originated by a foreign government and not yet released for publication by that government, ordinarily will not be made available to inquirers without the consent of the government concerned.

(c) *Application for use of records of the limited-access and closed periods*—(1) *Form of application.* The application shall be made on Department of State form DS–1192 and submitted to the Chief of the Historical Division. This application shall contain a description of the nature and scope of the proposed study and the types of records required (requests shall be confined, in so far as possible, to particular documents or materials on specific topics); information concerning the applicant's citizenship, academic background, and research experience; and a list of professional references. The application of an alien researcher shall be accompanied by a recommendation from the chief of mission in Washington representing the country to which the applicant owes allegiance.

(2) *Departmental action on application.* The Chief of the Historical Division shall confer with the appropriate officers of the Department, when necessary, and determine the action to be taken, the nature and extent of access to be granted, and any special restrictions to be placed on the use of the information. The Historical Division shall then notify the applicant whether the desired records can be made available within policy and security restrictions, and make any necessary arrangements for the applicant to consult official files subject to such conditions as may be decided upon.

(d) *Liberal interpretation of regulation.* It is the policy of the Department of State to make its records available to private individuals and to Government officials engaged in private research as liberally as possible, consistent with the security of the nation, the maintenance of friendly relations with other nations and the efficient operation of the Department.

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