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The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1969, and specifies how they are affected.

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 534—PAY UNDER OTHER SYSTEMS

Miscellaneous Amendments

Correction

In F.R. Doc. 69-1117 appearing at page 1303 of the issue for Tuesday, January 28, 1969, delete paragraph 2 in its entirety and substitute the following therefor:

2. Section 534.202(b) is amended to add the maximum stipends for student interns, Department of Health, Education, and Welfare, effective June 10, 1966; and the maximum stipends for student interns, Department of the Army, effective December 15, 1968, as set out below.

Title 7—AGRICULTURE

Chapter I—Consumer and Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 26—GRAIN STANDARDS

Subpart A—Regulations

Statement of considerations. On November 27, 1968, there was published in the FEDERAL REGISTER (33 F.R. 231, Part II) a notice of proposed rule making to amend the regulations (7 CFR 26.1–26.88) under the U.S. Grain Standards Act of 1916, as amended, and amendments thereof made by the Act of August 15, 1968 (7 U.S.C., and Supp. III, 71 *et seq.*).

Interested parties were given until December 27, 1968, to submit written data, views, or arguments. In total, 20 responses were received regarding the proposed regulations. The comments in the responses were quite varied. Several which pertained to needed clarification and needed flexibility have been adopted. Some suggestions were not adopted because they were already included in the regulations or would have required changes in the Act. Some of the suggestions were detailed in nature and will be adopted in the instructions issued by the Administrator.

Certain suggestions which favored local inspection systems were not adopted because they were not compatible with the uniform nationwide inspection system.

Several adverse comments were received regarding the retention of grain file samples. Some favored the retention of ship composite samples, but opposed the retention of ship sublot samples. The file sample retention plan and the retention periods, as adopted, are based, in large part, on the recommendations of national and local grain trade groups. They are primarily designed to meet the needs of the different segments of the grain trade, and secondarily to meet the needs of the Department of Agriculture.

An appeal inspection on shiplot grain, if requested after loading, can, in general, be based only on the ship sublot samples. In addition, an evaluation by supervisors of inspection performance on shiplot grain can best be performed on sublot samples instead of composite samples. The trade has an apparent need, at least in certain circumstances, for both sublot and composite samples.

Several comments were received questioning the Department's authority for mandatory withholding of inspection service because of "loading conditions." In practice, there are circumstances which warrant the withholding of an official inspection if the grain is not accessible for inspection or if the loading conditions are such as would contaminate the grain or otherwise lower the grade, quality, or condition of the grain. Guidelines are needed for determining when grain is to be considered not accessible for inspection and when loading conditions would adversely effect the grade, quality, or condition of the grain. Such guidelines will be developed after consultation with the grain trade.

Several comments were received questioning the limitations placed on the assessment and use of inspection fees by official inspection agencies, on the grounds that the limitations were too detailed and too involved. No comments were received objecting to the provision that the fees shall be nondiscriminatory and reasonable. After reviewing the comments, it has been concluded that the limitations can be simplified and shortened.

The Department is concerned about the assessment and use of inspection fees because (1) it is mandatory that certain grain be officially inspected; (2) designated official inspection agencies are, in effect, given an exclusive franchise to perform all official inspections in a given area; and (3) the fees for grain inspection services amount to millions of dollars annually.

In order that the terms "nondiscriminatory" and "reasonable" be meaningful, it is necessary that the use of fees for nonrelated purposes be prohibited. Most official inspection agencies are nonprofit organizations. The primary consideration in both profit and nonprofit agencies is whether the fees are related to the cost of the inspection services. If inspection fees are used for nonrelated purposes, they are discriminatory and unreasonable for nonmembers and for out-of-town and out-of-State shippers because the nonmembers and out-of-town and out-of-State shippers pay the fees, but do not receive the benefits from the nonrelated activities.

The final regulations on fees do not specifically cover all situations as the rule making proposal was designed to do. It is anticipated that the level of the fees assessed by agencies will be self-policing and self-regulating. If the level of fees is considered by the trade to be discriminatory or unreasonable, the grain trade is expected to bring such fees to the attention of the Department so a determination can be made on an individual basis whether the fees are, in fact, discriminatory or unreasonable.

The provisions governing limited licenses to seasonal samplers and technicians have been deleted because the provisions were duplicative of other provisions in the regulations. Certain additional changes have been made to achieve clarity, consistency, and conformity with the Act. Several new definitions have been added to clarify words or phrases used in the regulations. The "General Provisions for Original Inspections, Reinspections, and Appeal Inspections," have been moved ahead of "Original Inspections," "Reinspections," and "Appeal Inspections."

The revised regulations will implement the amended Act by:

1. Prescribing the inspection services that will be available under the Act.

2. Prescribing who will perform the services, and how and where the services may be obtained.

3. Prescribing the inspection records that inspection agencies and licensees will be expected to maintain.

4. Making provisions (other than rules of practice) for issuing, renewing, terminating, canceling, suspending or revoking licenses of grain samplers, grain technicians, and grain inspectors, and designating official inspection agencies and canceling, transferring or revoking the designations; and similar matters. It is planned that proposed rules of practice will be published at a later date.

5. Prescribing provisions to protect the integrity of the inspection service.

Except as provided in this paragraph, the regulations will become effective 30 days after publication in the FEDERAL REGISTER. Additional time will be needed by the official inspection agencies and by the Department of Agriculture to implement the provisions concerning tolerances, file samples, inspection certificate forms, designation of inspection areas, and volume-of-inspection reports. These provisions become effective as stated in the paragraph "Effective date" near the end of this document.

Pursuant to the authority contained in the U.S. Grain Standards Act of 1916, as amended, and amendments thereof

made by the Act of August 15, 1968 (7 U.S.C., and Supp. III, 71 et seq.) the Part 26 regulations (7 CFR 26 et seq.) are hereby amended to read as follows:

AUTHORITY: The provisions of this subpart A issued under sec. 8, 39 Stat. 485, 7 U.S.C. 84; and sec. 16, 82 Stat. 768, 7 U.S.C. 87e; 29 F.R. 16210, as amended; 33 F.R. 10750.

Subpart A—Regulations

DEFINITIONS

§ 26.1 Meaning of words.

(a) *Construction of words.* Words used in the singular form in this subpart shall be deemed to import the plural, and vice versa, as the case may be.

(b) *Definitions.* For the purposes of this subpart, unless the context otherwise requires, the following terms shall be construed, respectively, to have the meanings given for them below; and other terms defined in the Act shall be deemed to have the same meanings when used in this subpart.

(1) *The Act.* The U.S. Grain Standards Act, as amended August 15, 1968 (Public Law 90-487, 82 Stat. 761, 7 U.S.C. 71, 74-79,84-87, 87a-87h).

(2) *Administrator.* The Administrator of the Consumer and Marketing Service or any other officer or employee of the Department of Agriculture to whom authority is lawfully delegated to act in his stead.

(3) *Appeal inspection.* Review inspection service performed by official inspection personnel employed by the Department of Agriculture, or licensed under a contract with the Department of Agriculture. This term includes a Board appeal inspection as appropriate. An appeal inspection shall not be considered an original insection or a reinspection.

(4) *Applicant.* An interested person who requests an official inspection, and is assessed the fees and charges, if any, for the inspection.

(5) *Board of Appeals and Review.* A board of grain inspection supervisors duly qualified and designated as such under the regulations.

(6) *Business day.* For the purpose of the regulations, the term "business day" shall not be deemed to include Saturdays, Sundays, or national or locally recognized holidays.

(7) *Cargo shipment.* The term "cargo shipment" shall mean grain shipped via waterborne carrier and shall include, but not be limited to, grain loaded aboard oceangoing ships, barges, and tankers; lake vessels, river barges, bay boats; and other waterborne carriers. It shall not include grain loaded aboard railroad cars, trucks, trailers, and similar land carriers for shipment aboard a waterborne carrier.

(8) *Circuit.* A geographical portion of the United States assigned to a field office. (A circuit includes one or more designated inspection areas.)

(9) *Container.* A railroad car, barge, truck, or other means of conveyance of

grain in bulk, or a bin, other storage space, bag, box, or other receptacle for grain.

(10) *Consumer and Marketing Service.* The Consumer and Marketing Service of the Department of Agriculture.

(11) *Date of inspection.* The term "date of the inspection" shall be deemed to mean the day on which an inspection determination is completed as shown in the detailed work records in accordance with § 26.56. Each day shall be deemed to end at midnight, local time, unless otherwise approved in specific cases by the Administrator.

(12) *Designated inspection area.* A geographical portion of the United States assigned under the regulations to an official inspection agency for the conduct of official inspections. (A designated inspection area contains one or more designated inspection points.)

(13) *Designated inspection point.* A city, town, or other location assigned under the regulations to an official inspection agency for the conduct of official inspections, and within which the official inspection agency or one or more of its licensed inspectors is located.

(14) *District.* A geographical portion of the United States assigned to a district office. (A district includes two or more circuits.)

(15) *District office.* A field office of the Grain Division designated by the Administrator as the headquarters of a district. (When required by the context: The district office in the district in which the field office, or the official inspection agency, or the official inspection personnel, or the grain is located, or in which the grain was inspected.)

(16) *Federal Register.* The official U.S. Government publication issued under the Act of July 26, 1935, as amended (44 U.S.C. 301 et seq.).

(17) *Field office.* A field office of the Grain Division designated by the Administrator as the headquarters of a circuit. (When required by the context: The field office in the circuit in which the official inspection agency, or the official inspection personnel, or the grain is located or in which the grain was inspected.)

(18) *Grain Division.* The Grain Division of the Consumer and Marketing Service.

(19) *Instructions.* The Grain Inspection Manual and other instructions issued by the Administrator to official inspection personnel. (Copies of such instructions are available upon request to the Administrator, C&MS, U.S. Department of Agriculture, Washington, D.C. 20250.)

(20) *Materially in error.* A difference in inspection results which is greater than would be expected on the basis of statistically sound principles.

(21) *Offgrade.* In lot inspections, a grade different than the grade of the grain in the major portion of the lot.

(22) *Official certificate.* Any form of official certification prescribed or approved by the Administrator under the regulations to show the results of an official inspection.

(23) *Official factors.* Grade factors specified in the official grain standards.

(24) *Official grade.* The grade of grain as determined by official inspection personnel under the official grain standards.

(25) *Official grain inspector.* Any person employed by an official inspection agency and licensed under the Act and regulations to perform official inspections within the United States, or any person employed by the Department of Agriculture and authorized under the Act and the regulations to perform official inspections within the United States or official inspections of U.S. grain in Canadian ports, and to certify to any interested person the official grade and other determinations of an official inspection.

(26) *Official grain sampler.* Any person licensed under the Act and regulations, or any employee of the Department of Agriculture who is authorized under the Act and regulations, to perform specified official sampling functions including but not limited to sampling, examining grain for condition, and checkweighing or checkloading sacks of grain, and to perform laboratory duties and related services, as specified in the license or authorization.

(27) *Official grain standards.* The U.S. standards for grain prescribed under the Act and set forth in Subpart B of this chapter.

(28) *Official grain technician.* Any person licensed under the Act and regulations, or any employee of the Department of Agriculture who is authorized under the Act and regulations, to perform specified official laboratory functions including but not limited to chemical analyses, mechanical tests or physical separations, and to perform sampling duties and related services, as specified in the license or authorization.

(29) *Official inspection certificate.* Any form of official certificate prescribed in the regulations to show the results of any official sample inspection under the regulations.

(30) *Official inspection function.* The term "official inspection function" means sampling, inspecting, examining, testing, grading, or any other procedure required in making any determination of the kind, class, grade, quality, or condition of grain under the official grain standards, or making any determination of the quantity of sacks of grain, or other facts relating to grain under other criteria approved by the Administrator, or certifying the results of such actions. It does not include activities described in § 26.75(b).

(31) *Original inspection.* Initial inspection service performed in the United States by official inspection personnel employed by official inspection agencies and licensed by the Department of Agriculture, or licensed under a contract with the Department of Agriculture; and initial inspection service performed in Canadian ports by official inspection personnel employed by the Department of Agriculture or licensed under a contract with the Department of Agriculture. An original inspection shall not be considered a reinspection or an appeal inspection.

(32) *Other criteria.* Any description of grain by kind, class, quality, condition, or other factors, or tests, approved by the Administrator under the Act, other than factors or tests identified in the official grain standards, and available for use by the grain industry.

(33) *Quantity of sacks of grain.* The amount of grain in one or more sacks.

(34) *Regulations.* The regulations under the Act in this part.

(35) *Reinspection.* Review inspection service performed in the United States by official inspection personnel employed by official inspection agencies and licensed by the Department of Agriculture, or licensed under a contract with the Department of Agriculture; and review inspection service performed in Canadian ports by official inspection personnel employed by the Department of Agriculture, or licensed under a contract with the Department of Agriculture. A reinspection shall not be considered an original inspection or an appeal inspection.

(36) *Respondent.* An interested person other than the applicant.

(37) *Sampling.* The act of obtaining samples of grain from a lot or lots of grain.

(38) *Statistical tolerance.* An allowance in inspection results which is based on statistically sound principles.

(39) *U.S. Grain.* Grain shipped from the United States and located in a Canadian port.

ADMINISTRATION

§ 26.3 Administrator.

The administrator is responsible for the general direction and supervision of the program under the Act and is authorized to take any action required by law or deemed by him to be necessary and proper to the discharge of the functions vested in the Secretary of Agriculture under the Act; including authority to delegate his authority to appropriate officers and employees; excluding specified functions reserved to other officials in the Department. The Administrator may in specific classes of cases waive for limited periods any provision of the regulations in order to permit appropriate and necessary action in the event of a national emergency or to permit experimentation so that new procedures, equipment, and handling techniques may be tested to facilitate definite improvements: *Provided*, That such waivers of the provisions of the regulations are not in conflict with the purposes or provisions of the Act. Provision for such waivers will be published in the regulations. The functions of the Administrator as described in the regulations will be performed in such manner as to effectuate the purposes of the Act by him or his delegate.

GENERAL PROVISIONS FOR ORIGINAL INSPECTIONS, REINSPECTIONS, AND APPEAL INSPECTIONS

§ 26.5 Inspection services.

(a) *General.* The regulations in this part provide for a national inspection system for grain. The purpose of the system is to promote the uniform and accurate application of the official grain standards and to provide such inspection services as may be required by the Act or desired by the grain industry, with the objective that grain in the United States may be marketed in an orderly manner and that trading in grain may be facilitated. The types and kinds of inspection services described in §§ 26.6, 26.25–26.31, 26.35–26.39, and 26.45–26.50 shall, insofar as practicable, be available under the Act and the regulations at all designated inspection points in the United States, and on U.S. grain in Canadian ports.

(b) *Unauthorized inspections.* The following inspection services, except as noted, are not authorized and cannot be performed under the Act: (1) The inspection of processed grain products and any agricultural commodity not covered by the official grain standards; (2) the inspection of grain on the basis of unofficial standards or other criteria not approved by the Administrator; or (3) the testing of grain screenings: *Provided*, That if a sample of screenings appears to consist of at least 50 percent of grain for which standards have been established, and not more than 50 percent of other material, the sample may be examined to determine whether the grain does, in fact, conform to the requirements established in the official standards for the grain, and for each such screenings inspection, an official certificate shall be issued: *Provided*, That if the grain does not conform to the requirements in the official standards, the certificate shall show the statement "Not Standardized Grain" and the reason or reasons the grain does not conform to the standards.

(c) *Inspections under other authorities.* The inspection services described in paragraph (b) of this section may, upon request, be performed by official inspection personnel if authorized to perform them under other laws: *Provided*, That the performance of these services does not result in conflicts of interests on the part of the official inspection personnel, or preclude the official inspection personnel from performing inspection services requested by applicants under the Act and the regulations, or discredit the official inspection service.

§ 26.6 Kinds (scope) of official inspection services.

(a) *General.* The kinds of official inspection services available under the Act and the basis for performing each service are those shown in paragraphs (b) through (k) of this section.

(b) *Official sample—lot inspection.* (1) This inspection shall consist of (i) the official sampling of an identified lot of grain by official inspection personnel (other than a licensed employee of a grain elevator or warehouse); (ii) the inspection of the grain in the sample by official inspection personnel for official grade, or official factors, or under other criteria, or any combination thereof, in accordance with the regulations and the request for inspection; and (iii) issuance by official inspection personnel of an official inspection certificate in accordance with §§ 26.58 and 26.59.

(2) If the grain is inspected for official grade or official factors, the inspection shall be made in accordance with the official grain standards. If the grain is inspected under other criteria, the inspection shall be made in accordance with the methods or procedures prescribed in the instructions or approved in specific cases by the Administrator.

(c) *Type sample—lot inspection.* (1) This inspection shall consist of (i) the submitting of a clearly identified type sample of grain by or for an applicant to the official inspection agency or to the field office; (ii) the forwarding, by the official inspection agency or the field office, of a representative portion of the type sample to a person identified by the applicant as a prospective buyer; (iii) the official sampling, upon request of the applicant, of an identified lot of grain by official inspection personnel (other than a licensed employee of a grain elevator or warehouse); (iv) the comparison of the type sample with the official sample; and (v) the issuance by official inspection personnel of an official inspection certificate in accordance with §§ 26.58 and 26.59 and subparagraph (3) of this paragraph (c).

(2) If the grain is inspected for official grade or official factors, or a combination thereof, the inspection shall be made in accordance with the official grain standards. If the grain is inspected under other criteria, including appearance criteria, the inspection shall be made in accordance with methods or procedures prescribed in the instructions or approved in specific cases by the Administrator.

(3) If the inspection request is for an inspection for general appearance, official grade, and official factors, with or without other criteria, the certificate shall show in addition to the official grade and other results of the inspections, the following information: "The appearance of the grain in the above-identified lot is considered (better than) (equal to) (inferior to) the appearance of the grain in the type sample identified as _____. The results of the inspection of the grain in the lot, as shown above, are considered within the expected variation of the results of the inspection of the grain in the type sample, except as follows: Lot results which are better: _____; Lot results which are inferior _____."

(4) If the inspection request is for a less comprehensive kind (scope) of inspection, the statement shall be modified accordingly. The certificate shall show such other statements of fact as may be prescribed in the instructions or approved in specific cases by the Administrator.

(d) *Warehouseman's sample—lot inspection.* (1) This inspection shall consist of (i) the official sampling of an identified lot of grain by a licensed employee of a grain elevator or warehouse; (ii) the submitting of the sample and a completed sampling report on a form approved by the Administrator, by or for the applicant to any official inspection agency; (iii) the inspection of the grain in the sample by official inspection personnel for official grade or official factors, or under other criteria, or any combination thereof, in accordance with the regulations and the request for inspection; and (iv) issuance by official inspection personnel of an official inspection certificate in accordance with §§ 26.58 and 26.59 and subparagraph (3) of this paragraph.

(2) If the grain is inspected for official grade or official factors, the inspection shall be made in accordance with the official grain standards. If the grain is inspected under other criteria, the inspection shall be made in accordance with the methods and procedures prescribed in the instructions or approved in specific cases by the Administrator.

(3) Each certificate for a warehouseman's sample lot inspection shall show the name of the licensed employee and the number of the contract entered into by the licensed employee under § 26.90.

(e) *Submitted sample inspection.* (1) This inspection shall consist of (i) the submitting of a clearly identified sample of grain by or for an applicant to any official inspection agency; (ii) the inspection of the grain in the sample by official inspection personnel for official grade, or official factors, or under other criteria, or any combination thereof, in accordance with the regulations and the request for inspection; and (iii) issuance by official inspection personnel of an official certificate in accordance with §§ 26.58 and 26.59 and subparagraph (5) of this paragraph.

(2) Each submitted sample may be accompanied or supported by a completed application for inspection. (Instructions and application forms for use in obtaining submitted sample inspections may be obtained from official inspection agencies.)

(3) Each submitted sample should be of sufficient size to enable performance of the service requested. If the sample is not of sufficient size as determined by the official inspection personnel who are to perform the inspection, such personnel may (i) perform a partial inspection and issue a partial inspection certificate, or (ii) dismiss the request in accordance with the provisions of § 26.10.

(4) If the grain is inspected for official grade or official factors, the inspection shall be made in accordance with the official grain standards. If the grain is inspected under other criteria, the inspection shall be made in accordance with the methods or procedures prescribed in the instructions or approved in specific cases by the Administrator.

(5) Each certificate for a submitted sample inspection shall show, in the space provided for remarks, the following statement: "The above results are assigned only to the grain in the submitted sample herein described, and 'not' to the

grain from which the sample may have been taken."

(f) *Quality information inspection (ship loading or unloading only).* (1) This inspection shall consist of the following operations by official inspection personnel: (i) making frequent and periodic examinations of grain being loaded aboard or discharged from a ship, for official grade or official factors, or under other criteria, or any combination thereof, in accordance with the regulations and the request for inspection; (ii) promptly notifying the applicant, either orally or by official inspection memoranda, of the results of the examinations; (iii) issuing to the applicant, upon the completion of the inspection, a copy of a ship loading log showing the results of the examinations; and (iv) issuing an official certificate in accordance with §§ 26.58 and 26.59.

(2) If the grain is inspected for official grade or official factors, the inspection shall be made in accordance with the official grain standards. If the grain is inspected under other criteria, the inspection shall be made in accordance with the methods or procedures prescribed in the instructions or approved in specific cases by the Administrator.

(3) A quality information inspection may be made as a separate kind of inspection, or it may be made in conjunction with one or more other kinds of inspections.

(4) For the definition for "ship," see § 26.14(b).

(g) *Checkweighing or checkloading sacked grain.* (1) An inspection for checkweighing shall consist of the following operations by official inspection personnel: (i) Weighing a representative number of sacks of grain selected from a lot on a proportionate or random basis in accordance with instructions; (ii) determining the estimated total gross, tare, and net weights, or the estimated average gross or net weight per filled sack, or the estimated range in gross or net weights per filled sack, in accordance with the regulations and the request for inspection; and (iii) issuing an official certificate in accordance with §§ 26.58 and 26.59 and subparagraph (3) of this paragraph.

(2) An inspection for checkloading shall consist of the following operations by official inspection personnel: Making a stowage examination in accordance with paragraph (i) of this section; making a checkweighing determination in accordance with subparagraph (1) of this paragraph; making a continuous count or an estimate of the number of filled sacks of grain as they are loaded aboard an identified means of conveyance; if practicable, affixing seals to the railroad car or other means of conveyance; and issuing an official certificate in accordance with §§ 26.58 and 26.59 and subparagraph (3) of this paragraph. In no case shall the results of the checkloading be based, in whole or in part, on a shipper's "load and count."

(3) A certificate for checkweighing or for checkloading shall show the information determined pursuant to the request for inspection, and may contain a statement describing the sacks, the condition of the sacks, and the markings, if any, on the sacks.

(4) A checkweighing or checkloading inspection may be made as a separate kind of inspection, or it may be made in conjunction with one or more other kinds of inspection.

(h) *Sampling.* (1) The sampling service shall consist of the following operations by official inspection personnel: (i) Obtaining a representative sample from an identified lot of grain; (ii) as requested, dividing the sample into representative portions and sealing the portions in a manner prescribed in the instructions; (iii) forwarding the sample or the portions in accordance with the request for inspection; and (iv) issuing an official certificate in accordance with §§ 26.58, 26.59, and subparagraph (2) of this paragraph (h).

(2) Each certificate shall show the statement "Official Sample", and the date(s) of sampling, the method of sampling, the name of the sampler, and the quantity of grain in the sample in terms of volume or weight. The certificate may also show related information, including but not limited to, the kind and condition of the sacks, and the markings, if any, on the sacks.

(3) A copy of each certificate shall be enclosed with each portion of the sample.

(i) *Stowage examination (for grain).* (1) This inspection shall consist of the following operations by official inspection personnel: (i) Visually examining an identified stowage space or other container for the presence of insects or other vermin; moisture; foreign material; residue from previous cargoes; loose rust, scale, whitewash, or cement; commercially objectionable odor; and the presence of other conditions which could contaminate the grain, or otherwise lower the quality of the grain to be loaded; and (ii) issuing an official certificate in accordance with §§ 26.58, 26.59 and subparagraph (3) of this paragraph.

(2) A stowage examination may be made as a separate kind of inspection, or it may be made in conjunction with one or more other kinds of inspection. However, a stowage examination is required in the case of export grain and other lots of grain which are inspected at the time of loading into a means of conveyance on the basis of official samples obtained by official inspection personnel under paragraphs (b) and (c) of this section.

(3) Each certificate for stowage examination shall show the following or substantially equivalent statements: "Stowage space examined and found to be substantially clean and dry, and ready to receive grain on the above date." or "Stowage space examined and found not ready to receive grain on the above date because of _____." The certificate may also show closely related information which is (i) known to be true to the person issuing the certificate; (ii) of use in the merchandising of U.S. grain; (iii) not inconsistent with the Act or the regulations; and (iv) is approved by the Administrator under § 26.64.

(j) *Other closely related services.* Grain may be inspected for any other determination which is authorized by the Act and regulations and is approved by the Administrator under § 26.7. The inspection shall consist of making such determinations as are necessary to enable the official inspection personnel to perform the official inspection functions requested by the applicant, and the issuance of an official certificate in accordance with §§ 26.58 and 26.59.

(k) *A combination of inspection services.* A combination of inspection services may be provided for grain, in which case the inspection and certification shall be in accordance with the methods and procedures prescribed in the instructions or approved in specific cases by the Administrator for each component service. Only one official certificate shall be issued for a combination of inspection services performed concurrently, except as otherwise provided in § 26.58(a).

§ 26.7 Inspections under other criteria.

(a) *General.* Upon request by an applicant, grain may be officially inspected under criteria, other than the official grain standards, approved by the Administrator. In approving such other criteria, consideration will be given to a showing of need for the service, whether there is a practicable and an approved method for making the needed determinations, whether inspection service under the criteria can be made readily available in the more active designated inspection areas and elsewhere where it is desired, and whether the determinations required by the criteria can be made with a satisfactory degree of accuracy. A list of such other criteria which have been approved by the Administrator may be obtained from the Grain Division or any official inspection agency, field office, district office, or the Administrator.

(b) *Scope of inspection.* The scope of inspection service under other criteria shall be in accordance with the provisions of § 26.6. Chemical tests and laboratory analyses required for determinations under such criteria may be performed only by official inspection personnel who are licensed or authorized under the Act to perform the tests or analyses. Such personnel may be employed by an official inspection agency, or be employed by the Department of Agriculture, or perform the services under a contract with the Department of Agriculture.

§ 26.8 Sampling provisions and requirements.

(a) *Obtaining official samples.* Subject to limitations in § 26.110(d), official samples of grain may be obtained by licensed employees of official inspection agencies, authorized employees of the Department of Agriculture, licensed employees of grain elevators or warehouses, and other individuals who are licensed to sample grain under a contract with the Department of Agriculture.

(b) *Representative sample.* No official sample shall be deemed representative of a lot of grain unless the sample (1) has

been obtained by official inspection personnel licensed or authorized to sample grain; (2) is of the size prescribed in the instructions; and (3) has been obtained, handled, and submitted in accordance with methods and procedures prescribed in the instructions or approved in specific cases by the Administrator. A sample which fails to meet the requirements of this paragraph may, upon request of the applicant, be inspected as a submitted sample in accordance with § 26.6(e).

(c) *Submitted samples.* Submitted samples may be obtained by or for any interested person. (Instructions for sampling grain may be obtained upon request to the Administrator.)

(d) *Original inspections.* Each original lot inspection for kind, class, grade, quality, or condition shall be made on the basis of an official sample obtained from the grain at the time and place it is offered for inspection. A lot inspection for an "in" movement of grain in domestic commerce may, upon request of the applicant and subject to the grain being made accessible for sampling, be based on official samples obtained while the grain is at rest in the container, or during unloading, or after unloading and immediately after the initial elevation, in accordance with methods and procedures prescribed in the instructions or otherwise approved by the Administrator. Requirements for sampling export grain are prescribed in § 26.110(d).

(e) *Reinspections, appeal inspections.* Each lot reinspection or appeal inspection for kind, class, grade, quality, or condition shall be made on the basis of the most representative official sample(s) available or that can be obtained at the time of the reinspection or appeal inspection. The determination as to which sample(s) is most representative shall be made by the official inspection personnel performing the reinspection or appeal inspection.

(f) *Use of file samples.* (1) File samples which are retained by official inspection personnel, in accordance with the regulations and pursuant to the methods and procedures prescribed in the instructions or approved in specific cases by the Administrator, may be deemed representative for reinspections and appeal inspections: *Provided,* That (i) the samples have remained in the custody of the official inspection personnel who certificated the inspection in question or in the custody of the official inspection agency by which they were employed; and (ii) the official inspection personnel, who performed the inspections in question and the official inspection personnel who are to perform the reinspections or the appeal inspections, believe the samples were representative of the grain at the time of the inspection in question and that the quality or condition of the grain in the samples and in the lots has not changed since the time of the inspection in question.

(2) When a reinspection or an appeal inspection is based on a file sample, the certificate for the reinspection or the appeal inspection shall show the statement "Results based on official file sample."

(3) Upon request of the applicant, and if practicable, a new sample shall be obtained and examined as a part of a reinspection or appeal inspection.

(g) *Protecting samples.* Official inspection personnel shall protect official samples from manipulation, substitution, and improper or careless handling, which would deprive the samples of their representative character from the time of collection until the inspections are completed and the file samples have been discarded. Official inspection personnel shall give the same protection to submitted samples from the time of receipt by the official inspection personnel until the inspections are completed and the file samples have been discarded.

§ 26.9 Where and when inspection services may be obtained.

(a) *General.* Inspection services may be obtained to the extent that official inspection personnel are available to perform the services, as follows: (1) Original inspections may be obtained under §§ 26.25 through 26.29; (2) succeeding original inspections under § 26.30; (3) reinspections under §§ 26.35 through 26.39; (4) appeal inspections under §§ 26.45 through 26.49; and (5) appeal inspections by the Board of Appeals and Review under § 26.50.

(b) *Requests deemed under Act.* Each request submitted by an interested person to an official inspection agency, or to a field office, for inspection services for grain shall be deemed to be a request under the Act and the regulations, unless the request clearly states otherwise or the requested service is not authorized by the Act and the regulations.

(c) *Proof of agency.* If a request for an inspection service is filed by an agent of the applicant, the official inspection agency or the field office handling the inspection request may, if it deems necessary, require proof of the authority of the agent to file the request.

(d) *List of offices.* A list of the places where official inspection agencies, field offices, and district offices are located; and a list of the designated inspection areas and the circuits and districts in which they are located may be obtained by any interested person by calling or writing any official inspection agency, any field office, or any district office, or the Grain Division, Consumer and Marketing Service, Federal Center Building, Hyattsville, Md. 20782.

§ 26.10 When a request for inspection services may be withdrawn or dismissed.

(a) *Withdrawal.* A request for inspection may be withdrawn by an applicant at any time, subject to the provisions of paragraph (b) of this section.

(b) *Limitation.* No request for an inspection service may be withdrawn or dismissed after the results of the inspection have been released or have otherwise become known to the applicant or the respondents, or after the issuance of the official certificate for the inspection.

(c) *Grounds for dismissal.* A request for inspection services may be dismissed by the official inspection personnel (1) upon request of the applicant; or (2) if the request is for the inspection of grain for which standards have not been established under the Act, or if the official inspection agency, or in the case of U.S. grain in Canadian ports and appeal inspections, the field office, otherwise lacks jurisdiction under the Act or the regulations to handle the request; (3) if the request is not in compliance with the regulations; (4) if sufficient evidence is not available upon which to make an accurate and true determination; (5) if it is clearly not practicable to perform the requested inspection services; or (6) for reasons specified in §§ 26.11, 26.27, 26.30, 26.37, or 26.47 of the regulations or in section 10 of the Act.

(d) *Procedure for dismissal.* When an official inspection agency or field office proposes to dismiss a request for official inspection service, it shall inform the applicant of the proposed action and the reasons therefor and afford him an opportunity to demonstrate or achieve compliance with the regulations prescribing conditions for the availability of the service. Thereafter the agency or office shall determine whether the request should be dismissed: *Provided,* That a request for inspection may be dismissed for reasons specified in section 10 of the Act only in accordance with the rules of practice provided in Subpart C of this part;[1] *And provided further,* That a request for inspection for grain required to be inspected under section 5 of the Act may be dismissed only with the consent of the Administrator. When a request for inspection service is dismissed, notice of the dismissal shall be given in accordance with §§ 26.27, 26.30, 26.37, and 26.47 of the regulations or the rules of practice in Subpart C of this part.[1]

(e) *Expenses by agency.* Expenses, if any, incurred by an official inspection agency in connection with a request for inspection which has been withdrawn by the applicant, or dismissed or conditionally withheld by the official inspection agency, shall be payable by the applicant in accordance with the schedule of fees and charges published by the agency. For good cause shown, the requirement of this paragraph may be waived by the chief inspector of the official inspection agency.

(f) *Expenses by field office.* Expenses, if any, incurred by a field office in connection with a request for inspection which has been withdrawn by the applicant, or dismissed or conditionally withdrawn by the field office, shall be payable by the applicant in accordance with the rates shown for "checkloading, and other special services, and standby time," in §§ 26.71 and 26.72. For good cause shown, the requirement of this paragraph may be waived by the Administrator.

§ 26.11 Conditional withholding of inspection service.

(a) *Mandatory withholding.* (1) Official inspection shall be conditionally withheld by official inspection personnel for any grain which is to be loaded into a container if it appears to the official

[1] Such rules will be issued later.

inspection personnel that the grain is not accessible for inspection, except as provided in § 26.12(b), or that the loading conditions are such as would contaminate the grain or otherwise lower the grade, quality or condition of the grain. Standards for loading conditions shall be established by the Administrator after consultation with the grain trade.

(2) For the purpose of this paragraph, grain shall be deemed to be not "accessible for inspection" if it is offered for sampling or inspection under conditions which (i) are unduly hazardous to the health or safety of official inspection personnel, or (ii) do not permit an adequate and correct sampling, examination, or other determination for the requested inspection service. For example, grain will be deemed to be not accessible for inspection if it is in barges or similar waterborne carriers, and the barges and carriers are closed at the time the grain is offered for inspection and they cannot be readily opened by official inspection personnel.

(3) For the purpose of this paragraph, the term "loading conditions" shall be deemed to include, but not be limited to, conditions in (i) the loading elevator or warehouse; (ii) the shipping belt or conveyor and gallery; (iii) the loading spout; (iv) the pier area; (v) the deck or stowage area in the ship or other carrier; and (vi) the method and equipment used in loading the carrier.

(b) *Permissive withholding.* At the discretion of the official inspection personnel, an official inspection may be conditionally withheld if the applicant has failed to pay bills for prior inspection services; or the grain is offered for inspection outside of customary business hours, unless timely arrangements for overtime inspection have been made by the applicant with the official inspection personnel.

(c) *Procedure for withholding.* When an official inspection agency or field office proposes to conditionally withhold official inspection service under paragraph (a) or (b) of this section, notice of the proposed action and the reasons therefor shall be given to the applicant in accordance with §§ 26.27, 26.30, 26.37, and 26.47 and the applicant shall be afforded an opportunity to demonstrate or achieve compliance with the regulations prescribing conditions for the availability of the service. Thereafter, the official inspection agency or field office shall determine whether the inspection shall be conditionally withheld: *Provided,* That an inspection for grain required to be inspected under section 5 of the Act may be withheld only with the consent of the Administrator, in cases in which the agency or office has concluded that the applicant has not met the conditions involved.

(d) *Expenses.* Expenses, if any, incurred with respect to a conditional withholding of an inspection shall be paid by the applicant in accordance with paragraphs (e) and (f) of § 26.10.

§ 26.12 Method and order of inspection service.

(a) *General.* (1) All sampling, testing, grading, and related inspection services shall be performed by official inspection personnel pursuant to the regulations, and under such conditions and in accordance with such methods and procedures as may be prescribed in the instructions or approved in specific cases by the Administrator.

(2) Each inspection shall be based on the following items, and the items shall be considered in the order listed: (i) A careful inspection of the grain or a representative sample of the grain or a combination thereof; (ii) such tests or examinations as may be prescribed in the instructions or approved in specific cases by the Administrator; (iii) a review of the available results of previous inspection, if any; and (iv) such other pertinent information as may be available. In no case shall the results of a previous inspection be considered by official inspection personnel in making and recording initial findings for an inspection, but such results shall be given careful consideration by the personnel in making and recording their final determinations.

(b) *Partial inspections.* (1) Determinations which are based on a sampling and examination of the grain in a lot shall be based on a proportionate or random sampling and examination of the grain in the entire lot except as provided in § 26.13 (f) or (g).

(2) Determinations which are based on an examination, testing, or analysis of the grain in a submitted sample, shall be based on a careful and accurate examination, testing, or analysis. If a careful and accurate examination, testing, or analysis cannot be made because of inadequate sample size or similar conditions, the inspection request shall be dismissed, or a partial inspection certificate shall be issued as prescribed in § 26.13.

(c) *Showing source of sample.* If a sample obtained by or for another official inspection agency or another field office is used, the source of the sample shall be shown on the official inspection memoranda and the official grain inspection certificate for the inspection.

(d) *Recording receipt of documents.* A record showing the date of receipt of each document submitted by or for an applicant shall be made promptly at the time of receipt of the document by the official inspection agency or the field office conducting the inspection.

(e) *Order of service.* Inspection shall be performed, insofar as consistent with good management, in the order in which the requests for inspection are received. Precedence shall be given when necessary, to inspections required by section 5 of the Act. Precedence may be given to other kinds of services with the consent of the Administrator.

(f) *Conflict of interest.* No official inspection personnel shall perform, or participate in performing, an inspection on grain in which they are directly or indirectly financially interested: *Provided,* That a licensed elevator or warehouse employee may, upon request of the applicant, perform official sampling functions.

§ 26.13 Inspection of grain in railway cars, trucks, and barges for grade.

(a) *General.* The inspection for grade of bulk or sacked grain loaded aboard, or being loaded aboard, or discharged from a railway car, truck, trailer, river barge, bay boat, bin, warehouse, or other container (except those within § 26.14) shall be conducted in accordance with the provisions in this section, and such methods and procedures as may be prescribed in the instructions or approved in specific cases by the Administrator.

(b) *Multiple grade procedure.* (1) If the grain in a container is offered for inspection as one lot, and the grain is found to be uniform in condition, the grain shall be sampled, inspected, graded, and certificated as one lot. For the purposes of this section, the condition of grain shall be evaluated only on the factors heating, musty, and sour.

(2) If the grain in a container is offered for inspection as one lot, and the grain is found to be not uniform in condition by reason of the presence therein of a portion or portions of grain which is heating, musty, or sour, the grain in each portion shall be sampled, inspected, and graded as a separate lot. (If any portion of the lot is found to grade "weevily," the entire lot shall be graded "weevily.")

(c) *One certificate per railway car, truck or barge.* An official inspection certificate shall, except as provided in § 26.15 and paragraph (d) of this section, be issued for each railway car, truck, or barge. If the grain is not uniform in condition, the certificate shall show the approximate quantity in each portion, the location of each portion in the railway car, truck or barge, and the grade of the grain in each portion, in accordance with procedures prescribed in the instructions or approved in specific cases by the Administrator.

(d) *Bulkhead lots.* If the grain in a container is offered for inspection as two or more lots, and the lots are separated by a bulkhead or other partition, the grain in each lot shall be sampled, inspected, and graded as a separate lot in accordance with paragraphs (a) and (b) of this section. An official certificate shall be issued for each lot inspected. Each certificate shall show the term "Bulkhead Lot", the approximate quantity of grain in the lot, the location of the lot in the container, and the grade or grades of the lot, in accordance with instructions or procedures prescribed or approved in specific cases by the Administrator.

(e) *Special multiple grade procedure.* In addition to the multiple grade procedure provided by paragraph (b) of this section, upon request by an applicant, a lot may be multiple graded by reason of the presence therein of a material portion or portions of grain which are distinctly different in kind, class, quality, or specified factors. In such case, the sampling,

inspection, grading, and certification of the grain shall be performed in accordance with the applicable provisions of paragraphs (a) through (d) of this section and in accordance with methods and procedures prescribed in the instructions or approved in specific cases by the Administrator. For the purpose of this paragraph only, a portion which represents 10 percent or more of the lot shall be considered a material portion, and a difference in quality of two or more grades, or an equivalent difference, shall be considered to be a distinct difference.

(f) *Bottom not sampled.* If bulk grain is offered for inspection as it is at rest in a container, and the grain is fully accessible for sampling in an approved manner, except that the grain is in such a condition or of such depth that the bottom of the container is not reached throughout the sampling of the grain, the grain shall be sampled as thoroughly as possible with an approved probe, and shall be inspected, graded, and certificated in accordance with the provisions of paragraphs (b) through (e) of this section, except that the official certificate shall be qualified to show the estimated average depth of the grain sampled and the statement "Bottom Not Sampled", as follows: "Top _____ feet sampled. Bottom Not Sampled." For the purpose of the regulations, such an inspection shall not be deemed to meet the inspection requirement of section 5 of the Act for export grain.

(g) *Partial inspection—heavily loaded.* (1) If bulk or sacked grain is offered for inspection as it is at rest in a container, and it is loaded in such a manner that it is possible to secure only a door probe, shallow probe, door sack probe, or surface sack probe sample or samples of the lot or the grain is not trimmed, or otherwise does not have a reasonably level surface, the container shall be considered to be "heavily loaded," and the request for inspection may be dismissed or a partial inspection may be made: *Provided*, That if the request is for the inspection of an "out" movement, the request shall be dismissed on the ground that the grain is not accessible for a correct "out" inspection.

(2) If a partial inspection is made, the grain shall be sampled as thoroughly as possible with an approved probe, and shall be inspected, graded, and certificated in accordance with the provisions of paragraphs (a) through (d) of this section, except that a partial inspection certificate shall be issued. The certificate shall show the statement "Partial Inspection—Heavily Loaded" and the statement "See reverse side", in the space provided for remarks; and on the reverse side of the certificate the type of sample or samples obtained shall be described as door probe, shallow probe, door sack probe, or surface sack probe samples; and in the case of sacked grain, the approximate number of sacks accessible for sampling shall be stated.

(3) A request for a reinspection or for an appeal inspection from an inspection of grain in a "heavily loaded" container shall be dismissed unless the grain is found to be accessible for sampling, or is made fully accessible for sampling, for the reinspection or the appeal inspection.

(4) (i) For the purposes of this paragraph door-probe sample means a sample taken with an approved bulk grain probe from a lot of bulk grain which is loaded so close to the top of the container that it is possible to insert the probe only in the grain in the vicinity of the door or hatch of the railway car, the tailgate or hatch of the truck or trailer, or the hatch of the barge, or in a similarly restricted opening or area in the container in which the grain is located.

(ii) Shallow-probe sample means a sample taken with an approved bulk grain probe from a lot of bulk grain which is loaded so close to the top of the container that is is possible to insert the probe in the grain at the prescribed locations, but only at an angle greater or more obtuse from the vertical than the angle prescribed in the instructions.

(iii) Door-sack probe sample means a sample taken with an approved sack grain probe from a lot of sacked grain which is loaded so close to the top of the container that it is possible to insert the probe only in the grain in the sacks in the vicinity of the door or hatch of the railway car, the tailgate or hatch of the truck or trailer, or the hatch of the barge, or in a similarly restricted opening or area in the container in which the sacks are located.

(iv) Surface-sack probe sample means a sample taken with an approved sack grain probe from a lot of sacked grain which is so loaded or placed that it is possible to insert the probe only in the grain in the sacks in the upper portion, sides, or ends of the lot.

(5) No "partial inspection—heavily loaded" inspection certificate shall be issued for any inspection other than the inspection described in this paragraph (g), and § 26.14(j).

(h) *Part lots.* (1) If a portion of the grain in a container is removed, the grain which is removed and the grain remaining in the container shall, for the purpose of the regulations, be considered separate lots. If an inspection is desired on either portion, the grain shall be sampled, inspected, graded, and certificated in accordance with paragraphs (a) through (e) of this section, except that a "part-lot" inspection certificate shall be issued. The certificate for the grain remaining in the container shall show the statements "Partly unloaded; results based on portion remaining in _____"; the term "Part Lot" following the quantity information; the identification of the container; and the identification of the part lot substantially as follows: "Est. ¼ Car, Brake End."

(2) The certificate for the grain removed from the container shall show the statement "Part Lot. Results based on portion removed from _____"; the term "Part Lot"; and if the grain is sampled as it is being unloaded from the container, the identification of the former container substantially as follows: "Ex-Car _____" or "Ex-Barge _____", as applicable. If the grain removed from the container was not sampled as it was unloaded from the container, the certificate may show the statement "Applicant states grain is ex-car _____" or "Applicant states grain is ex-barge _____", as applicable.

(i) *Identification for compartmented cars.* The identification for a part of a compartmented car shall, in the absence of readily visible markings on the car, be stated in terms of the location of the grain in a compartment or bay, with the first bay at the brake end of the car being identified as B–1, and the remaining compartments or bays being numbered consecutively towards the no-brake end of the car.

§ 26.14 Inspection of grain in ships.

(a) *General.* The inspection for grade of bulk or sacked grain loaded aboard, or being loaded aboard, or discharged from a ship shall be in accordance with the provisions in this section, and such methods and instructions as may be prescribed in the instructions or otherwise approved by the Administrator.

(b) *Definitions.* For purposes of this section the term "ship" means all oceangoing ships, barges, and tankers; lake vessels; and ships of similar or larger capacity.

(1) The term "reasonably continuous operation" shall be construed to include inactive intervals of not more than 88 consecutive hours: *Provided*, That the ship does not leave the designated inspection point or port in which the inspection is being performed. Upon request of the applicant, the statement "Loaded under continuous official inspection" may be shown on the official inspection certificate when the conditions of this section are met.

(2) The term "material portion" means a portion which is considered significant under a sampling plan prescribed in the instructions on the basis of approved statistical principles after consultation with the grain trade: *Provided*, That if the applicant has been informed by official inspection personnel or otherwise knows the quality of the grain prior to loading the grain on a ship, any portion of "off-grade" grain which is of an inferior grade in comparison with the grade of the grain in the balance of the lot shall be deemed to be a material portion.

(c) *Grain uniform in grade.* The grain in each lot offered for inspection shall be examined thoroughly for uniformity of grade. If the grain is found to be uniform in grade, and is loaded aboard or discharged from the ship in a reasonably continuous operation, the grain shall be sampled, inspected, graded, and certificated as one lot. (The requirements of this paragraph and paragraph (d) of this section with respect to reasonably continuous loading or discharge shall not apply to grain which is at rest in a ship when the grain is offered for an inspection.)

(d) *Grain not uniform in grade.* If the grain in a lot is found to be not uniform in grade because of the presence therein of a material portion or portions

of grain of different grades, or if the grain is not loaded aboard or discharged from the ship in a reasonably continuous operation, the grain in each portion, and the grain which is loaded aboard or discharged from the ship at different times shall, except as provided in paragraph (f) of this section, be sampled, inspected, graded, and certificated as a separate lot.

(e) *Certification of grain not uniform in grade.* If the grain in a lot is found to be not uniform in grade under paragraph (d) of this section, the cargo inspection certificate for each lot shall show (1) the grade of the lot; (2) a statement that the grain has been loaded on board with other grain; (3) the grade, location, and approximate quantity of the other grain; and (4) such other information as may be required by the regulations and the instructions or approved in specific cases by the Administrator. (The requirements of subparagraph (2) of this paragraph shall not apply to grain which is inspected as it is being discharged from a ship.)

(f) *Grain not uniform because of better grade.* (1) If the grain in a lot is found to be not uniform in grade, because of the presence therein of a material portion or portions of grain of the same kind but of a better or superior grade in comparison with the grade of the grain in the balance of the lot, the requirements of paragraph (d) of this section with respect to a material portion or portions of a different grade may, upon request of the applicant for inspection, be waived by the official inspection personnel performing the inspection.

(2) Each waiver shall be subject to the following requirements: The material portion or portions may not constitute more than 40 percent of the lot. If the grade of the material portion or portions is more than one grade, or more than the equivalent of one grade, better than the grade of the grain in the balance of the lot, or if the material portion or portions constitute more than 20 percent, but not more than 40 percent of the lot, the official certificate for the lot shall show (i) the average grade for the lot; (ii) that the lot covered by the certificate includes grain of another grade without separation; (iii) the grade, location, and approximate quantity of the grain of better or superior grade; and (iv) such other information as may be required in the instructions or approved in specific cases by the Administrator.

(g) *"Weevily" grain.* If the grain in a lot is offered for inspection as it is being loaded aboard a ship, and the grain, or a portion of the grain, is found to grade "weevily" because of insect infestation, the applicant shall be promptly notified and shall have the option of (1) continuing loading or (2) treating the grain which graded "weevily" for the purpose of destroying the insects, subject to subsequent examination by official inspection personnel, after a time interval prescribed in the instructions by the Administrator. If the applicant elects to continue loading, the grain which graded "weevily" shall be considered a material portion and shall be sampled, inspected, graded, and certificated as a separate lot. If the applicant elects to treat the grain which graded "weevily," and the subsequent examination indicates that the grain, after the prescribed time interval, does not grade "weevily," the sampling, inspection, and grading of the lot shall continue in the same manner as though the "weevily" condition had not been found: *Provided,* That the information regarding the grading of the grain as "weevily" and treatment shall be fully recorded on the ship loading log.

(h) *Common stowage.* (1) If the grain is offered for inspection as it is being loaded aboard a ship, and is loaded in a common stowage with other grain or another commodity, the official certificate for each lot of grain in the common stowage shall show the relative location of the lot. If a separation or separations are laid between the lots, the certificates shall show the kind of material used in the separation or separations and the location of the separation or separations in relation to each lot.

(2) If separations are not laid between the lots, the official certificate for each lot shall show that the lot was loaded on board with other grain or another commodity without separation, and shall show the kind, the grade, if known, and the location of the other grain, or the kind and the location of the other commodity in the adjacent lots.

(3) The requirements of this paragraph shall not be applicable to the first lot in the stowage, unless the second lot has been loaded, in whole or in part, prior to the issuance of the official certificate for the first lot.

(4) Upon a showing of good cause, the requirement in subparagraph (2) of this paragraph may be waived in the instructions by the Administrator for a class of shipments.

(i) *Grain from or to two elevators.* If the grain in a lot is offered for inspection as one lot, and is loaded into a ship from, or is unloaded from a ship into, two or more elevators, within one designated inspection area, the official inspection personnel performing the inspection may, upon the request of the applicant and subject to the provisions of paragraphs (b) and (c) of this section, sample, inspect, grade, and certificate the grain as one lot, or as two lots, in accordance with methods and procedures prescribed in the instructions or approved in specific cases by the Administrator.

(j) *Grain at rest.* If bulk grain is at rest in a ship when it is offered for inspection, it shall be sampled, inspected, graded, and certificated in accordance with the provisions of this section. If the grain which is offered for inspection is not fully accessible for sampling in a manner prescribed in the instructions, a "partial inspection—heavily loaded" certificate shall be issued.

(k) *Weighted averages.* Official certificates issued under this section shall be identified as cargo inspection certificates. The inspection and grading results shown on the certificates shall, subject to the provisions of paragraphs (c) through (g) of this section, be based, on weighted averages of the analyses of the sublots of grain in the certificated lots, and shall be determined in accordance with methods and procedures prescribed in the instructions or approved in specific cases by the Administrator: *Provided,* That if during the loading or unloading, the grain is found to be uniform for a specific grade on the basis of the sublot samples, and the weighted average analyses of the sublot samples show a different grade, the grade prevailing during the loading or unloading shall be deemed to be the grade for the lot.

(l) *Official mark.* If an export lot is inspected for grade as the grain is being loaded aboard the ship, upon request by the applicant, the following mark shall be shown on the export inspection certificate: "Loaded Under Continuous Official Inspection". Such mark shall constitute an official inspection mark for purposes of the Act.

(m) *Other certification requirements.* For additional provisions governing the certification of grain in ships, see §§ 26.59 and 26.60. For provisions for the issuance of divided-original inspection certificates, see also § 26.61.

§ 26.15 Inspection and certification of grain in combined lots.

(a) *Inspection during loading.* Upon request by an applicant, the grain in two or more containers may be sampled, inspected and certificated as a combined lot if:

(1) The request is filed in advance of the loading of any of the grain;

(2) The request shows the quantity of grain which is to be certificated as a combined lot;

(3) Each container is specifically identified in the request;

(4) The grain in each container is accessible for sampling and is sampled in one designated inspection area, within a 24-hour period;

(5) A representative sample or samples are obtained from the grain in each container; and

(6) The grain in each container is inspected and graded in acordance with the provisions of §§ 26.12 and 26.13 as applicable, and the grain in each sample is found to be of the same grade, and not offgrade grain.

(b) *Inspection after certification.* Upon request by an applicant, the grain in two or more containers which has been sampled, inspected and certificated as separate lots may be certificated as a combined lot if:

(1) The request is filed within a reasonable time, not to exceed 2 business days after the date of the latest inspection;

(2) The grain in each container was accessible for sampling and was sampled in one designated inspection area, within a 24-hour period;

(3) The grain in each container was found to be the same grade and not offgrade grain;

(4) The originals of the official certificates issued for the component lots

are surrendered to the official inspection agency or the field office;

(5) Representative file samples of the grain are available;

(6) The official inspection personnel who issued the certificates for the component lots and the official inspection personnel who will issue the combined lot certificate believe that the samples which were used as the basis for the component inspections were representative of the grain at the time of the inspections, and that the quality or condition of the grain in the samples, and the quality or condition of the grain in the combined lot has not changed since the time of the component inspections.

(c) *Certification.* For each combined lot inspection, an official certificate shall be issued. Each such certificate shall show the statement "Combined Lot Inspection", and the identification of each container. The inspection results shown on the certificate shall be the weighted average results of the analyses of the samples from the component lots: *Provided*, That if the grain in the component lots is found to be uniform for any grade, and the weighted averages show a different grade, the grade found for the component lots shall prevail. Upon request, information as to specified factors for each component lot shall be shown on the combined lot inspection certificate.

(d) *Combined lot superseding certificate requirements.* (1) If the request was filed after the grain in the component lots was inspected and certificated, the combined lot inspection certificate shall also show: (i) The date the component lots were inspected as the date of inspection of the grain in the combined lot. However, if the lots were inspected on different dates, the latest of the dates shall be shown; (ii) a new serial number, other than the serial numbers of the certificates which are to be superseded; (iii) a statement showing the name(s) of the elevator(s) or warehouse(s) from which the grain in the combined lot was loaded; (iv) a statement showing the approximate quantity of grain in the combined lot; (v) a statement showing the identification of any superseded certificates as follows: "This Combined Lot certificate supersedes certificates Nos. _____, dated _____." (The numbers shown in the statement shall in all cases include the lettered prefix.); and (vi) if the superseded certificates are in the custody of the Grain Division or an official inspection agency, the superseded certificates shall be marked "Void" in a clear and conspicuous manner. If, at the time of issuing the combined lot inspection certificate, the superseded certificates are not in the custody of the Grain Division, or an official inspection agency, the statement "The superseded certificates identified herein have not been surrendered" shall be clearly shown, in the space provided for remarks, on the combined lot inspection certificate beneath the statement identifying the superseded certificates. Official inspection personnel shall exercise such other precautions as may be found necessary to prevent the fraudulent or unauthorized use of the superseded certificates.

(e) *Quantity.* No combined lot inspection certificate shall be issued which shows a quantity of grain in excess of the quantity shown on the superseded certificates.

(f) *Further combining.* After a combined lot certificate has been issued in accordance with this section, there shall be no dividing or further combining of the certificate at a later date.

(g) *Limitation.* No combined lot inspection certificate shall be issued for any inspection other than as described in this section.

(h) *"Off-grade lots."* A separate inspection certificate shall be issued for each "off-grade" lot.

(i) *Reinspection and appeal inspection on combined or off-grade lots.* A reinspection or an appeal inspection may be obtained on a combined lot or on each "off-grade" lot in accordance with the regulations.

§ 26.16 Inspection after appeal.

(a) *General.* If an appeal inspection has been requested or made on an identified lot or sample of grain in any designated inspection area, no inspection may be made by official inspection personnel on the same identified grain in the same area without securing in advance, the approval of the Administrator.

(b) *Certification.* A certificate for an "after appeal" inspection shall show, in the space provided for remarks, the following completed statement: "This grain has been inspected on appeal; see appeal certificate No. _____, dated _____." (The number shown in the statement shall, in all cases, include the lettered prefix.)

§ 26.17 When identity of grain shall be deemed lost.

(a) *Lots.* The identity of a lot of grain shall be deemed lost (1) if a portion of the grain in the lot is unloaded, transferred, or otherwise removed from the container in which it had been identified; (2) a portion of grain or other material is added to the lot; or (3) the identification of the container(s) in which the grain had been identified is changed. The identity of a lot in a closed means of conveyance may be deemed lost, at the option of the official inspection personnel performing the inspection, if the means of conveyance is not sealed, or if the seal record is incomplete.

(b) *Submitted samples.* The identity of a sample of grain shall be deemed lost (1) if a portion of grain or other material is added to or removed from the sample; or (2) when the identifying number, mark, or symbol for the sample is lost or destroyed; or (3) when the sample has not been retained by official inspection personnel in the manner prescribed in the instructions.

§ 26.18 Place of inspection.

For the purpose of handling reinspections and appeal inspections, the designated inspection area where the grain was located when the inspection in question was made shall be deemed to be the designated inspection area (a) where the grain was sampled or examined for the inspection in question, or (b) where the sample was inspected and the certificate in question was issued, or (c) where a combination of operations described in paragraphs (a) and (b) of this section occurred, at the option of the applicant, subject to the requirements of the regulations.

§ 26.19 Disposition of inspection samples.

(a) *Return of excess grain.* If the scope of the requested inspection requires that gain be sampled by official inspection personnel, any grain which is obtained in excess of the quantity specified in the instructions or approved in specific cases by the Administrator for the requested inspection, and for related activities including the necessary file samples, shall be returned to the lot which is sampled or to the owner of the grain or his designated agent.

(b) *Disposition of inspection samples.* On request of the applicant, inspection samples shall, after they have served their intended purpose, be returned to him or to his order, at his expense, otherwise they shall be disposed of as follows:

(1) Samples which contain toxic substances or materials should be kept out of food and feed channels.

(2) Samples obtained by, for, or submitted to official inspection agencies may be sold, donated, destroyed, or otherwise disposed of by such agencies: *Provided*, That a complete and accurate record of the disposition shall be maintained by each agency for review by the Department of Agriculture for possible conflicts of interest.

(3) Samples obtained by, for, or submitted to the Grain Division may, without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, be sold, donated, destroyed, or otherwise disposed of, in accordance with procedures prescribed in the instructions.

Original Inspections

§ 26.25 Who may request an original inspection.

(a) *General.* An original inspection may be requested by any person who desires an official inspection of grain.

(b) *Blanket requests.* A request for an original inspection may cover one or more identified lots or submitted samples; or a blanket request may be made for an original inspection of a number of lots or submitted samples to be shipped from or to a specified location during a particular period; or a blanket request may be made for an original inspection of all grain shipped from or to a specified location, or from or to a specified firm.

(c) *Guaranteed stations.* If desired, an applicant may enter into an agreement with an official inspection agency whereby the applicant agrees to pay a specified amount and the official inspection agency agrees to make official inspection personnel available to perform original inspection services for the applicant.

§ 26.26 Where and when to request an original inspection and information required.

(a) *Where to file.* A request for an original inspection shall, except as provided in § 26.6 (d) and (e) be filed with the official inspection agency or its designated agent, or for grain in Canadian ports, with the field office, for the designated inspection area in which the grain is located. If the request is made orally or by telegraph, it shall, upon request by the official inspection agency or the field office, be confirmed in writing. (For locations where official inspection services are available, see § 26.9(d).)

(b) *Written confirmation.* If a written confirmation is requested, it shall be signed by the applicant or his agent; and shall show, or be accompanied by, the following information: (1) The identification, quantity, and the specific location of the grain (if known); (2) the name and mailing address of the applicant; (3) the kind (scope) of inspection desired; and (4) such other pertinent information as may be required in specific cases by the official inspection agency, or for grain in Canadian ports, by the field office, conducting the original inspection. (Copies of an approved application form will be furnished by an official inspection agency, or for inspection of grain in Canadian ports, by the field office, upon request.)

(c) *Delayed documents.* If the information or documents required by paragraph (b) of this section are not available at the time of filing the request, the applicant shall submit the information or documents, or cause them to be submitted, as soon as they are available. At the discretion of the official inspection agency, or the field office, conducting the original inspection, action on the inspection may be withheld pending the receipt of the required information or documents.

(d) *When to file.* For lots which are to be inspected during loading, or unloading, or during handling, a request for an original inspection shall be filed sufficiently in advance of the loading or unloading, or handling of any of the grain to enable the official inspection personnel to be present. When an extended grain movement is planned, a request for an original inspection should be filed as far in advance of the shipping date as possible to permit the official inspection agency, or in Canadian ports, the field office, to anticipate its staffing needs. For other lots and for submitted samples, a request for an original inspection may be filed at any time prior to the time the inspection service is to be furnished.

(e) *Recording date of filing.* A request for an original inspection shall be deemed filed when it is received by the official inspection agency, or the field office, conducting the original inspection, and when the grain is offered for inspection. A record showing the date of filing shall be maintained by the official inspection agency or the field office: *Provided*, That a copy of a railroad manifest for grain cars shall be deemed to meet the requirements of this paragraph for inbound grain.

§ 26.27 When a request for an original inspection may be withdrawn or dismissed.

(a) *Withdrawal.* For withdrawal of request, see § 26.10.

(b) *Grounds for dismissal.* A request for an original inspection for grain in the United States may be dismissed by an official inspection agency, or for U.S. grain in Canadian ports, a field office in accordance with § 26.10, (1) for any of the reasons specified in § 26.10; or (2) if the original inspection cannot be completed within 2 business days after the grain is offered for inspection.

(c) *Notification.* When a request for an original inspection is dismissed, the official inspection agency, or in case of U.S. grain in Canadian ports, the field office, shall promptly notify the applicant orally or in writing of the reasons for the dismissal; and, in the case of such action by an official inspection agency, the agency shall promptly forward a copy of the notice of dismissal to the field office or otherwise notify such office of its action.

§ 26.28 Who shall handle original inspection, and method and order of performance.

(a) *United States.* An original inspection on grain located in the United States shall be conducted by official inspection personnel licensed by the Department of Agriculture and employed by an official inspection agency.

(b) *Canada.* An original inspection on U.S. grain in Canadian ports shall be conducted by official inspection personnel employed and authorized by or licensed under a contract with the Department of Agriculture, with certification by a field office.

(c) *Method and order.* The method and order of service shall be in accordance with the provisions of § 26.12.

(d) *Tolerances.* No administrative, statistical, or other tolerances shall as provided in § 26.88(e), be applied by any official inspection personnel in performing an original inspection or in showing the results of an original inspection on an inspection certificate, except as provided in § 26.30(d).

§ 26.29 Issuance and distribution of original inspection certificates.

(a) For each original inspection, an official certificate shall be issued in accordance with § 26.58. The certification for the first original inspection on a specific lot or submitted sample in any designated inspection area shall show the term "Original Inspection".

(b) The original and a minimum of one copy of each official certificate for an original inspection shall be issued to the applicant of record or to his order; one copy shall be forwarded to the field office; and one copy shall be filed with the official inspection agency.

§ 26.30 Succeeding original inspections.

(a) *General provisions.* In cases where an original inspection has been obtained in any designated inspection area on a specific lot or submitted sample of grain, and a later or more current inspection of the same kind (scope) is desired in the same area on the same lot or sample of grain, one or more succeeding original inspections may be obtained in accordance with paragraphs (b) through (i) of this section.

(b) *Requests.* A request for a succeeding original inspection shall be made in accordance with the provisions for original inspections in §§ 26.25 and 26.26. Each request shall show the identity of the preceding original inspection certificate(s). If a request is not for the same kind (scope) of inspection, it will be deemed to be a request for an original inspection.

(c) *Grounds for dismissal.* A request for a succeeding original inspection may be withdrawn or dismissed in accordance with the provisions of §§ 26.10 and 26.27, or when a reinspection or an appeal inspection can be obtained from the preceding original inspection and will better fit the needs of the applicant.

(d) *Scope, order, and method of inspection.* (1) The scope of each succeeding original inspection shall be in accordance with the request for the original inspection. The method and order of performing a succeeding original inspection shall be in accordance with the provisions of § 26.12.

(2) For the purpose of this section, statistical tolerances for expected variations between inspections shall be applied to the results of the succeeding original inspection in determining whether the results of the preceding original inspection(s) were or were not materially in error. The statistical tolerances shall, in all cases, be those set forth in the instructions.

(e) *Certification.* For each succeeding original inspection, an official certificate shall be issued in accordance with § 26.29, subject to the following provisions: (1) In performing a succeeding original inspection, the official inspection personnel shall determine whether the results of the preceding inspection(s) are materially in error. If the results are not materially in error, the results of the preceding original inspection(s) and the results of the succeeding original inspection shall be averaged, and the resulting averages shall be shown on the official certificate for the succeeding original inspection. If the results of the preceding original inspection(s) are materially in error, only the results of the succeeding original inspection shall be shown on the official certificate for the succeeding original inspection.

(2) The certificate for a second original inspection shall show the statement "Second Original Inspection". Certificates for succeeding original inspections in the same designated inspection area shall similarly identify the succeeding original inspections in numerical order.

(3) An official certificate for a succeeding original inspection shall supersede the last preceding official certificate for the same kind (scope) of inspection. In such case, the succeeding certificate

shall clearly show, in the space provided for remarks, the following statement in completed form: "This certificate supersedes certificate No. ------ dated ----------." (The number shown in the statement shall, in all cases, include the lettered prefix.) The superseded certificate shall be considered null and void as of the date of the issuance of the succeeding certificate and shall not thereafter be used to represent the grain described therein.

If the superseded certificate is in the custody of the official inspection agency or the Grain Division, the superseded certificate shall be marked "Void" in a clear and conspicuous manner. If, at the time of issuing the succeeding official certificate, the superseded certificate is not in the custody of the official inspection agency or the Grain Division, the statement "The superseded certificate identified herein has not been surrendered" shall be clearly shown in the space provided for remarks on the succeeding official certificate. Official inspection personnel shall exercise such other precautions as may be found necessary to prevent the fraudulent or unauthorized use of the superseded certificate.

(f) *Reinspections.* A reinspection or appeal inspection may be obtained from any succeeding original inspection in accordance with the provisions of §§ 26.35 through 26.39 and §§ 26.45 through 26.50.

(g) *Applicable to all movements.* The provisions of this section shall be applicable to any type of movement or any combination of movements (in, out, local) within a designated inspection area.

(h) *Loss of identity.* If the identity of a lot or submitted sample of grain is lost as provided in § 26.17, an original inspection may be obtained on the grain without reference to any previous inspection.

(i) *Inspection in other area.* If grain has been inspected in one designated inspection area and has moved to another area, any applicant may obtain an original inspection in the other designated inspection area. Such inspection in the other area shall be considered an original inspection and not a succeeding original inspection.

§ 26.31 Original inspections on "set back" means of conveyance.

If an original "out" inspection is performed on any day on grain loaded into a means of conveyance and the means of conveyance is returned (set back) to the loading grain elevator or warehouse, and the grain is unloaded and reloaded, and an original "out" inspection is performed the same day on the grain in the reloaded means of conveyance the official inspection personnel performing the later "out" inspection shall void or otherwise supersede the official certificate for the earlier "out" inspection in accordance with the provisions of § 26.30(e)(3).

REINSPECTIONS

§ 26.35 Who may request a reinspection.

(a) *General.* A reinspection from an original inspection (or succeeding original inspection) may be requested by any interested person who desires the service.

(b) *Limitations.* One or more interested persons may request a reinspection but only one reinspection may be obtained from any original inspection (or succeeding original inspection). No reinspection may be obtained from an inspection resulting in issuance of a certificate that has been superseded, or from a reinspection.

§ 26.36 Where and when to request a reinspection and information required.

(a) *Where to file.* A request for a reinspection shall be filed with the official inspection agency, or in the case of U.S. grain in Canadian ports, with the field office, in the designated inspection area in which the original (or succeeding original) inspection in question was made, or with the official inspection agency, or in the case of U.S. grain in Canadian ports, the field office, in the designated inspection area in which the grain is located. If the request is made orally or by telegraph, it shall, at the request of the official inspection agency, or field office, be confirmed in writing in accordance with paragraph (b) of this section. (For locations where inspection services are available, see § 26.9(d).)

(b) *Written confirmation.* If a written confirmation is requested, it shall be signed by the applicant or his agent; and shall, except as provided in paragraph (c) of this section, show, or be accompanied by, the following information or documents: (1) The identification, quantity, and the specific location of the grain, if known; (2) the reason for requesting the reinspection, stated in terms of the factor or factors in question (not applicable to requests filed in advance); (3) the name and mailing address of the applicant; (4) the original official certificate for the inspection in question; (5) a statement showing whether a request for a reinspection, or a request for an appeal inspection, on the grain in question has been filed with any other official inspection agency, or with the Grain Division, and the place of filing, if any; and (6) such other pertinent information as may be required in specific cases by the official inspection agency or field office conducting the reinspection. (Copies of an approved application form will be furnished by an official inspection agency or field office upon request.)

(c) *Delayed documents.* (1) If the information or documents required by paragraph (b) of this section are not available at the time of filing the request, the applicant shall submit the information or documents, or cause them to be submitted, as soon as they are available. At the discretion of the official inspection agency, or in the case of U.S. grain in Canadian ports, the field office conducting the reinspection, action on the reinspection may be withheld pending the receipt of the information or documents required by paragraph (b) of this section.

(2) In no case shall a reinspection certificate be issued unless the information and documents required by paragraph (b) of this section are filed with the official inspection agency, or in the case of U.S. grain in Canadian ports, the field office, or it is found by the official inspection agency, or the field office, that some of the information or documents are not available but sufficient information is available to enable performance of the reinspection. If it is found that any of the required information or documents is not available, a record of the finding shall be included in the record of the reinspection.

(d) *When to file.* (1) A request for a reinspection must be filed (i) before the grain has left the designated inspection area where the grain was located when the inspection in question was made; (ii) before the identity of the grain has been lost, as provided in § 26.17 and (iii) as promptly as possible, but not later than the close of business on the second business day following the date of the inspection in question.

(2) If a representative file sample, as prescribed in § 26.8(f), is available, the official inspection agency, or in the case of U.S. grain in Canadian ports, the field office, conducting the reinspection may, upon written request by the applicant and the respondents, if any, waive the requirements of subparagraph (1) of this paragraph. The requirement in subparagraph (1)(iii) of this paragraph, may also be waived by the official inspection agency, or the field office, upon a satisfactory showing by any interested person of the existence of fraud, or that on account of distance or other good cause the time allowed for filing was not sufficient.

(3) A record of each waiver action must be included by the official inspection agency, or the field office, in the record of the reinspection.

(e) *Advanced notice.* If desired by the applicant, requests for reinspections may be filed in advance of the original (or succeeding original) inspection which is in question.

(f) *Multiple request.* A request for a reinspection may cover one or more identified lots or samples.

(g) *Recording date of filing.* A request for a reinspection shall be deemed filed when it is received by the official inspection agency, or in the case of U.S. grain in Canadian ports, the field office, conducting the reinspection and when the grain is offered for inspection. A record showing the date of filing shall be made promptly by the official inspection agency, or field office.

§ 26.37 When a request for a reinspection may be withdrawn or dismissed.

(a) *Withdrawal.* For withdrawal of request, see § 26.10 of the regulations in this part.

(b) *Grounds for dismissal.* A request for a reinspection may be dismissed by an official inspection agency, or in the case of U.S. grain in Canadian ports, the field office, in accordance with § 26.10, (1) for any of the reasons specified in § 26.10; or (2) if the inspection in question is

being referred to another official inspection agency for a reinspection, or to the Grain Division for an appeal inspection; or (3) if the condition of the grain has undergone a material change since the inspection in question; or (4) if the reinspection cannot be completed within 2 business days of the date of the inspection in question.

(c) *Notification.* When a request for a reinspection is dismissed, the official inspection agency, or field office, shall promptly notify the applicant orally or in writing of the reason for the dismissal; return or release to the applicant, or his agent, any official certificate which was filed with the request; and in the case of such action by an official inspection agency, the agency shall promptly forward a copy of the notice of dismissal to the field office or otherwise notify such office of its action.

§ 26.38 Who shall handle reinspections, and method and order of performance.

(a) *United States.* A reinspection on grain located in the United States shall be conducted by official inspection personnel licensed by the Department of Agriculture and employed by an official inspection agency.

(b) *Canada.* A reinspection on U.S. grain in Canadian ports shall be conducted by official inspection personnel employed and authorized by or licensed under a contract with the Department of Agriculture, under the direction of a field office of the Grain Division.

(c) *Scope.* The scope of a reinspection shall be confined to the scope of the inspection in question: *Provided,* That a reinspection for grade shall include a review of all factors which may determine the accurate and true grade at the time and place of the reinspection.

(d) *Method and order.* The method and order of service shall be in accordance with the provisions of § 26.12. For the purpose of this section, statistical tolerances for expected variations between inspections shall be applied to the results of the reinspection in determining whether the results of the inspection in question were or were not materially in error. The statistical tolerances shall, in all cases, be those set forth in the instructions.

(e) *New sample.* Upon request of the applicant, and if practicable, a new sample shall be obtained and examined as a part of a reinspection.

(f) *Conflict of interest.* No official inspection personnel shall perform, or participate in performing, or issue official certificates for reinspections involving the correctness of inspections performed or certificated by them: *Provided,* That this requirement is waived if there is only one duly qualified person available at the time and place of a reinspection.

§ 26.39 Issuance and distribution of reinspection certificate.

(a) *General.* For each reinspection, a reinspection certificate shall be issued in accordance with § 26.58. The original and a minimum of one copy of each reinspection certificate shall be issued to the applicant of record or to his order; one copy shall be forwarded to the field office; and one copy shall be filed with the official inspection agency. If the official inspection personnel who certificated the results of the inspection in question are employed by another official inspection agency, one copy shall be forwarded to the other agency.

(b) *Showing results.* (1) If the results of the reinspection indicate that none of the results of the inspection in question were materially in error, only the results of the inspection in question shall be shown as the results of the reinspection.

(2) If the results of the reinspection indicate that all of the results of the inspection in question were materially in error, only the results of the reinspection shall be shown on the reinspection certificate.

(3) If the results of the reinspection indicate that some of the results of the inspection in question were not materially in error, and that some were, the results which were not materially in error shall be shown in accordance with subparagraph (1) of this paragraph, and the results which were materially in error shall be shown in accordance with subparagraph (2) of this paragraph.

(c) *Required statements.* (1) Each reinspection certificate shall clearly show, in the space provided for remarks, the following statement in completed form: "This certificate supersedes certificate No. ------ dated ----------." (The number shown in the statement shall, in all cases, include the lettered prefix.) The superseded certificate shall be considered null and void as of the date of the issuance of the reinspection certificate and shall not thereafter be used to represent the grain described therein.

(2) If the superseded certificate is in the custody of the official inspection agency or the Grain Division, the superseded certificate shall be marked "Void" in a clear and conspicuous manner. If, at the time of issuing the reinspection certificate, the superseded certificate is not in the custody of the official inspection agency or the Grain Division, the statement "The superseded certificate identified herein has not been surrendered." shall be clearly shown, in the space provided for remarks, on the reinspection certificate beneath the statement identifying the superseded certificate. Official inspection personnel shall exercise such other precautions as may be found necessary to prevent the fraudulent or unauthorized use of the superseded certificate.

APPEAL INSPECTIONS

§ 26.45 Who may request an appeal inspection.

(a) *General.* An appeal inspection from an original inspection (or succeeding original inspection) or a reinspection may be requested by any interested person who desires the service. (See also § 26.50 concerning a Board appeal inspection.)

(b) *Limitations.* One or more interested persons may request an appeal inspection but only one appeal inspection may be obtained from any original inspection (or succeeding original inspection), or from any reinspection. (A Board appeal inspection may be obtained only from an appeal inspection conducted by a field office.) No appeal inspection may be obtained from any inspection resulting in the issuance of a certificate that has been superseded by another certificate.

§ 26.46 Where and when to request an appeal inspection and information required.

(a) *Where to file.* A request for an appeal inspection shall be filed with the field office in the circuit in which the original inspection or reinspection in question was made, or with the field office in the circuit in which the grain is located. If the request is made orally, it shall be confirmed in writing in accordance with paragraph (b) of this section. (For locations where inspection services are available, see § 26.9(d).)

(b) *Written confirmation.* Each request for an appeal inspection shall be in writing; shall be signed by the applicant or his agent; and except as provided in paragraph (c)(2) of this section, shall show, or be accompanied by, the following information or documents: (1) The identification, quantity, and specific location of the grain, if known; (2) the reason for requesting the appeal inspection, stated in terms of the factor or factors in question (not applicable to requests filed in advance); (3) the names and mailing addresses of the applicant and the respondents, if any; (4) the original official certificate for the inspection in question; (5) a statement showing whether a request for an appeal inspection on the grain in question has been filed with any other field office, and the other place of filing, if any; and (6) such other pertinent information as may be required by the field office in specific cases. (Copies of an approved application form will be furnished by field offices upon request.)

(c) *Delayed documents.* (1) If the information or documents required by paragraph (b) of this section are not available at the time of filing the request, the applicant shall submit the information or documents, or cause them to be submitted, as soon as they are available. At the discretion of the field office conducting the appeal inspection, action on the appeal inspection may be withheld pending the receipt of the information or documents required by paragraph (b) of this section.

(2) In no case shall an appeal inspection certificate be issued unless the information and documents required by paragraph (b) of this section are filed in the field office, or it is found by the field office that some of the information or documents are not available but sufficient information is available to enable performance of the appeal inspection. If it is found that any of the required information or documents is not available, a record of the finding shall be included in the record of the appeal inspection.

(d) *When to file.* (1) For lots which are to be inspected during loading, unloading, or handling, a request for an appeal inspection shall be filed in advance of the inspection in question.

(2) For lots other than the lots identified in subparagraph (1) of this paragraph and for submitted samples, a request for an appeal inspection must be filed (i) before the grain has left the designated inspection area where the grain was located when the inspection in question was made; (ii) before the identity of the grain has been lost, as provided in § 26.17; and (iii) as promptly as possible, but not later than the close of business on the second business day following the date of the inspection in question.

(3) If a representative file sample, as prescribed in § 26.8(f), is available, the field office conducting the appeal inspection may, upon written request by the applicant, and the respondents (if any), waive the requirements of subparagraph (1) or (2) of this paragraph. The requirement in subparagraph (2)(iii) of this paragraph may be waived by the field office upon a satisfactory showing by any interested party of the existence of fraud, or that on account of distance or other good cause, the time allowed for filing was not sufficient. A record of each waiver action must be included by the field office in the record of the appeal inspection.

(e) *Advanced notice.* If desired by the applicant, a request for an appeal inspection may be filed in advance of an original inspection or reinspection of any grain.

(f) *Recording date of filing.* A request for an appeal inspection shall be deemed filed when it is received by the field office conducting the appeal inspection and when the grain is offered for inspection. A record showing the date of filing shall be made promptly by the field office.

(g) *Multiple request.* A request for an appeal inspection may cover one or more identified lots or samples: *Provided,* That upon request of the field office, a separate request shall be filed for each appeal inspection.

§ 26.47 When a request for an appeal inspection may be withdrawn or dismissed.

(a) *Withdrawal.* For withdrawal of request, see § 26.10.

(b) *Grounds for dismissal.* A request for an appeal inspection may be dismissed by a field office in accordance with § 26.10(1) for any of the reasons specified in § 26.10; or (2) if the inspection in question is being appealed to another field office; or (3) if the condition of the grain has undergone a material change since the inspection in question; or (4) if the appeal inspection cannot be completed within 5 business days of the date of the inspection in question.

(c) *Notification.* When a request for an appeal inspection is dismissed, the field office shall promptly (1) notify the applicant orally or in writing of the reason for the dismissal; (2) return or release to the applicant, or his agent, any official certificate which was filed with the request; and (3) forward a copy of each notice of dismissal to the district office or otherwise notify such office of its action.

§ 26.48 Who shall handle appeal inspections, and method and order of performance.

(a) *United States.* An appeal inspection on grain located in the United States shall be conducted by a field office.

(b) *Canada.* An appeal inspection on U.S. grain in Canadian ports shall be conducted by the Board of Appeals and Review.

(c) *Scope.* The scope of an appeal inspection shall be confined to the scope of the inspection in question: *Provided,* That an appeal inspection for grade shall include a review of all factors which may determine the accurate and true grade at the time and place of the appeal inspection.

(d) *Method and order.* The method and order of service shall be in accordance with the provisions of § 26.12. For the purpose of this section, statistical tolerances for expected variations between inspections shall be applied to the results of the appeal inspection in determining whether the results of the inspection in question were or were not materially in error. The statistical tolerances shall, in all cases, be those set forth in the instructions.

(e) *New sample.* Upon request of the applicant, and if practicable, a new sample shall be obtained and examined as a part of an appeal inspection.

(f) *Conflict of interest.* No grain inspection supervisor shall perform, or participate in performing, or issue an official certificate for an appeal inspection involving the correctness of inspections performed or certificated by him: *Provided,* That this requirement is waived if there is only one duly qualified person available at the time and place of the appeal inspection.

§ 26.49 Issuance and distribution of appeal inspection certificates.

(a) *General.* For each appeal inspection, an appeal inspection certificate shall be issued in accordance with § 26.58. The original and one copy of each appeal inspection certificate shall be issued to the applicant of record or to his order; one copy shall be issued to each respondent of record, if any, or to his order; one copy shall be issued to the official inspection agency which conducted the inspection in question; and one copy shall be filed in the field office.

(b) *Showing results.* (1) If the results of the appeal inspection indicate that none of the results of the inspection in question were materially in error, the results of the inspection in question shall be shown as the results of the appeal inspection.

(2) If the results of the appeal inspection indicate that all of the results of the inspection in question were materially in error, the results of the appeal inspection only shall be shown on the appeal inspection certificate.

(3) If the results of the appeal inspection indicate that some of the results of the inspection in question were materially in error, and that some were not, the results which were not materially in error shall be shown in accordance with subparagraph (1) of this paragraph, and the results which were materially in error shall be shown in accordance with subparagraph (2) of this paragraph.

(c) *Required statements.* (1) Each appeal inspection certificate shall clearly show, in the space provided for remarks, the following statement: "This certificate supersedes certificate No. ------, dated ----------." (The number shown in the statement shall, in all cases, include the lettered prefix.) The superseded certificate shall be considered null and void as of the date of the issuance of the appeal inspection certificate and shall not thereafter be used to represent the grain described therein.

(2) If the superseded certificate is in the custody of the Grain Division or an official inspection agency, the superseded certificate shall be marked "Void" in a clear and conspicuous manner. If, at the time of issuing the appeal inspection certificate, the superseded certificate is not in the custody of the Grain Division, or an official inspection agency, the statement "The superseded certificate identified herein has not been surrendered" shall be clearly shown in the space provided for remarks on the appeal inspection certificate beneath the statement identifying the superseded certificate. Official inspection personnel shall exercise such other precautions as may be found necessary to prevent the fraudulent or unauthorized use of the superseded certificate.

§ 26.50 Appeal Inspection by Board of Appeals and Review.

(a) *Formation of Board.* The Board of Appeals and Review in the Grain Division is responsible for the supervision of the official inspection of grain to maintain uniformity and accuracy of inspection, and to perform appeal inspections in accordance with the Act and regulations. For the purpose of this section the Board of Appeals and Review shall be considered a field office with the entire United States and Canada as its circuit.

(b) *Who may request.* An appeal inspection by the Board of Appeals and Review may be requested by an applicant from an inspection conducted by a field office.

(c) *Filing requirements.* (1) A request for an appeal inspection by the Board of Appeals and Review shall be filed with the field office which conducted the inspection in question, or with the field office in the circuit in which the grain is located, or with the Board of Appeals and Review.

(2) Except as otherwise provided in this paragraph, each request shall be filed in accordance with the provisions of §§ 26.45 and 26.46, and the request may be withdrawn or dismissed in accordance with the provisions of § 26.47. Each request shall show pertinent information specified in the form or as may be required in specific cases by the Board of

Appeals and Review, and shall be filed not later than the close of business on the next business day after the date of the inspection in question. The Board of Appeals and Review may, for good cause shown, extend the time for filing the request. (Copies of an approved application form will be furnished by field offices upon request.)

(d) *Performance and issuance.* The appeal inspection shall be performed in accordance with the provisions of § 26.48; and an appeal inspection certificate shall be issued in accordance with the provisions of § 26.49. An appeal inspection certificate issued by the Board of Appeals and Review shall be the final appeal inspection certificate.

(e) *Action by field office.* The field office which conducted the inspection in question shall act in a liaison capacity between the applicant requesting the appeal inspection and the Board of Appeals and Review, and shall promptly forward to the Board of Appeals and Review all available samples, documents, and other evidence pertaining to the inspection in question.

RECORDS

§ 26.55 Maintenance and availability of records.

(a) *General.* (1) A complete record of the activities performed under the Act by official inspection personnel shall be kept by each official inspection agency and each field office for a period of 2 years after the inspection or transaction, which is the subject of the record, occurred: *Provided*, That official file samples shall be kept for the periods specified in § 26.57. In specific cases such records (other than file samples) may be required by the Administrator, to be kept for a longer period. Notice of any requirement for such longer retention of records in specific cases will be given to the official inspection agency or field office concerned. (2) The complete record shall show (i) each inspection activity performed during the course of an inspection and (ii) other matters as provided in this section.

(b) *Records on inspection activities.* The complete record shall include (1) detailed work records, (2) official file samples, and (3) official certificates, as prescribed in §§ 26.56, 26.57, and 26.58. The record for each inspection shall be kept in such manner as to permit comparison with the record for other inspections on the same identified grain.

(c) *Other records.* The complete record shall include the following information:

(1) A record of the disposition of the grain samples obtained under the Act and the regulations shall be kept by each official inspection agency and each field office in accordance with the instructions.

(2) A record of the organization and staffing of each official inspection agency shall be kept by the agency. The record shall show (i) whether it is a government, trade, or private organization, or is sponsored by a government, trade, or private organization; (ii) the name of each member of the sampling, inspection, and clerical staff, and his capacity on the staff; (iii) the scope of the license, if any, held by each employee under the Act and the regulations; and (iv) the authorizations to affix signatures, if any, held by each employee. If the agency is a trade organization or sponsored by a trade organization, the record shall show the nature of the organization; a list of the member firms; the managerial and technical controls that the trade organization exercises over the inspection activities or the inspection personnel; and the operating procedures for exercising the controls; e.g. management by a grain committee that employs and directs the chief inspector. If the organization exercises managerial or technical controls over the inspection activities or the inspection personnel, the record shall show the name, address, and the employing firm(s) for each person who exercises such controls. The information in the record required by this subparagraph shall be kept current at all times. Upon request, a copy of the record shall be submitted to the field office.

(3) A copy of the currently effective schedule of fees and charges required to be filed under § 26.70(b).

(4) A copy of any report required to be filed under § 26.100 and section 16 of the Act.

(d) *Availability of records and information therein.* (1) All records of the Grain Division or other units of the Consumer and Marketing Service are available for inspection and copying in accordance with the administrative regulations of the Department and regulations of the Consumer and Marketing Service (7 CFR 1.1 et seq. and 900.500 et seq.) subject to restrictions stated in such regulations; and

(2) The organization and staff records required by § 26.55(c)(2) and the records of the schedule of inspection fees and charges required by § 26.55(c)(3) to be kept by each official inspection agency shall be considered public information and made available by such agency for inspection by any person upon request. The work records required by § 26.56, the official file samples required by § 26.57 and the original and copies of official inspection certificates required by § 26.58 to be kept by each official inspection agency shall be made available by such agency during customary business hours for inspection upon request by any representative of the Department of Agriculture, or other official inspection personnel to the extent required for the performance of their official duties, or by the applicant or any respondent interested in the inspection involved. The volume-of-inspection reports required by § 26.100 to be filed by each official inspection agency, may be made available for inspection or copies may be furnished to local trade groups or other persons by the official inspection agency. Otherwise, records of official inspection agencies required by the regulations to be kept and information from such records shall not be made available to any person except representatives of the Department of Agriculture or official inspection personnel to the extent necessary for the performance of their official duties or as authorized by the Administrator in specific cases.

§ 26.56 Detailed work records.

(a) *General.* A detailed work record shall be kept for each activity performed during the course of an official inspection: *Provided*, That only one set of records need be kept per inspection.

(b) *Forms.* (1) The work records shall be on standard forms prescribed in the instructions or approved in specific cases by the Administrator and furnished by the official inspection agency or, as appropriate, by the Grain Division; be written or printed in English; be complete, accurate, and clearly legible; and show the name or initials of the individual(s) who made each of the determinations shown on the record. The record shall consist of (i) a Form A sampling and inspection memorandum; (ii) a Form B ship loading log; and (iii) supporting documents and records.

(2) The work record shall be a concise record of each activity involved in the inspection; and shall contain (i) a record of each determination which is shown on the corresponding inspection certificate; (ii) information needed by the chief inspector or the Grain Division in performing supervision activities and in handling trade and other complaints or inquiries; and (iii) such other information as may be required by the instructions or in specific cases by the Administrator.

(c) *Use of record.* The work record shall be used by official inspection personnel as a basis for issuing official certificates. In accordance with paragraphs (d) and (e) of this section, the record may also be used for reporting the results of official inspections in writing, in advance of or in addition to, the issuance of the official certificate.

(d) *Form A (pan tickets).* (1) Each sampling, inspection, checkweighing, checkloading, ship stowage examination, or other inspection activity performed under the Act and the regulations shall, except as provided in paragraph (e) of this section, be recorded on a Form A sampling and inspection memorandum. (A sample Form A memorandum may be obtained from the offices designated in § 26.9(d) but copies must be supplied by the official inspection agency for inspection purposes.) Activities which, during the course of an inspection, are performed in a series, such as sampling and grading, may be recorded on one memorandum, or may be recorded on separate memoranda.

(2) Upon completion of an inspection, one or more copies of the completed Form A memorandum shall, upon request by the applicant, be issued to the applicant or to his order in advance of or in addition to, the official certificate: *Provided*, That if the request for inspection has been withdrawn or dismissed, no Form A memorandum shall be issued or released to the applicant. The original Form A memorandum shall be retained by the official inspection agency

or, as appropriate, by the field office which conducted the inspection.

(e) *Form B (ship loading log).* (1) Each cargo grain inspection that is performed while the grain is being loaded or unloaded from a ship, and each quality information inspection on cargo grain shall be recorded by official inspection personnel on a Form B, ship loading log. (Copies of Form B shall be obtained from the Grain Division.) A Form A sampling and inspection memorandum may also be kept for such inspections: *Provided,* That a modified Form A sampling and inspection memorandum may be prescribed in the instructions with respect to sampling and other specified activities performed during the course of such inspections.

(2) (i) Upon completion of a quality information inspection, one or more copies of the completed Form B shall, upon request by the applicant, be issued to the applicant or to his order: *Provided,* That if the request for the quality information inspection has been withdrawn or dismissed, no copies of the log shall be issued or released to the applicant.

(ii) The original Form B shall be retained by the official inspection agency or, as appropriate, by the field office which conducted the inspection. If the inspection is conducted by an official grain inspection agency, two copies of the log shall be promptly sent to the field office.

(f) *Other form.* Each detailed test, including but not limited to, moisture determinations and chemical determinations, which cannot be completely recorded on a Form A or modified Form A memorandum, shall be recorded in a complete, accurate, and concise manner on such other form as is prescribed in the instructions or in specific cases by the Administrator.

(g) *Abbreviations.* If the space on the Form A or Form B memorandum does not permit showing the full names for factors, abbreviations may be used. (A list of approved abbreviations may be obtained upon request, from any office designated in § 26.9(d).)

§ 26.57 File samples.

(a) *General.* For each official inspection, an official file sample shall be maintained in accordance with paragraphs (b) through (h) in this section: *Provided,* That no file sample need be maintained for checkweighing and other types of inspections which are not based on an examination of the grain in a sample.

(b) *Who shall maintain samples.* File samples shall be maintained by the official inspection personnel who performed the inspection or by the official inspection agency that conducted the inspection: *Provided,* That no file sample need be maintained by a licensed employee of a grain elevator or warehouse: *And provided further,* That if a file sample maintained by an official inspection agency is used for an appeal or review inspection, the field office which conducted the appeal or review inspection shall thereafter have the responsibility for maintaining the sample.

(c) *Size of sample.* Each file sample shall consist of a worked portion and an unworked portion: *Provided,* That if the inspection does not require the use or examination of the grain in both portions, and if the applicant will not desire a portion of the sample during the prescribed retention period, only one portion is required to be maintained. Each file sample shall be of such size as will permit a reinspection, an appeal inspection, or a review inspection for the kind (scope) of inspection for which the sample was obtained. (In the case of a submitted sample inspection, if an undersized sample is received, the entire sample shall be retained.)

(d) *Containers.* Each sample shall be retained in such container and in such manner as will retain the representativeness of the sample from the time it is obtained or received by the official inspection personnel until it is discarded. High moisture samples, infested samples, and other problem samples shall be retained in accordance with the instructions.

(e) *File system.* To facilitate the full use of file samples, each official inspection agency and each field office shall establish and maintain, in accordance with the instructions, a uniform file sample system which has been approved by the Administrator. The instructions may prescribe the kind and size of the file sample containers, the method of identification, and methods for retaining the representativeness of the samples.

(f) *Retention periods.* (1) Each file sample shall be retained for the following applicable period of time which is necessary for the handling of a reinspection, an appeal inspection, or a trade complaint:

Type of carrier (or container)	*Retention period (calendar days)*
Rail cars:	
In (other than en route)[1]	[2] 5–7
Out	15
Trucks:	
In (other than en route)[1]	[3] 2–4
Out	7
Barges:	
In (other than en route)[1]	10
Out	30
Bins and tanks	[3] 2–4
Submitted samples	[3] [4] 2–4

	Composite samples	*Sublot samples*
Ships:		
In	[5]	7
Out (domestic)	[5]	15
Out (export)	90	30

[1] The retention period for an "IN" (en route) movement shall be the same as for an "OUT" movement in the identified carrier.

[2] 5 calendar days if applicant, or his agent, receives notice of inspection results on the date of inspection, otherwise 7 calendar days.

[3] 2 calendar days if applicant, or his agent, receives notice of inspection results on the date of inspection, otherwise 4 calendar days.

[4] If the identification of an unofficial sample is the same as the identification of a carrier, the retention period for the sample shall be the same as for an "OUT" movement in the identified carrier.

[5] The retention of composite samples for "IN" and for "OUT (Domestic)" ship lots shall be optional with the official inspection personnel and the official inspection agency. Samples may be kept for longer periods of time as desired at the option of the persons or agency maintaining the samples.

(2) For good cause shown, and upon request by the official inspection personnel or the official inspection agency, and with the approval of the Administrator, specified samples or classes of samples may be retained for agreed shorter periods of time.

(3) In determining the retention period, the time period shall begin on the date of the inspection involved.

(g) *Furnishing file samples to field offices.* (1) Upon request by a field office, a file sample retained by official inspection personnel or by an official inspection agency shall be furnished to the field office for an appeal inspection or a review inspection.

(2) If a sample is furnished to a field office, no portion of the sample need be retained by the official inspection personnel or the official inspection agency.

(3) Official inspection agencies furnishing file samples to a field office for appeal inspections may, upon request, be reimbursed at the rate prescribed in § 26.72, by the Grain Division for the cost of locating and sending the samples.

(h) After official file samples have been retained the prescribed period of time, they may be disposed of in accordance with the provisions of § 26.19.

§ 26.58 Official certificates (issuance and distribution).

(a) *Issuance (general).* For each official inspection, an official certificate shall be issued, except as provided in paragraph (j) of this section. All of the determinations requested by the applicant shall, if practicable, be shown on the certificate: *Provided,* That upon request of the applicant and for good cause shown, determinations made at different times during the course of the inspection may be shown on separate certificates. If more than one certificate is issued for an inspection, each of the certificates, shall, insofar as practicable, be clearly cross-referenced to the other certificates issued for the inspection.

(b) *Distribution (general).* (1) The original and a minimum of one copy of each certificate shall be delivered or mailed to the applicant of record or to his order; and one copy shall be retained by the official inspection agency, or the field office, which conducted the inspection. One copy of each appeal inspection certificate shall also be delivered or mailed to each respondent of record, or to his order.

(2) At the option of the official inspection agency, additional copies may be furnished to the applicant without extra charge, if the request for the extra copies is made prior to the issuance of the certificate. If the request for the extra copies is received after the certificate is issued, the copies may be furnished without extra charge or may be furnished at an established fee.

(3) One copy of each certificate issued by a licensed employee of an official inspection agency shall be delivered or mailed to the field office.

(c) *Prompt issuance.* The original of each official certificate, the copies for the respondents, if any, and the copy for the field office shall be issued on the date of inspection: *Provided,* That if the results of the inspection have been reported or released to the applicant on that date, the certificate and the copies may be issued not later than the close of business on the next business day following that date. (For meaning of "business day" and "date of inspection", see § 26.1(b) (6) and (11).) No official certificate shall be predated or postdated except as may be provided in the instructions.

(d) *Reproducing certificates.* Holders of official certificates may make photocopies or similarly reproduced copies of the certificates: *Provided,* That no reproduced copy of an original certificate shall be made or issued unless the reproduced copy is clearly marked Reproduced Copy. A violation of this section may be deemed a violation of the provisions of paragraph (a)(1) of section 13 of the Act.

(e) *Who may issue certificates.* (1) Certificates for inspection conducted by an official inspection agency, may be issued by any grain sampler, grain technician, or grain inspector who is employed by the inspection agency and is licensed to perform and to certify the inspection covered by the certificate: *Provided,* That only a licensed inspector may issue a certificate which shows an official grade determination, with or without additional factor information.

(2) Certificates for inspections conducted by the Grain Division may be issued by any sampler, technician, inspector, or supervisor who is employed and authorized by the Department of Agriculture to perform the inspection covered by the certificate.

(3) In no case may a person issue a certificate unless he is licensed or otherwise authorized to issue the certificate.

(f) *Who shall issue certificates.* The person who is in the best position to know whether an inspection has been performed in an approved manner and whether the final determinations are accurate and true shall issue the certificate for the inspection. If an inspection is performed, in whole or in large part, by one person, the certificate should be issued by that person. If an inspection is performed by two or more persons, the certificate should be issued by the person who made the majority of the more significant determinations: *Provided,* That nothing in the foregoing shall preclude a supervisory inspector or chief inspector from issuing an official certificate if he is licensed to perform the inspection covered by the certificate.

(g) *Name requirement.* The name, or the signature, or both, of the person who issued the inspection certificate shall be shown on the certificate: *Provided,* That the name and the signature shall be shown on each original export certificate and, upon request of an applicant, shall be shown on other original certificates. If an original certificate is signed, either the signature or a stamped facsimile shall be shown on each copy.

(h) *Authorizations to affix names.* (1) The names or the signatures of official inspection personnel may be affixed to official certificates by persons other than the official inspection personnel: *Provided,* That (i) the persons are employed by an official inspection agency or by the Grain Division; (ii) the persons have been designated as authorized agents for this purpose by a field office; (iii) a power of attorney authorizing the affixing of the names or signatures has been issued to each such person by each of the official inspection personnel; (iv) if the person is employed by an official inspection agency, the original or a true copy of the designation and of the power of attorney are on file in the office of the agency, and a copy of each document is on file in the field office and in the case of Grain Division personnel, the original or a true copy of the designation and of the power of attorney are on file in the field office and a copy of each document is on file in the district office; and (v) the certificate is prepared from an official work record which has been personally signed by the person whose name or signature is shown on the certificate.

(2) When a name or signature of any official inspection personnel issuing a certificate is affixed to an official certificate by an authorized agent, the initials of the given names and surname of the authorized agent shall be shown on the certificate immediately below or following the name or signature of such official inspection personnel.

(i) *Advanced information.* Upon request of an applicant, all or any part of the contents of a certificate may be telegraphed or telephoned to him, or to his order, at his expense.

(j) *Information on dismissed inspection.* No official certificate shall be issued or information thereon released after the request for inspection has been withdrawn or dismissed.

(k) *Voiding certificates.* Each official certificate which is rendered useless through clerical error or by being superseded by another certificate, shall be marked "Void". If a certificate is rendered useless through clerical error, the original or a true copy of the certificate shall be retained by the official inspection agency or field office. If a certificate is superseded, the original of the superseded certificate shall be filed if surrendered, with the copy of the superseding certificate. A true copy of each superseded certificate shall be retained in accordance with paragraph (l) of this section.

(l) *Certificate control system.* (1) Each official inspection agency and each field office shall establish a certificate control system for official certificates which they receive, issue, and void or otherwise render useless. Such system shall be subject to approval by the Administrator. The system shall consist of (i) maintaining a record of the numbers of the official certificates received from any source; (ii) storing the unused certificates in a manner and location that will adequately safeguard the certificates from fraudulent or unauthorized use; (iii) maintaining a file copy of each certificate issued, or voided or otherwise rendered useless; and (iv) maintaining a record showing the name or initials of the person who verified the truth and accuracy of each certificate issued. File copies shall be retained by certificate number, by date, or by carrier identification number for ready reference.

(2) In the case of an original (or succeeding original) inspection, the file copy shall consist of a true copy of the official certificate. In the case of a reinspection, appeal inspection, divided original, or corrected original certificate, the file copy shall consist of a true copy of the reinspection, appeal inspection, divided original, or corrected original certificate and, if surrendered, the original of the certificate which is superseded.

§ 26.59 Official certificates (general requirements).

(a) *General.* Official certificates shall (1) be on standard forms prescribed in the instructions or approved in specific cases by the Administrator, after consultation with the grain trade; (2) be furnished by the official inspection agencies or, as appropriate, by the Administrator; (3) be typewritten, or written in ink, be in English, and be clearly legible; (4) show the results of official inspections in a uniform, accurate, and concise manner; (5) contain or show the information required by the regulations and such other statements or information as may be prescribed in the instructions; and (6) contain or show only such other statements of fact not inconsistent with the Act or the regulations as may be approved in specific cases by the Administrator.

(b) *Required statements.* Each original and each copy of an official certificate shall, except as provided otherwise in the regulations or in the instructions or approved in specific cases by the Administrator, contain or show the following statements or information:

(1) (i) The caption "Official Grain Inspection Certificate" for certificates which show the results of official sample inspection; (ii) The caption "Official Certificate" for certificates which show only the results of other inspections;

(2) The name of the official inspection agency which conducted the inspection (In the case of U.S. grain in Canadian ports, and appeal inspections, the name "Grain Division" shall be shown);

(3) Information showing whether the certificate is an original, divided-original, duplicate-original, corrected-original, or copy;

(4) Information showing whether the certificate represents an Original Inspection, Second Original Inspection (or successively numbered original inspection), Reinspection, Appeal Inspection, or Board Appeal Inspection;

(5) The consecutive number of the certificate together with a lettered prefix assigned to the official inspection agency or field office by the Administrator (The prefix and the number shall, except on divided-original certificates, be preprinted on the certificate.);

(6) The name of the city, town, or other location, and the State where the certificate is prepared and issued;

(7) The date of the inspection as specified in § 26.1(b)(11);

(8) Information showing whether the certificate represents an In, Out, Export, or Local movement.[1] (An In movement shall be deemed to be a movement of grain into an elevator or warehouse, or into or through a city, town, port, or other location without loss of identity. An Out movement shall be deemed to be movement of grain out of an elevator or warehouse, or out of a city, town, port, or other location. An Export movement shall be deemed to be an Out movement in which the grain is moving out of the United States. A Local movement shall be deemed to be a bin run or similar in-house movement. Grain in store in bins, tanks, or other stationary containers shall be considered as grain in a local movement.)

(9) Information showing whether the inspection is an Official Sample-Lot Inspection, a Type Sample-Lot Inspection, Warehouseman's Sample-Lot Inspection, Submitted Sample Inspection, Checkweighing, Checkloading, Sampling, Stowage Examination, or other identified kind of inspection;

(10) A statement showing that the certificate is issued under the authority of the U.S. Grain Standards Act, as follows:

(i) For certificates which show the results of an official lot inspection:

I hereby certify that I am licensed or authorized under the U.S. Grain Standards Act to inspect the kind of grain covered by this certificate, and that on the above date the following-identified grain was inspected under the Act, with the following results:

(ii) For certificates which show the results of other inspections:

I hereby certify that I am licensed or authorized under the U.S. Grain Standards Act to perform the inspection service covered by this certificate, and that on the above date the following-identified service was performed under the Act, with the following results:

(11) The location of the grain at the time it was sampled, in terms of (i) the railroad yard, pier, elevator, or other specific place; and (ii) the name of the city and the State: *Provided*, That the name of the city and the State need not be shown if they are the same as the city and State shown in accordance with subparagraph (6) of this paragraph;[1]

(12) The date or dates the grain was sampled and the method of sampling the grain;[1]

(13) Upon request of the applicant, the identification of the seals, if any, applied by the applicant or by official inspection personnel to the container identified on the certificate, or the statement "No seals applied," as applicable (The provisions of this subparagraph are not applicable to certificates which represent checkweighing inspections, stowage examinations, or inspections which involve grain in a container which is not designed to be closed and sealed.);

(14) The identification of the grain in terms of (i) car initials and number; (ii) State or municipality license number of truck or trailer, and when necessary to identify an individual truck or trailer, the approximate time of sampling or the scale ticket number; (iii) name or other designation of a ship, barge, or other means of conveyance and the number of the hold or other place of stowage; (iv) name or other designation of an elevator or warehouse and the bin or compartment; (v) the applicant's mark, number, or other identification for a submitted sample; or (vi) other identification as the official inspection personnel who issue the certificate may deem necessary[2] (An applicant's mark, number, or identification which is known by official inspection personnel to be false or misleading shall not be shown as the identification of a submitted sample. If such a mark, number, or identification is shown by the applicant, the official inspection personnel shall assign, or may request the applicant to assign a new mark, number, or identificaton: *Provided*, That nothing in this subparagraph (14) shall preclude the true showing by an applicant of the identification of the means of conveyance transporting the grain.);

(15) (i) For lot inspection certificates: The approximate quantity of grain in the lot, stated in terms of carload, truckload, trailerload, part-carload, part-truckload, part-trailerload, or in bushels, or by weight: *Provided*, That if the quantity is stated in terms of bushels or by weight, the statement "Weights Not Verified" shall, unless the weights are verified by the official inspection agency, be shown on the certificate immediately below the information showing the quantity, and if the weights are verified by the agency, the statement shall not be shown. (An inspection certificate, other than a checkweighing or checkloading certificate, is not deemed to be a weight certificate.)

(ii) For "Submitted Sample" inspection certificates: The approximate quantity of grain in the sample, stated in terms of volume or weight.

(16) The grade and kind of the grain covered by the certificate: *Provided*, That if an official grade is not shown on the certificate, the word "grade" shall not be shown on the certificate. (The requirement of this subparagraph is not applicable to certificates which represent stowage examinations.)

(17) Information showing the results of the inspection, in accordance with the kind of inspection requested by the applicant (See § 26.6 for kind (scope) of official inspection services.);

(18) The word Remarks, together with space for such information;

(19) The name and/or signature of the duly qualified person who issued the certificate, stated in accordance with the provisions of § 26.58;

(20) The title of the person who issued the certificate, in terms of Official Grain Sampler, Official Grain Technician, Official Grain Inspector, Grain Inspection Supervisor, of Chairman, Board of Appeals and Review;

(21) A statement showing (i) the authority for the issuance of the certificate, (ii) a validity clause, (iii) a receivability clause, and (iv) a disclaimer clause, as follows: "This certificate is issued under the authority of the U.S. Grain Standards Act, as amended (7 U.S.C. 71 et seq.), and the regulations thereunder (7 CFR 26.1 et seq.). It is issued to show the kind, class, grade, quality, condition, quantity of sacks of grain, or other facts relating to grain as specified herein, at the time and place of inspection. If it is not canceled by a superseding certificate, it is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the facts stated herein. This certificate does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal Law.";

(22) For "Warehouseman's Sample—Lot Inspection", and "Submitted Sample" inspection certificates, a statement, as follows: "This certification does not meet the requirements of section 5 of the U.S. Grain Standards Act.";

(23) A warning statement, as follows: "Warning: Any person who shall knowingly falsely make, issue, alter, forge, or counterfeit this certificate, or participate in any of such actions, is subject to a fine of not more than $5,000 or imprisonment for not more than 1 year, or both.";

(24) A reference statement, as follows: "Please refer to this certificate by the lettered prefix, number, and date."; and

(25) Any other statements required by §§ 26.5, 26.6, 26.8, 26.13–26.16, 26.30, 26.39, 26.49, 26.61–26.63 and any other statements prescribed in the instructions or approved in specific cases by the Administrator.

(c) *Statements to be shown on face of certificate.* All statements and information required or permitted to be shown on official certificates shall, except where the regulations prescribe otherwise, be shown on the face of the certificates.

(d) *Other languages.* Upon request by an applicant, and approval by the Adminstrator the statements and information shown on an export certificate may be shown, in whole or in part, in another language in addition to being shown in English.

(e) *Other requirements for certificates.* The requirements for the certificate forms to be used by official inspection personnel shall be prescribed in the instructions. They may include, but are not limited to, requirements concerning the following: (1) Uniform kind,

[1] This requirement is not applicable to certificates which represent unofficial submitted sample inspections, checkweighing or checkloading inspections, stowage examinations, or other inspections which do not involve the sampling of grain by official inspection personnel.

[2] For the identification of part-lots, see § 26.13(h).

weight, and color specifications for the original certificates and for copies of the certificates, including a requirement that the original certificates be on stock that is distinctively tinted with fugitive ink; (2) uniform sizes and shapes; (3) uniform formats including, but not limited to (i) a form on pink paper, covering submitted sample inspections; (ii) a form on yellow paper, covering warehouseman's sample-lot inspections; (iii) a form on white paper, covering export inspections; and (iv) a combination form or forms on white paper, covering other kinds of official inspections.

(f) *Factor identification.* Whenever practicable, factor identifications shall be printed on inspection certificates in block form. When space on the certificates does not permit showing the full identification for a factor, an abbreviation may be used: *Provided*, That (1) the abbreviation is shown in accordance with the provisions of § 26.56(g); (2) the abbreviations and the meaning of the abbreviations are shown on the back of the certificate; and (3) the statement "See reverse side for abbreviations," is shown in the space provided for remarks, on the face of the certificate.

§ 26.60 Grade inspection certificates.

(a) *General.* Each official certificate which shows an official grade determination (with or without specified factors) shall show the grade in accordance with the official grain standards, and shall show the following factor information:

(1) The test weight per bushel.

(2) The moisture content of the grain, whenever the moisture content is equal to or exceeds the following limits:

	Percent		*Percent*
Wheat	12.5	Grain sorghum	12.0
Corn	13.0	Flaxseed	8.5
Barley	12.5	Soybeans	12.0
Oats	13.0	Mixed grain	13.0
Rye	13.0		

Provided, That each certificate which represents a cargo shipment shall show the moisture content of the grain.

(3) The information for any factor for which a specific determination is made during the course of inspection.

(4) Each certificate which represents a cargo shipment shall show the information for each of the following factors in addition to the information required by subparagraphs (1) through (3) of this paragraph.

WHEAT (HARD RED SPRING, HARD RED WINTER, SOFT RED WINTER, AND WHITE)

Heat-damaged kernels.
Damaged kernels (total).
Foreign material
Shrunken and broken kernels.
Defects (total).
Contrasting classes.
Wheat of other classes (total).

WHEAT (DURUM)

Heat-damaged kernels.
Damaged kernels (total).
Foreign material.
Shrunken and broken kernels.
Defects (total).
Contrasting classes.

NOTE: Wheat of other classes (total) shall not be shown.

WHEAT (RED DURUM)

Heat-damaged kernels.
Damaged kernels (total).
Foreign material.
Shrunken and broken kernels.
Defects (total).
Wheat of other classes (total).

WHEAT (MIXED)

Heat-damaged kernels.
Damaged kernels (total).
Foreign material.
Shrunken and broken kernels.
Defects (total).

CORN

Broken corn and foreign material.
Damaged kernels.
Heat-damaged kernels.

BARLEY (OTHER THAN MALTING, BLUE MALTING, AND WESTERN)

Sound barley.
Damaged kernels.
Heat-damaged kernels.
Foreign material.
Broken kernels.
Thin barley.
Black barley.

BARLEY (MALTING AND BLUE MALTING)

Sound barley.
Damaged kernels.
Foreign material.
Skinned and broken kernels.
Thin barley.
Black barley.
Other grains.

BARLEY (WESTERN)

Sound barley.
Heat-damaged kernels.
Wild oats.
Foreign material.
Broken kernels.
Black barley.

OATS

Sound cultivated oats.
Heat-damaged kernels.
Foreign material.
Wild oats.

RYE

Damaged kernels.
Heat-damaged kernels.
Foreign material.
Foreign matter other than wheat.

GRAIN SORGHUM

Damaged kernels.
Heat-damaged kernels.
Broken kernels, foreign material, and other grains.

FLAXSEED

Heat-damaged flaxseed.
Damaged flaxseed (total).

SOYBEANS

Splits.
Damaged kernels.
Heat-damaged kernels.
Brown, black, and/or bicolored soybeans in yellow or green soybeans.
Foreign material.

MIXED GRAINS

Foreign material.
Damaged kernels.
Heat-damaged kernels.

(5) In case the grain in a cargo shipment is graded a grade other than No. 1 and the grade is determined by a factor or factors other than those listed in subparagraphs (1) through (4) of this paragraph, the certificate shall show the information for each of the factors that determined the grade.

(6) Each certificate which represents an inspection other than a cargo shipment shall show the information for each of the factors which determined the grade, if the grain is graded other than No. 1, and the factor information for heating, musty, or sour, if the grain is graded heating, musty, or sour. (See also subparagraphs (1) through (3) of this paragraph.)

(7) Subject to requirements in subparagraphs (1) through (6) of this paragraph, all official grade factor information requested by the applicant, in addition to that required by this paragraph.

(8) A certificate may contain any or all other official factor information which the person issuing the certificate deems necessary to correctly describe the grain.

(b) *Meaning of term "factor".* For the purposes of this section, each factor which is defined in the official grain standards, such as test weight per bushel, moisture, and damaged kernels, and each other factor such as musty, heating, and stained shall be considered a separate and distinct factor.

§ 26.61 Divided-original inspection certificates.

(a) *General requirements.* If an export cargo shipment is offered for inspection as one lot, and is found to be uniform in grade and is certificated as one lot, or does not contain more than 40 percent of grain of a better grade than the balance of the lot, the applicant may exchange the original certificate for two or more divided-original certificates subject to the requirements in paragraphs (b) through (g) in this section.

(b) *Application.* The request for the divided-original certificates must be filed (1) in writing; (2) by the applicant who filed the request for the export cargo shipment inspection; (3) with the official inspection agency, or the field office which conducted the export cargo shipment inspection; (4) at the time of the export cargo shipment inspection, or within 5 business days after the date of the inspection; and (5) before the identity of the grain has been lost: *Provided*, That upon a showing of good cause, the Administrator may waive subparagraph (4) of this paragraph.

(c) *Required information.* The request for the divided-original certificates must (1) be accompanied by written evidence which shows that the grain, in fact, is being exported from the United States; and (2) specify the quantity of grain to be shown on each divided-original certificate.

(d) *Surrender of certificate.* The original export cargo shipment inspection certificate must be in the custody and control of the official inspection agency or the Grain Division; must be marked: Void-Surrendered for Divided-Original Inspection Certificates; and must show the identity of the divided-original inspection certificates.

(e) *Change in condition.* The official inspection personnel who performed the original inspection must have no reason to believe that the condition of the grain has changed since the date of the inspection.

(f) *Certification requirements.* The same identical information and statements shall be shown on the divided-original certificates as shown, or required to be shown, on the original certificate except (1) the original and all copies shall show, in the space provided for remarks, the completed statement "This grain is part of an undivided lot of _____ (bushels) (pounds)."; (2) the original shall show the term Divided-Original instead of Original and the copies shall show the term Divided-Original (Copy) instead of the word Copy; (3) the serial number shown on the divided-original certificates shall be the same as the serial number shown on the original certificate except the serial number on the divided-original certificates shall include a serially numbered suffix; (4) the quantity of grain shown on the divided-original certificates shall be in accordance with the request for the certificates: *Provided*, That no divided-original certificates shall be issued which show, individually or in the aggregate, a quantity of grain in excess of the quantity shown on the original certificate.

(g) *Limitations.* (1) No divided-original inspection certificates shall be issued for any inspection other than an export cargo shipment inspection for grade, with or without additional factors, or in any manner other than as prescribed in this section. (2) After divided-original certificates have been issued in accordance with the provisions of paragraphs (b) through (h) of this section, there shall be no combining or further dividing of the divided-original certificates at a later date except as may be approved in specific cases by the Administrator.

(h) *Other certification requirements.* For the general provisions governing the inspection and certification of grain in ships, see §§ 26.14, 26.59, and 26.60.

§ 26.62 Duplicate-original inspection certificates.

If the original of an official certificate has been lost or destroyed, and has not been superseded, a duplicate-original certificate may be obtained in accordance with the following requirements:

(a) *Application.* The request for the duplicate-original certificate must be made in writing by the applicant for inspection, and must be accompanied by satisfactory evidence that the original certificate has been lost or destroyed and, if lost, that diligent effort has been made to find it without success.

(b) *Certification requirements.* The duplicate-original certificate shall show the identical information and statements as shown on the lost or destroyed certificate except (1) the original of the duplicate-original certificate shall show the term Duplicate-Original instead of the word Original; (2) the copies of the duplicate-original shall show the term Duplicate-Original (Copy) instead of the word Copy; and (3) the original and all copies shall show, in the space provided for remarks, the following completed statement: "This Duplicate-Original certificate is issued in lieu of a (lost) (destroyed) certificate."

(c) *Issuance.* The duplicate-original certificate shall be issued as promptly as possible to the applicant. In the case of appeal inspections, copies of the duplicate-original certificate shall be issued to the same interested parties as received copies of the certificate which was lost or destroyed.

(d) *Limitations.* No duplicate-original certificate shall be issued for a certificate that has been superseded, or be issued in any manner other than as prescribed in this section.

(e) *Scope.* The provisions of this section shall be applicable to all levels of certificates, from official certificates for original inspections through official certificates for Board appeal inspection.

§ 26.63 Correcting errors in inspection certificates.

(a) *General.* Official certificates issued and not superseded under the Act and the regulations in this part are receivable by all officers and all courts of the United States as prima facie evidence of the truth of the facts stated therein. The truth and accuracy of official certificates shall be verified by official inspection personnel prior to the issuance of the certificates. If errors are found during the verification process, or at a later date, corrections shall be made in accordance with the provisions of this section. For the purpose of this section, the term "errors" shall be deemed to include errors of commission and errors of omission.

(b) *Limitations.* (1) No correction, erasure, addition, or other change, shall be made on any official certificate by any person other than official inspection personnel licensed or authorized to issue such certificates, or their authorized agents. (2) No correction, erasure, addition, or other change, shall be made or shown on an export inspection certificate except with the consent of the applicant and the Administrator. In the absence of such consent, if errors are found in such a certificate before issuance, it shall be marked "Void" and shall not be issued.

(c) *Prior to issuance.* If errors are found prior to the issuance of a certificate, the errors may, subject to the provisions in paragraph (b) of this section, be corrected by (1) issuing a new certificate; or (2) making corrections on the incorrect certificate subject to the following requirements: (i) The corrections shall be made in a neat and legible manner; (ii) the corrections shall be initialed by the person correcting the certificate; and (iii) the corrections and the initials shall be shown on the original and all copies of the certificate.

(d) *After issuance.* If errors are found after the issuance of a certificate, the errors may, subject to the provisions in paragraph (b) of this section, be corrected by obtaining the original and all copies of the incorrect certificate and issuing a new certificate to the same applicant and respondents who received the incorrect certificate. If the original and all copies cannot be obtained, a corrected-original inspection certificate may be issued in lieu of the incorrect certificate subject to the following requirements:

(1) Written or oral notice of the error shall be issued to the applicant, the respondents, and the field office (i) before the grain has left the designated inspection area where the grain was located when the inspection in question was made; and (ii) as promptly as possible, but not later than the close of business on the first business day following the date of inspection. Upon written or oral approval of the applicant, the respondents, and the Administrator, any or all of the requirements of this subparagraph may be waived. A record of each waiver action must be included by the official inspection agency in the record of the inspection.

(2) The original of the incorrect certificate shall, if possible, be obtained from the applicant by, or be in the custody or control of, the official inspection agency or the Grain Division.

(3) The original and the copies of the corrected-original certificate shall be issued to the same applicant and respondents who received the certificate which was found incorrect.

(4) The corrected-original inspection certificate shall show the identical information and statements as shown on the incorrect certificate except (i) the correct statement or information shall be shown instead of the incorrect or omitted statement or information; (ii) a new serial number shall be shown; (iii) the original of the corrected-original certificate shall show the term Corrected-Original instead of the word Original; (iv) the copies of the corrected-original certificate shall show the term Corrected-Original (Copy) instead of the word Copy; (v) the original and the copies shall show, in the space provided for remarks, the following completed statement: "This certificate is corrected as to _____ and supersedes certificate No. _____, dated _____." (The number shown in the statement shall, in all cases, include the lettered prefix); and (vi) if the superseded certificate is in the custody of the official inspection agency or the Grain Division, the superseded certificate shall be marked Void in a clear and conspicuous manner. If the superseded certificate is not in the custody of the official inspection agency or the Grain Division at the time of issuing the corrected-original certificate, the statement "The superseded certificate identified herein has not been surrendered" shall be clearly shown in the space provided for remarks on the corrected-original certificate. Official inspection personnel shall exercise such other precautions as may be found necessary to prevent the fraudulent and unauthorized use of the superseded certificate.

(5) No corrected-original certificates shall be issued (i) for a certificate which has been superseded; or (ii) in any manner other than as prescribed in this section.

(e) *Scope.* The provisions of this section shall be applicable to all levels of

certificates, from official certificates for original inspections through official certificates for Board appeal inspection.

§ 26.64 Additional information which may be included on certificates or letterhead statements.

(a) *General.* In addition to the information and statements required to be shown, official certificates may contain or show only such other statements of fact not inconsistent with the Act or the regulations as may be prescribed in the instructions or approved in specific cases by the Administrator.

(b) *List of approved statements.* A list of statements which have been approved by the Administrator and which may, upon request by an applicant, be shown on inspection certificates, may be obtained from any official inspection agency, field office, or district office.

(c) *Letterhead statements.* In showing other additional statements, letterhead reports may be issued by official inspection personnel when (1) such reports are more suitable than official certificates, and (2) the wording and issuance of the reports have been prescribed in the instructions or approved in specific cases by the Administrator. Such reports shall be official forms within the meaning of the Act.

FEES AND CHARGES

§ 26.70 Inspections conducted by official inspection agencies.

(a) *Assessment and use of fees.* Fees and charges assessed by an official inspection agency shall be nondiscriminatory and reasonable and shall not be used to pay costs of conducting any operation of the inspection agency which is not related to official inspection functions.

(b) *Schedule of fees and charges.* A schedule of the fees and charges for inspection services conducted under the Act by an official inspection agency shall be established, and published or otherwise made available, by the agency to users or prospective users of the services.

§ 26.71 Federal inspection services in Canadian ports.

(a) *General.* The fees and charges for inspection services performed by official inspection personnel on U.S. grain in Canadian ports shall be as follows:

Service	Fee or Charge
(1) For original inspections:	
(i) Lot inspection: For sampling and inspection for grade, factor analysis, or other criteria, whether performed singly or concurrently (per man-hour)	$20.00
(ii) Checkloading and other special services [1] prescribed in § 26.6 (g), (h), (i), and (j), and standby time (per man-hour)	20.00
(iii) Minimum fee	20.00
(iv) Submitted sample inspection (per sample)	20.00
(2) For reinspections and appeal inspections: [2]	
(i) Lot inspections: Basis original sample (per lot)	20.00
Basis new sample (per lot)	[3] 20.00
(ii) Submitted sample inspection (per sample)	20.00
(3) For extra copies of certificates (per copy)	1.00

[1] Only one fee will be charged for these services whether performed singly or concurrently. (But see minimum fee requirement.)

[2] If it is found that there was a material error in the inspection from which a reinspection or an appeal is taken, no reinspection or appeal inspection fee shall be assessed.

[3] Plus applicable sampling charge.

(b) *Hourly rates.* (1) Hourly rates shall be applicable at any time during any day and include (i) the cost of travel and transportation to perform the service requested, and (ii) the cost of an original and four copies of an official certificate.

(2) Hourly rates shall begin when the Grain Division representatives arrive at the point of service and end when they depart from the point of service, computed to the nearest quarter hour (less meal time, if any).

(c) *Standby time.* Standby time shall be computed whenever the Grain Division representative (1) has been requested by an applicant to perform a service at a specified time and location, (2) is on duty and is ready and willing to perform the service requested, and (3) is unable to perform the service requested because of a delay by the applicant for any reason. Standby time shall be computed to the nearest quarter hour (less meal time, if any).

(d) *Authorization.* The Grain Division representative may be a salaried employee of the Department of Agriculture or a person licensed by the Administrator to perform the services requested under a contract with the Department.

(e) *Miscellaneous fees and charges.* Fees and charges for Federal inspection services for U.S. grain in Canadian ports not specified in paragraph (a) of this section will be fixed by the Administrator and published in the regulations.

§ 26.72 Appeal inspection services in the United States.

(a) *General.* The fees and charges for appeal inspection services performed by official inspection personnel of the Grain Division (other than Board appeals) on grain in the United States shall be as follows: [3] [4]

[3] Fees shown in subparagraphs (1) through (5) of paragraph (a) shall include inspections for grade, or for factor analysis, whether performed singly or concurrently; or inspections for one or more other criteria, whether performed singly or concurrently.

[4] If it is found that there was a material error in the inspection from which an appeal is taken, no appeal inspection fee shall be assessed, but see § 26.73(a).

Service	Fee or charge: Inspections for grade or factor analysis; *or* inspections for one or more other criteria	Fee or charge: Inspections for grade or factor analysis; *and* inspections for one or more other criteria
(1) For bulk or sacked grain in carlots:		
(i) Covered hopper cars and other cars with a marked capacity of 130,000 or more pounds (per carlot or part-carlot)	$13.00	$18.00
or		
Basis official file sample	[1] 5.50	10.50
(ii) All other cars (per carlot or part-carlot)	9.00	14.00
or		
Basis official file sample	[1] 5.50	10.50
(2) For bulk or sacked grain in truck and trailer lots (per truck or trailer lot or part-truck or part-trailer lot)	7.50	12.50
or		
Basis official file sample	[1] 5.50	10.50
(3) For bulk or sacked grain in ship (barge, or other waterborne carrier) lots (per thousand bushels or fraction thereof)	1.75	2.50
or		
Basis official file sample per sublot	[1] 5.50	10.50
Basis warehouseman's sample per sublot	5.00	10.00
Minimum fee per lot (except basis official file sample or warehouseman's sample)	7.50	12.50
(4) For submitted sample, or package of grain (per sample or package)	5.00	10.00
(5) For all lots of grain other than those referred to in subparagraphs (1), (2), (3), and (4) of this paragraph (a) (per thousand bushels or fraction thereof)	1.75	2.50
or		
Basis official file sample	[1] 5.50	10.50
Minimum fee per lot (except basis official file sample)	7.50	12.50

Service	Fee or charge
(6) Checkloading and other special services [1] prescribed in § 26.6 (g), (h), (i), and (j), and standby time (per man-hour)	$7.50
Minimum fee per inspection	7.50
(7) Quality information inspection (available only in connection with an appeal inspection on a ship lot) (per lot)	[2] 7.50
(8) For extra copies of an appeal inspection certificate (per copy) (The original and one copy of each appeal inspection certificate or divided-original certificate shall be issued to the applicant of record or to his order, and one copy shall be issued to each respondent of record or to his order. Additional copies furnished to the applicant and to each respondent or to their order shall be considered extra copies.)	1.00

See footnotes at end of table.

Service	Fee or charge: Inspections for grade or factor analysis; or inspections for one or more other criteria	Fee or charge: Inspections for grade or factor analysis; and inspections for one or more other criteria
(9) Charges for holiday, night, or overtime work performed by employees of the Department of Agriculture on account of an appeal, and for travel time on account of an appeal for which employees receive overtime compensation, shall be determined at the rate of $9.80 per man-hour per employee and shall include the following:		
(i) A minimum charge of 2 hours shall be made for any unscheduled overtime work performed by an employee in any of the following circumstances: (a) On a day when no work was scheduled for him; or (b) which is performed by an employee on his regular work day beginning either at least 1 hour before his regular tour of duty or which has necessitated his recall to perform work after he has completed his regular tour of duty and has left his place of employment; or (c) when the employee is ordered, before he leaves his place of employment, to perform such unscheduled overtime work and at least two hours elapse between the end of his duty tour whether regular or overtime, and his return to duty to perform the overtime work.		
(ii) The charges for holiday, night, or overtime work and for travel time for which employees receive overtime compensation shall be in addition to the fees described in subparagraphs (1) to (8) of this paragraph (a) in all cases, whether there was or was not a material error in the inspection from which the appeal was taken.		

[1] The fee for an appeal inspection on the basis of an official file sample retained by an official inspection agency, includes a surcharge of $0.50 which is forwarded to the official inspection agency as reimbursement for locating and furnishing samples.
[2] Only one fee will be charged for these services, whether performed singly or concurrently.
[3] Fee shall be in addition to the applicable fee shown in subparagraph (3) of paragraph (a) of this section.

(b) *Board appeals.* The fees and charges for appeal inspection services performed by the Board of Appeals and Review on grain in the United States shall be as follows:

(1) For services identified in subparagraphs (1) through (5) in paragraph (a) of this sample, a fee of $11 per lot, sublot, or sample: *Provided,* That if it is found that there was a material error in the inspection from which an appeal is taken by the Board of Appeals and Review, no fee shall be assessed.

(2) For extra copies of an appeal inspection certificate, $1 per copy.

(c) *Costs included in fees.* The fees and charges specified in this section shall, except as provided in paragraph (a)(9) of this section, include the cost of travel and transportation to perform the service requested, and the original and one or more copies of an appeal inspection certificate as specified in paragraph (a)(8) of this section.

§ 26.73 Fees and charges; general provisions.

The fees and charges prescribed in §§ 26.71 and 26.72 shall be determined, assessed, paid, and deposited as follows:

(a) *Material error.* If it is found that there was a material error in the inspection from which a reinspection or an appeal inspection is taken, no fees or charges shall be assessed, except as provided in § 26.72(a)(9). For the purpose of the regulations, a change in grade, or any comparable change, as prescribed in the instructions, shall be deemed evidence of a material error.

(b) *To whom fees assessed.* Fees and charges for official inspection services shall be assessed to and paid by the applicant.

(c) *Advanced payment.* If required by a field office, fees and charges shall be paid in advance. Any fees and charges remitted in excess of the amount due shall be refunded.

(d) *Form and time of payment.* Payment for fees and charges for inspection services shall be made by check, draft, or money order payable to the Consumer and Marketing Service. Payment shall be remitted promptly upon receipt of a bill for the services.

(e) *Revolving fund.* Receipts for inspection services shall be deposited by the Consumer and Marketing Service in a fund which shall be available without fiscal year limitation for the expenses of the Department of Agriculture incident to providing official inspection services.

(f) *Charges for demonstrations and standard samples.* Charges may be made for demonstration of performance of inspection functions or standard line samples demonstrating determinations when such demonstrations or samples are furnished to persons other than official inspection personnel upon request. The charges for the demonstrations and preparing the samples shall be based on an hourly rate established by the Administrator and shall as nearly as practicable cover the cost to the Consumer and Marketing Service incident to the services.

(g) *Information.* Information concerning the fees and charges for any particular inspection service may be obtained from the Administrator or from any field or district office.

Licenses, Authorizations, and Contracts

§ 26.75 When license or authorization is required.

(a) *General.* Any person who performs, or represents that he is licensed or authorized to perform, in whole or in part, any official inspection function under the Act and the regulations, must be duly licensed, or duly authorized under the Act and the regulations: *Provided,* That a prospective applicant for a sampler's or a technician's license may, for a limited period of time not to exceed 2 weeks, help perform official sampling or testing functions under the direct supervision of an individual who is licensed to perform such functions: *Provided, further,* That such supervising licensee shall be fully responsible for the official inspection functions performed by the prospective applicant and shall initial any work forms prepared by the prospective applicant. A person shall be deemed to be licensed or authorized to perform an official inspection function only if he holds a license or an authorization for each official inspection function which he performs, or represents that he is licensed or authorized to perform.

(b) *When license not required.* A license or authorization under the Act and the regulations is not required for (1) the opening or closing of a means of conveyance or the transporting or filing of official samples or similar laboring functions; or (2) the typing or filing of inspection records or similar clerical functions; or (3) the performance of private (not official) inspection functions.

§ 26.76 Who may be licensed or authorized.

(a) *Prohibitions.* No person may be licensed or authorized to perform official inspection functions under the Act and the regulations who (1) is financially interested (directly or otherwise) in any business entity owning or operating any grain elevator or warehouse or engaged in the merchandising of grain, other than as a grower; (2) is in the employment of any such entity; or (3) is engaged in any of the activities specified in § 26.87 as involving a conflict of interest: *Provided,* That qualified employees of any grain elevator or warehouse may be licensed to perform specified sampling functions in accordance with the provisions of § 26.79(c)(2).

(b) *General qualifications.* Any individual may be licensed to perform official inspection functions if he is employed by an official inspection agency to perform such functions, or enters into a contract with the Department of Agriculture to perform such functions, and if he is found competent in accordance with this section and § 26.78. To be deemed competent, the individual must (1) have graduated from grade school and had one or more year's qualifying experience, or have graduated from high school, or have an equivalent amount of education and experience; (2) have been found in accordance with § 26.78 to possess the proper qualifications and to have available to him and subject to his direction the necessary equipment and facilities for performing the official functions: *Provided,* That upon a showing of good cause, the grade school education requirement may be waived by the Administrator.

(c) *Qualifying experience.* For the purpose of paragraph (b) of this section, qualifying experience for a grain sampler's license shall consist of, but not be limited to, sampling, producing, or handling grain; for a grain technician's license, sampling, testing, or analyzing grain; and for a grain inspector's license,

sampling, testing, analyzing or grading grain.

(d) *Competency determinations.* (1) For the purpose of paragraph (b) of this section, the competency of a grain sampler or grain technician employed by an official inspection agency, shall be determined by the chief inspector and the Administrator; and the competency of all inspectors employed by an official inspection agency and of samplers and technicians employed under the terms of a contract with the Department of Agriculture shall be determined by the Administrator. Such determinations shall include an evaluation of the results of examinations or reexaminations under § 26.78.

(2) Upon request by an official inspection agency, employees of the agency may assist, at the option of the Administrator, a field office, on a fee basis, in determining the competency of grain samplers employed by grain elevators or warehouses within the designated inspection area assigned to the agency.

(e) *Meaning of "employed".* For the purposes of paragraph (b) of this section, an individual shall be deemed to be "employed" if he is actually employed or his employment is being withheld pending the receipt by the individual of the required license under the Act and the regulations.

§ 26.77 Applications for licensing actions.

(a) *General.* Applications for licensing actions under the Act and the regulations shall be made to the field office on a form prescribed for the purpose and furnished by the Administrator. (For location of field offices, see § 26.9(d).) Each application shall (1) be in English; (2) be typewritten or written in ink; (3) include all information prescribed in the application form; and (4) be signed by the applicant in his own handwriting.

(b) *Additional information.* An applicant shall at any time furnish such additional information as the Administrator may request as necessary for the consideration of the application.

(c) *Withdrawal and dismissal.* An application for a licensing action may be withdrawn by an applicant at any time. An application may be dismissed by the Administrator (1) if the applicant is found not to meet the requirements of § 26.76; or (2) the application is found not to meet the requirements of this section (26.77): *Provided,* That an application for a renewal of a license, or for the return of a license which has been suspended, may be dismissed only after the licensee has been afforded an opportunity for a hearing in accordance with rules of practice in Subpart C of this part.[2] When an application is dismissed, the Administrator shall promptly inform the applicant of the reason for the dismissal.

(d) *Review of applications for determination of conflicting interests.* (1) The Grain Division office having jurisdiction to issue a license shall promptly review each application for such a license for the purpose of determining whether there is any conflict of interest on the part of the applicant for the license.

(2) In any case in which the review raises a question as to whether a conflict exists, the matter will be resolved promptly at the field office level if possible. The applicant (or licensee) shall be provided an opportunity to explain or end the alleged conflict of interest. When the issue of the conflict of interest is not resolved, the case shall be referred to the Administrator for a ruling. (See also §§ 26.76 and 26.87 for conflicts of interest provisions.)

§ 26.78 Examinations and reexaminations.

(a) *General.* Applicants for a license, licensees, and employees in field offices shall, whenever deemed warranted by the Administrator (after consultation with the chief inspector in the case of an employee of an official inspection agency) submit to examinations or reexaminations to determine their competency to perform any or all of the official inspection functions for which they desire to be or are licensed or authorized.

(b) *Time and place of examinations.* Examinations or reexaminations under this section shall be conducted by such licensed or authorized personnel as may be designated by the Administrator and at such time and place, and otherwise in such manner as may be prescribed in the instructions.

(c) *Scope of examinations.* Examinations or reexaminations may include, but are not limited to, color vision tests, on-the-spot performance tests, or written tests; and may be based, in whole or in part, on the provisions of the Act, the regulations, the official grain standards, and the instructions.

(d) *Standards of performance.* For the purpose of the regulations a person may be deemed incompetent to perform all or specified parts of an official inspection function if he (1) has a serious color vision deficiency; (2) cannot meet the physical requirements of his duties; (3) cannot readily distinguish between the different kinds of grain, or the different conditions in grain including heating, musty, sour, insect infestation, smut, or other conditions which have a pronounced effect on the merchantability or storability of grain; (4) does not have a thorough knowledge of approved sampling, testing, inspection, or grading procedures prescribed in the instructions; (5) does not have a working knowledge of the Act, the regulations, the official grain standards, or applicable provisions of the instructions; or (6) cannot prepare legible records in the English language.

§ 26.79 Issuance and possession of licenses.

(a) *Form of license.* Licenses issued under the Act and the regulations shall be on forms prescribed for the purpose and furnished by the Administrator.

(b) *Kinds of licenses.* Licenses will be issued on the basis of the licensee's principal duty. A sampler will receive a sampler's license, a laboratory technician will receive a technician's license, and an inspector will receive an inspector's license. Licensees will ordinarily be eligible to receive only one license; however, in unusual instances, multiple licenses may be issued to one licensee upon showing of good cause.

(c) *Scope of licenses.* Subject to the provisions of § 26.76, samplers, technicians, and inspectors may be licensed to perform the following duties:

(1) *Grain samplers and grain technicians.* Grain samplers and grain technicians employed by an official inspection agency may be licensed to perform sampling, testing, and similar functions, and upon request of the agency, to issue official certificates for the functions performed by them;

(2) *Warehouse samplers.* Employees of grain elevators or warehouses may be licensed to sample grain: *Provided,* That no grain elevator or warehouse employee will be licensed to (i) sample export grain which is required to be officially sampled under section 5 of the Act; (ii) test grain, (iii) grade grain, or (iv) certify the results of any official inspection function.

(3) *Grain inspectors.* Grain inspectors employed by an official inspection agency may be licensed to perform sampling, testing, grading and related functions and to issue official certificates for the functions performed by them. No person other than a grain inspector will be licensed or authorized to issue an official certificate which shows an official grade, with or without additional factor information.

(4) *Contract licensees.* Persons may be licensed under a contract with the Department of Agriculture for the performance of specified sampling or testing functions. Such persons will not be licensed to issue official certificates.

(d) *Issuing officers.* Official grain sampler's licenses shall be issued by field offices. Official grain technician's licenses and official grain inspector's licenses shall be issued by the Administrator.

(e) *Condition for issuance.* (1) Each license is issued on the condition that the licensee will, during the term of the license, comply with all of the provisions of the Act, the regulations, and instructions issued by the Administrator.

(2) Each license shall be the property of the Department of Agriculture, but each licensee shall have the right of possession of his license, subject to the provisions of §§ 26.78(a) and 26.87(c).

(f) *Duplicate license.* Upon satisfactory proof of the loss or destruction of a license, a duplicate license will, at the discretion of the Grain Division office which issued the lost license, be issued to the licensee.

(g) *Card-form license in custody of licensee.* All licensees shall have in their custody the card-form license and upon request, while on duty, present it as a means of identification.

§ 26.80 Automatic termination of licenses.

(a) *Term of license.* The term for a license shall be in accordance with the

[2] Such rules will be issued later.

alphabetical termination schedule in paragraph (b) of this section (unless the licenses are terminated, canceled, or revoked at an earlier date): *Provided*, That upon request of a licensee, and a showing of good cause, the termination date may be advanced or delayed by the Administrator for a period not to exceed 60 days.

(b) *Termination schedule.* The termination schedule shall be as follows:

For licensees whose surnames begin with	Termination date (last day of month shown)		
	Licenses issued prior to February 11, 1969		Licenses issued after February 11, 1969
	Month	Year	Month*
A	January	1973	January.
B	January	1973	February.
C, D	March	1972	March.
E, F, G	April	1972	April.
H, I, J	May	1972	May.
K, L	June	1972	June.
M	July	1972	July.
N, O, P, Q	August	1972	August.
S	September	1972	September.
R, T, U, V	October	1972	October.
W	November	1972	November.
X, Y, Z	December	1972	December.

*Licenses shall terminate 3 years after issuance date on the last day of the month shown except that no licenses will terminate less than 3 years after issuance date, except as provided in paragraph (a) of this section.

(c) *Termination notices.* Notices of termination shall be issued to the licensees by the Administrator at least 60 days in advance of the termination date. The notices shall (1) provide detailed instructions for requesting renewal of licenses; (2) state whether or not an examination will be required and (3) if an examination will be required, show the nature and scope of the examination. Failure to receive a notice from the Administrator will not relieve the licensee of the responsibility to have his license renewed on or before the expiration date prescribed in this section.

(d) *Renewal of licenses.* Licenses which are renewed shall show the licensee's permanent license number, the date of renewal, and the word "Renewed."

§ 26.81 Voluntary suspension or cancellation of licenses.

(a) *General.* Licenses issued under the regulations may, upon the request of the licensee, be suspended or canceled in accordance with paragraphs (b), (c), and (d) of this section.

(b) *When license may be canceled or suspended.* Upon request by a licensee and a showing of good cause, a license may be canceled or may be suspended for a specified period of time, not to exceed 1 year. (A request for a cancellation, or a suspension, or for the return of a suspended license, shall be submitted in accordance with § 26.77.)

(c) *Handling suspensions.* Actions pertaining to the suspension of a license shall be handled by the Grain Division office which issued the license.

(d) *Cancellation after suspension.* A suspension of a license shall not affect the expiration date of the license. If a license has been suspended for 1 year and no request has been received for the return of the license, or a request for return of the license has been dismissed in accordance with the provisions of § 26.77 the license shall be summarily canceled by the Administrator at the expiration of said year, in accordance with the provisions of § 26.83.

§ 26.82 Automatic suspension of license by change in employment.

A license issued to an employee of an official inspection agency shall be suspended automatically when the licensee ceases to be employed by the agency. If the licensee is employed by the same agency or by another official inspection agency within 1 year of the suspension date, and the license has not expired or been canceled in the interim, upon request of the licensee, the license will be reinstated subject to the provisions of § 26.78. (This provision shall be applied in a similar manner to a license issued to a person who operates under a contract with the Department of Agriculture for the conduct of specified inspection functions.)

§ 26.83 Cancellation by Administrator.

Licenses may be summarily canceled by the Administrator upon a finding that (1) a licensee is imprisoned for a period in excess of 1 year; or (2) has died; or (3) no official inspection functions have been performed under a license for a period of 1 year: *Provided*, That before a license is canceled for nonuse, written notice of a proposed cancellation shall be given to the licensee, if living, at least 30 days in advance of the proposed date of cancellation. Thereafter, if official inspection functions are performed and notice thereof is given to the Administrator prior to the proposed date of cancellation, the cancellation shall not be made effective, but if official functions are not performed prior to the proposed date, the license shall be summarily canceled.

§ 26.84 Surrender of license.

(a) *General.* Each license which is terminated, suspended, or canceled under the provisions of §§ 26.80 through 26.84, or suspended or revoked for cause under the provisions of § 26.89 shall be promptly surrendered by the licensee, or in the case of death of the licensee, by his heirs or executor, to the field office. Any license not surrendered in accordance with the provisions of this section may, upon notice to the licensee, be summarily canceled by the Administrator: *Provided*, That no notice is required if the licensee has died. Licenses which are surrendered for voluntary suspension shall be returned to the licensee only upon request, in accordance with the provisions of § 26.77.

(b) *Marking canceled licenses.* Each terminated, canceled, or revoked license surrendered shall be marked "Canceled" upon receipt in the Grain Division office.

§ 26.85 Duties of official inspection personnel.

(a) *General.* Official inspection personnel shall be responsible for performing the duties specified in the Act, the applicable regulations, and paragraphs (b) through (i) of this section.

(b) *Inspection services.* Official inspection personnel shall perform requested inspection services (1) without discrimination, except as authorized in § 26.12; (2) as soon as practicable; and (3) upon reasonable terms.

(c) *Scope of operations.* Each licensee shall, except as provided in this paragraph, (1) operate within the scope of functions specified on his license; (2) operate within his designated inspection area; and (3) operate at his designated inspection point. A licensee may perform official inspection services at a different location within his designated inspection area with the consent of the field office, and may perform such services outside his designated inspection area with the consent of the Administrator.

(d) *Working materials.* Official inspection personnel shall have available for their use and shall familiarize themselves with the provisions of the Act, the official grain standards, the regulations, and the instructions. Such personnel shall also have a working knowledge of the mandatory and the permissive inspection services which are available under the Act and shall help interested persons determine which type and kind (scope) of service is needed or desired.

(e) *Reporting changes.* Each licensee shall promptly inform the field office of any change in the scope or sphere of his duties, or of his employment, or any suspension of his official inspection activities for such length of time as would impair the inspection services at any location within his designated inspection area.

(f) *Reporting violations.* Official inspection personnel shall immediately report to their immediate supervisor (1) evidence coming to their knowledge which shows or tends to show a violation of or a noncompliance with any of the provisions of the Act, the regulations, or the instructions issued by the Administrator, and (2) evidence of any instructions which have been issued to them by any other official inspection personnel which are contrary to or inconsistent with the Act, the regulations, or the instructions.

(g) *Related duties.* Official inspection personnel should assist in training official inspection agency employees who desire to become licensees. Upon request of the Administrator, such personnel may assist in examining applicants for competency.

(h) *Warehouse samplers.* Each elevator or warehouse employee who is licensed to obtain warehouseman's samples shall maintain such records and submit such reports pertaining to his sampling functions as may be prescribed in the instructions.

(i) *Instructions by Administrator.* Official inspection personnel shall execute diligently all instructions issued to them by the Administrator either in writing or orally and, upon request, shall inform the Administrator in full detail of any facts regarding inspection equipment

used by them, inspection services performed by them, and compensation received for such services: *Provided*, That instructions issued by the Administrator to employees of official inspection agencies shall insofar as practicable, be issued after consultation with the official inspection agencies.

(j) *Joint responsibilities.* In the administration and enforcement of the Act, each official inspection agency and official inspection personnel employed by such agency shall be deemed to be jointly and severally liable for the duties which are assigned to the inspection personnel. The failure of a grain inspection agency shall not be deemed to diminish the responsibility of a licensee employed by such agency to comply with all applicable provisions of the Act, the regulations, and the instructions.

§ 26.86 Standards of conduct for official inspection personnel.

(a) *General.* High standards of honesty, integrity, impartiality, and other aspects of conduct must be met by official inspection personnel to assure proper performance of their duties and responsibilities and to maintain the confidence of the grain industry and the public in the official grain inspection service. The confidence in the service depends not only on the manner in which the personnel perform their duties and responsibilities, but also on the way the personnel conduct themselves in the eyes of the public.

(b) *Authorized employees.* Authorized employees of the Department of Agriculture are subject to the standards of conduct prescribed by (1) paragraphs (d) through (f) of this section, and (2) Part 0 of this Title 7 covering employee responsibilities and conduct.

(c) *Licensees.* Licensees shall be subject to the standards of conduct prescribed by paragraphs (d) through (f) of this section.

(d) *Prohibited conduct—general.* Subject to the guarantees of the Constitution of the United States, and except as provided in subparagraphs (4) and (6) of this paragraph, licensees are specifically prohibited from:

(1) Engaging in criminal, dishonest, or notoriously disgraceful conduct, or other conduct prejudicial to the Department of Agriculture.

(2) Making unwarranted criticisms or accusations against other licensees or employees of the Department of Agriculture.

(3) Refusing to give testimony or respond to questions made in connection with official inquiries or investigations.

(4) Soliciting contributions from other licensees, or making a donation, for a gift to an employee of the Department of Agriculture. (The restrictions in this paragraph shall not be deemed to prohibit activities incident to the voluntary giving or acceptance of gifts of nominal value made on special occasions such as retirement.)

(5) Reporting for duty in an intoxicated condition or consuming intoxicating beverages while on duty.

(6) Taking any action, whether or not specifically prohibited by this paragraph, which might result in, or create the appearance of (i) losing complete independence or impartiality; or (ii) affecting adversely the confidence of the public in the integrity of the official grain inspection service. (The restrictions in this subparagraph shall not be deemed violated by licensed employees of grain elevators or warehouses merely because of their employment.)

(e) *Outside (nonofficial) activities.* No licensee other than a licensed employee of a grain elevator or warehouse shall perform or be engaged in any outside (nonofficial) work or activity:

(1) If the efficiency of the licensee may be impaired by the performance of the outside duties; that is where the outside duties are of such onerous or fatiguing nature as to injure his health or to prevent him from doing his best work during his official hours;

(2) If the outside work or activity may be construed by the public to be the official acts of the licensee (Forms or reports, if any, used in the performance of duties other than official inspection duties shall not contain or show any of the following information or statements: (i) The words "Official Grain Inspection Certificate"; (ii) any grade shown in the official grain standards; (iii) the terms U.S. Grain Standards or official grain standards; (iv) any information or statements which would conflict with information and statements shown on an official certificate; or (v) the titles, Official Grain Sampler, Official Grain Technician, or Official Grain Inspector.);

(3) If the business connections to be established or property interests to be acquired may result in a conflict between the private interest of the licensee and his official duty; or

(4) If such employment or activity may tend to bring criticism on or cause embarrassment to the Department of Agriculture.

(f) *Activities with farm organizations.* (1) No licensee shall participate actively in meetings or in other activities concerned with the establishment of general or specialized farm organizations, or with recruiting members for existing organizations such as the national, regional, State, and local organizations of the National Grange, the American Farm Bureau Federation, the Farmers' Union, the National Farmers Organization, the National Association of Soil Conservation Districts, the National Rural Electric Cooperative Association, the National Council of Farmer Cooperatives and Breed and Commodity Organizations. This is a necessary corollary of the equally long-established policy of the Department of Agriculture that it shall deal fairly with all organizations and deal with each upon the same basis. As a continuation of this policy, it should be understood by licensees that it is not permissible for any of them to:

(i) Participate in establishing any general or specialized farm organization;

(ii) Act as organizer for any such organization, or hold any other office therein;

(iii) Act as financial or business agent for any such organization;

(iv) Participate in any way in any membership campaign or other activity designed to recruit members for any such organization;

(v) Accept the use of free office space or contributions for salary or traveling expense from any such organization;

(vi) Advocate that any particular general or specialized organization of farmers is better adapted for carrying out the work of the Department of Agriculture than any individual citizen, group of citizens or organizations;

(vii) Advocate that the responsibilities of any agency of the Department of Agriculture or any other Federal agency should be carried out through any particular general or specialized organization of farmers; or

(viii) Advocate or recommend that any State or local agency should carry out its responsibilities through any particular general or specialized organization of farmers.

(2) The restrictions set forth in this section do not:

(i) Apply to specialized organizations of farmers such as cow testing associations and similar groups; or

(ii) Prohibit licensees from participating in the organization of groups that are needed in carrying out Federally authorized programs, for example, an REA cooperative, and similar groups determined by the Administrator to be essential in effectuating Federally authorized programs.

§ 26.87 Conflicts of interest.

(a) *General.* Section 11 of the Act prohibits official inspection personnel from (1) being financially interested (directly or otherwise) in any business entity owning or operating any grain elevator or warehouse or engaged in the merchandising of grain, or (2) being in the employment of, or accept gratuities from, any such entity, or (3) being engaged in any other kind of activity specified by regulation of the Secretary as involving a conflict of interest: *Provided, however,* That the Secretary may license qualified ememployees of any grain elevator or warehouse to perform official sampling functions, under such conditions as the Secretary may by regulations prescribe, and the Secretary may by regulation provide such other exceptions to the restrictions of section 11 of the Act as he determines are consistent with the purposes of this Act.

(b) *Interpretations.* (1) A person will be deemed to be financially interested in a business entity owning or operating a grain elevator or warehouse or engaged in the merchandising of grain if he (i) holds any appointive or elective office or position in any national, regional, State, or local grain industry group, organization, or association: *Provided,* That a grain inspection group, organization or association shall not be deemed to be a grain industry group, organization, or association; or (ii) is employed by or otherwise works for any association, corporation, or other business entity owned

or composed, in whole or in part, by persons who are financially interested in a grain elevator or warehouse or who are engaged in the merchandising of grain: *Provided*, That this restriction will not apply if neither such business entity, nor any of its officers or members, give any technical advice or technical direction to the official inspection personnel, or otherwise exercise any control, direct or indirect, over any of the technical aspects of the official inspection functions: *Provided further*, That the physical presence of any officer or member of such a business entity in the inspection or testing quarters assigned to the official inspection personnel may, in the absence of a specific invitation by the personnel, be deemed to be a control, direct or indirect, over the technical aspects of the official inspection functions performed by such personnel.

(2) A person will be deemed to be engaged in the merchandising of grain if he is engaged in the business of buying, selling, transporting, cleaning, elevating, storing, binning, mixing, blending, drying, treating, fumigating, or other preparation of grain (other than as a grower of grain, or the disposition of inspection samples); or in the business of cleaning, treating, or fitting of carriers or containers for transporting or storing grain; the mechandising for non-farm use of equipment for cleaning, drying, treating, fumigating, or otherwise processing, handling, or storing grain; or the merchandising of grain inspection equipment (other than buying or selling by official inspection personnel of such equipment for use in performance of their official inspection functions): *Provided*, That licensed employees of grain elevators or warehouses may obtain warehouseman's samples, as provided in § 26.6(d).

(3) A "gratuity" will be deemed to include any fee or charge in excess of the published fee or charge or any favor, gift, loan, unusual discount, service, entertainment, or other thing of monetary value furnished to official inspection personnel in circumstances in which acceptance could result, or create the appearance of resulting in (i) the use of their office for undue private gain; (ii) an undertaking to give undue preferential treatment to any person; or (iii) any other loss of complete independence or impartiality in performance of official inspection functions.

(c) *Other conflicts.* The kinds of activities specified in subparagraphs (1) and (2) of this paragraph shall also be deemed to involve a conflict of interest if engaged in by official inspection personnel:

(1) No official inspection personnel shall participate (directly or otherwise) in any transaction concerning the purchase or sale of corporate stocks or bonds, commodities, or other property for speculative purposes if such action might tend to interfere with the proper and impartial performance of his duties or bring discredit upon the Department of Agriculture. Licensees and employees are not prohibited by this paragraph from making bona fide investments.

(2) No official inspection personnel shall coerce or give the appearance of coercing any person to provide special or undue benefits to themselves as licensees or authorized employees.

(d) *Reports of interests.* Official inspection personnel shall report such information regarding their employment or other business interests as may be required at any time by the Administrator. (The filing of such reports, or the filing of an application for a license as provided in § 26.77, does not permit a licensee or authorized employee to have a conflict of interest prohibited by the Act or the regulations.)

(e) *Avoiding conflicts of interest.* Each licensee and each authorized employee shall at all times avoid acquiring any financial interest or engaging in any activity that would result in a violation of this section or § 26.86 or other violation of section 11 of the Act and shall not permit his spouse, minor children, or any blood relative who reside in his immediate household to acquire any such interest or engage in any such activity. For the purpose of this section, the interest of a spouse, minor child, or blood relative who is a resident of a licensee's or an authorized employee's immediate household shall be considered to be an interest of the licensee or employee.

(f) *Disposition of conflicting interests.* (1) Upon being advised that certain employment or other interest is in conflict with his official duties and that remedial action is required, the applicant, licensee, or authorized employee shall take immediate action to end the conflict of interest and advise the responsible officials of action taken in this respect.

(2) An applicant, licensee, or authorized employee who believes that remedial action will cause undue hardship may request a review and modification by forwarding to the Administrator either directly or through the field office, a written statement setting forth all the facts and circumstances with the reasons for the request or modification.

(3) If a final determination is made that a conflict of interest does, in fact, exist, failure to take immediate action to end the conflict of interest shall subject an applicant to the dismissal of his application; a licensee to administrative action against his license and criminal prosecution; and an authorized employee to disciplinary action and criminal prosecution.

§ 26.88 Other prohibited actions by official inspection personnel.

(a) *General.* In addition to the prohibitions or restrictions prescribed in the Act, and the applicable regulations, official inspection personnel shall also be subject to the prohibitions in paragraphs (b) through (f) of this section.

(b) *Instructions by supervising licensees.* No chief inspector or supervisory licensee shall issue to licensees under his supervision any instructions inconsistent with the Act, the regulations or the instructions.

(c) *Crop year, variety, and origin statements.* No official inspection personnel shall certify or otherwise state in writing (1) the year of production of any grain for which standards have been established, e.g., by use of "new crop" or "old crop", (2) the place or geographical area where the grain was grown, or (3) except as may be provided in the instructions, the name of the variety of the grain.

(d) *Issuing superseded certificates.* No official inspection personnel shall issue, or permit to be issued over his signature or name, any official certificate, or copy thereof, which has been superseded by another certificate, without the consent of the Administrator.

(e) *Application of tolerances.* No official inspection personnel shall apply any administrative, statistical, or other tolerances to his official determinations other than as prescribed in the instructions.

(f) *Right of inspection.* (1) No official inspection personnel shall, directly or indirectly, deter or prevent, or attempt to deter or prevent, any interested person from exercising his right to request any inspection service: *Provided*, That the dismissal of a request for inspection or a discussion of the grounds for dismissal or conditional withholding of an official inspection, with an interested person, shall not be deemed to be in violation of this section.

§ 26.89 Corrective actions for violations by official inspection personnel.

(a) *Criminal prosecution.* Official inspection personnel who commit any offense prohibited by section 13 of the Act are subject to criminal prosecution in accordance with section 14 of the Act.

(b) *Administrative action.* In addition to the action described in paragraph (a) of this section, official inspection personnel are subject to administrative actions, in accordance with this paragraph, for any of the causes shown in section 9 of the Act: (1) Less serious cases may be disposed of by written cautionary notices or letters of warning; (2) in the more serious cases, administrative actions may be instituted for temporary suspension of a license pending final determination, suspension of a license for a prescribed period of time, or revocation of a license, as provided in the rules of practice in Subpart C of this part.[3] Administrative actions for authorized Department employees may include, but are not limited to, changes in assigned duties or disciplinary action in accordance with law.

§ 26.90 Contracts for the performance of specified functions.

(a) *When contract is required.* Each person who desires to perform official inspection functions, and is not an official inspection agency, or an employee of an official inspection agency or an employee of the Department of Agriculture, is required to enter into a contract with the Department of Agriculture for the performance of the functions.

[3] Such rules will be issued later.

(b) *Who may enter into a contract.* Any person who meets the requirements of section 9 of the Act and § 26.76 may enter into a contract with the Department of Agriculture for performance of official sampling services or official testing services: *Provided,* That an employee of a grain elevator or warehouse may enter into a contract for official sampling only if (1) the operator of the elevator or warehouse also enters into the contract, and (2) the employee has available for his use an approved mechanical sampler, or approved sampling equipment that gives equivalent results.

(c) *Applications for contracts.* Applications for contracts may be made to the field office in the circuit in which the applicant is located. (For location of field offices, see § 26.9(d).) The contracts will be on a form prescribed for the purpose and furnished by the Administrator. Each contract shall be signed by the applicant in his own handwriting.

(d) *Issuance of contracts.* Contracts will be entered into by the Department of Agriculture only (1) upon a showing of good cause, and (2) a finding that the applicant has a currently effective license issued in accordance with § 26.79.

(e) *Termination of contracts.* Contracts entered into under this section shall terminate and be renewable annually, and may be canceled by either party upon 30 days notice in writing prior to the cancellation, unless otherwise provided in the contract.

(f) *Charges for examinations and review visits.* Contracts entered into under this section shall provide for reimbursement to the Department of Agriculture for the costs, if any, of examining the applicant for a license to perform specified official inspection functions, and the costs, if any, of making periodic and other visits to the applicant to review the performance of his official duties.

OFFICIAL INSPECTION AGENCIES

§ 26.95 Designations—general.

(a) *Designation required.* Before any agency or person may operate an official inspection agency for the conduct of official inspection services, including the issuance of official inspection certificates, such agency or person must be designated by the Administrator in accordance with § 26.98.

(b) *Limit on designations.* Not more than one official inspection agency shall be operative at one time for any one designated inspection point: *Provided,* That this limitation shall not prevent any inspection agency from operating in any area in which it was designated to operate on August 15, 1968.

§ 26.96 Requirements for designation.

(a) *General requirements.* An applicant who desires to operate as an official inspection agency is required to (1) file an application for designation, in accordance with the provisions of § 26.97, and (2) meet or otherwise comply with the prerequisites shown in paragraphs (b) through (f) of this section.

(b) *Trade need.* An official inspection agency should meet a trade need. If an applicant cannot demonstrate such a need, the application may be dismissed.

(c) *Citizenship.* If an applicant is a government organization, and is not an agency of a State, county, or other political subdivision of the United States; or is a business organization, and does not have its principal office in the United States; or is an individual, and is not a resident of the United States; or is otherwise not fully subject to the jurisdiction of the courts identified in paragraph (h) of section 17 of the Act, the application will be dismissed.

(d) *Conflict of interest.* An official inspection agency cannot own or operate a grain elevator or warehouse, or be engaged in the merchandising of grain, or be engaged in any other activity, directly or indirectly, which would create a conflict of interest situation for its employes. If an applicant is found to have a conflict of interest, he must divest himself of the interest which causes the conflict, or the application will be dismissed.

(e) *Personnel.* An official inspection agency, or the inspection department of an official inspection agency, must be staffed with duly qualified official inspection personnel. If it is found by the Administrator that an applicant will not have the necessary qualified personnel or otherwise will not be able to provide official inspection services adequate to effectuate the purposes of the Act, the application will be dismissed.

(f) *Equipment and facilities.* An official inspection agency must own, or have control of, the equipment and facilities needed to perform the official inspection services which the agency is designated to perform. If an applicant does not own, or have control of, or cannot demonstrate the ability to acquire the necessary equipment and facilities, as determined by the Administrator, the application may be dismissed.

§ 26.97 Application for designation.

(a) *General requirements.* An application for designation to operate an official inspection agency shall be typewritten or written in ink, and contain or show, or be accompanied by, documents which contain or show, the following information:

(1) Whether the applicant is a government, trade, or private organization or individual or is sponsored by a government, trade, or private organization; (i) if it is a government organization, its identification as an agency of a State, county, or other political subdivision of the United States; if it is a business organization, the location of its principal office; if it is an individual, his place of residence; (ii) if it is a trade organization or sponsored by a trade organization, the nature and function of the organization, a list of the member firms, the managerial and technical controls that the trade organization exercises over the inspection activities, and the operating procedure for exercising the controls; e.g., management by a grain committee that employs and directs the inspection personnel;

(2) Whether the applicant is now providing official inspection services at designated inspection points and, if so, where;

(3) Whether the applicant can provide Statewide grain inspection services at places where such services are desired by the trade, but are not now available;

(4) The name(s) of the place(s) in which the applicant desires to station licensed inspection personnel;

(5) The kind (scope) of inspection service which the applicant desires to perform at each point, in terms specified in § 26.6;

(6) The number and the type (sampler, technician, or inspector) of licensed inspection personnel who would be located at each place specified under subparagraph (4) of this paragraph, and the names of the licensees, if known;

(7) A summary showing the inspection equipment and facilities that the applicant would have at each such place;

(8) Additional services, if any, such as weighing, which the applicant would provide at each such place;

(9) The schedule of the inspection fees and charges that the applicant proposes to assess at each such place, and a statement whether it would be necessary for members of the grain trade to agree to pay a yearly aggregate minimum amount at each such place;

(10) Whether the fees and charges would be in accordance with the provisions of § 26.70;

(11) Whether the applicant would be willing to keep separate and complete accounts of all receipts for inspection service and all disbursements from such receipts for purpose of audit by the Department of Agriculture;

(12) The regular hours of business when service would be available at each place specified under subparagraph (4) of this paragraph if designated as an inspection point, and whether the applicant would be able to provide "24 hour per day" service if requested by the trade;

(13) The expected annual volume of carlot, trucklot, bargelot, and shiplot and other inspections which the applicant estimates would be handled at each place specified in subparagraph (4) if designated as an inspection point;

(14) The names and addresses of the firms, located at or near each place specified in subparagraph (4) of this paragraph, which are believed to desire inspection of grain from or to such place; and

(15) Whether the applicant is willing to comply with the provisions of the Act, the regulations, and the instructions.

(b) *Where applications may be filed.* An application for designation may be submitted to the field office in the circuit in which the applicant desires to operate, or to the district office, or to the Administrator. (For location of the field and district offices, see § 26.9(d).)

(c) *Review of application.* If, upon review, it is found that the applicant and the application are in compliance with the regulations, the application will be processed in accordance with the provisions of § 26.98. If it is determined

that the applicant or the application are not in compliance, action on the application may be withheld pending compliance by the applicant, or the application may be dismissed, but before such a determination is made, the applicant shall be notified of the reasons for the proposed action and given an opportunity to present his views.

§ 26.98 Approval or denial of designation.

If it appears that the applicant qualifies for designation under § 26.96, notice of the application will be published in the FEDERAL REGISTER, and interested persons will be given opportunity to submit comments in writing. On the basis of the comments which are received, and other information available to the Department of Agriculture, a decision to approve or deny the application will be made by the Administrator. The decision will be published in the FEDERAL REGISTER and the applicant will be informed in writing of the decision.

§ 26.99 Designated points and areas.

(a) *General.* (1) Each official inspection agency shall be assigned a designated inspection area, identified by geographical boundaries, and one or more designated inspection points within the area, for the performance of official inspection services.

(2) With the approval of the field office, the agency may operate at any location within its designated inspection area; and with the approval of the district office, the agency may perform specified inspection services at specified locations outside its area.

(b) *Establishing, amending, or revoking assignments.* The assigning, reassigning, amending, and revoking of assignments of areas and inspection points to official inspection agencies shall be done by the Administrator in accordance with the provisions of paragraph (f) of section 7 of the Act, and after consultation with interested State departments of agriculture, official inspection agencies, members of the grain trade, and other interested persons, and after taking into account the needs and circumstances of local markets. Notice of proposed assignment actions will be published in the FEDERAL REGISTER and interested persons will be given opportunity to submit comments in writing.

§ 26.100 Duties of official inspection agencies.

(a) *General.* For the purposes of the regulations, each official inspection agency shall, as provided in § 26.85(j), be deemed responsible for the performance of each of the duties assigned to its licensed personnel. In addition, each official inspection agency shall be deemed responsible for the performance of the duties shown in paragraphs (b) through (h) of this section.

(b) *Staffing.* Each official inspection agency shall maintain an adequate staff of qualified official inspection personnel, and adequate equipment and facilities to perform official inspection services within its designated inspection area.

(c) *Providing service.* Each official inspection agency shall promptly provide, within its designated inspection area, requested inspection services, including the prompt issuance of official inspection certificates, and, upon request, help interested persons determine what kind (scope) of services they need or desire.

(d) *Training and supplies.* Each official inspection agency shall provide its licensed personnel with training, as needed, and adequate supplies of forms approved by the Administrator, the instructions (including grain inspection manuals and inspection procedures for "other criteria"), official grain standards, and other materials necessary for the conduct of official inspection functions.

(e) *Obtaining licenses.* Each official inspection agency shall assist its personnel in obtaining needed licenses for official inspection activities, and needed authorizations for affixing signatures.

(f) *Supervision.* Each official inspection agency shall provide supervision, as needed, to its licensed and clerical personnel to assure the proper performance of their duties, the maintenance of standards of conduct, the avoidance of conflicts of interest, and the avoidance of other prohibited actions in accordance with §§ 26.86 through 26.88.

(g) *Changes in service.* Each official inspection agency shall promptly notify the field office of any change in the scope of the inspection services which the agency performs or any suspension of official inspection activities for such length of time as would impair the inspection services at any location.

(h) *Fees and charges.* Each official inspection agency shall establish and collect fees and charges that are in accordance with the provisions of § 26.70.

(i) *Report of inspection volume.* Each official inspection agency shall periodically submit a report showing the kind and volume of inspections conducted under the Act in accordance with the instructions and on a form furnished by the Administrator: *Provided,* That upon a showing of good cause, the requirement of this paragraph may be waived in specific cases by the Administrator for limited periods. The original report shall be submitted to the field office. A summary of the reports shall be submitted by the field offices to the district office.

§ 26.101 Cancellation, amendment, transfer, supervision, and revocation of designation.

(a) *Voluntary cancellation, amendment, transfer, or suspension.* Upon request by an official inspection agency, and a showing of good cause, a designation to operate as an official inspection agency may be canceled, amended, transferred to another agency or person, or suspended for a definite or indefinite period of time: *Provided,* That proposed action on such requests shall be published in the FEDERAL REGISTER and interested persons shall be given opportunity to present their views. Reasonable notice of the final action shall be published in the FEDERAL REGISTER in advance of the effective date. In the case of a transfer, the transferee must qualify under the requirements in § 26.96.

(b) *Suspension or revocation for cause.* Proceedings for a temporary suspension, or for a suspension for a prescribed period of time, or for a revocation of a designation, for failure to comply with the requirements of § 26.96 or § 26.100 shall be conducted in accordance with rules of practice in Subpart C of this part.[3]

(c) *Replacement agency.* If a designation for an official inspection agency is suspended or revoked, arrangements for a replacement agency shall be made by the Administrator, insofar as practicable, in advance of the suspension or revocation, and after consultation with interested State departments of agriculture, official inspection agencies, grain trade groups, and other interested persons.

§ 26.102 Filing of complaints.

Agencies or persons who are aggrieved by an application action under § 26.98 or an assignment action under § 26.99, may file a complaint in accordance with the rules of practice in Subpart C of this part.[3]

PROVISIONS GOVERNING GRAIN MERCHANDISING

§ 26.110 Mandatory inspection—export grain.

(a) *General requirements.* Whenever standards are effective under the Act for any grain, an official inspection for grade must, except as provided in paragraph (g) of this section, be obtained for each lot of such grain which is to be shipped from the United States to any place outside thereof and is sold, offered for sale, or consigned for sale by grade. Inspection is also required as prescribed in § 26.111 for export and other grain if it is in a container which shows an official grade designation or an official inspection mark; or the grain is represented to have been officially inspected.

(b) *Who must obtain inspection.* The official inspection for official grade, of export grain must be obtained by or for the exporter of record, unless a certificate sufficient for purposes of section 5 of the Act has previously been obtained. The conditions under which the grain is offered for inspection must meet the requirements of § 26.11. If the grain is inspected at the time of loading, the carrier or stowage space(s) for the grain must be examined by official inspection personnel and found to be clean, dry, and free of insects, other vermin, commercially objectionable foreign odors, and other factors which could contaminate the grain or lower the grade of the grain.

(c) *Scope and basis of inspection.* The inspection for official grade and official factors shall be in accordance with the official grain standards.

(d) *Sampling requirements.* (1) The inspection for official grade and official factor information must be based on official samples obtained from the grain

[3] Such rules will be issued later.

as it is being loaded aboard, or while it is in, the final carrier in which it is to be transported from the United States.

(2) The samples must be obtained by official inspection personnel (other than licensed employees of a grain elevator or warehouse).

(3) If the grain is sampled as it is being loaded aboard the carrier, the sample must be obtained after the final vertical elevation, at such place or places and in such manner as will obtain the most representative sample, and otherwise in accordance with the instructions.

(e) *Where to obtain inspection.* A request for an original inspection on export grain shall be filed in accordance with § 26.26; for reinspection in accordance with § 26.36; and for appeal inspection in accordance with § 26.46. Exceptions to the requirements of this paragraph may, upon request of the applicant, be made by the Administrator. (For locations where official inspection services are available, see § 26.9(d)).

(f) *Certification requirements.* Subject to paragraph (g) of this section, only an unsuperseded and unqualified official grain inspection certificate for official grade shall be deemed to meet the requirements of section 5 of the Act. The original of the unsuperseded inspection certificate must be forwarded by the shipper or his agent, to the consignee or to his order with the bill of lading or other shipping documents covering the shipment.

(g) *Exemptions.* (1) The mandatory inspection and certification provisions of paragraphs (a) through (f) of this section are waived with respect to export grain which (i) is not shipped from or through a designated inspection area; or (ii) is in lots of 500 bushels or less, and is located 50 or more miles from the nearest designated inspection point (For locations where official inspection services are available, see § 26.9(d).); or (iii) is shipped from or through a designated inspection area where official inspection is ordinarily obtainable but the applicant for service is notified by the official inspection agency or field office where the application was filed that official inspection personnel are temporarily not available to perform the required inspection as determined in each specific case by the Administrator: *Provided*, That no exemption under this subparagraph shall be applicable to export grain which is in a container which shows an official grade designation or an official inspection mark, or to grain which is represented to have been officially inspected and is required to be inspected under § 26.111.

(2) The invoice covering each lot which is shipped under any exemption prescribed in subparagraph (1) of this paragraph shall clearly show the statement, "This lot not officially inspected for grade."

§ 26.111 Other inspection requirements.

Official inspection is also required for any grain whenever necessary to avoid a violation of paragraph (a) (5) or (6) of section 13 of the Act, as provided in section 26.114.

§ 26.112 Permissive inspection.

Whenever standards have been established under the Act for any grain, any interested person who desires an official inspection on any lot or any submitted sample of such grain may, upon request, obtain an inspection at any designated inspection point or any point conveniently reached by official inspection personnel.

§ 26.113 Mandatory grades.

(a) *Use of official grades—when required.* Under paragraph (a) of section 6 of the Act, no grain, for which standards are effective under the Act, which is sold, offered for sale, or consigned for sale, for shipment in interstate or foreign commerce, shall be described in any advertising, price quotation, other negotiation of sale, contract of sale, invoice, bill of lading, or other document, or any description on bags or other containers of the grain, as being of any grade, other than by an official grade designation, with or without additional information as to specified factors.

(b) *When grain is described by grade.* (1) For the purposes of this section, a description for grain which denotes a relative level of quality shall be deemed to be a description of the grain by grade, except as provided in subparagraphs (2) and (3) of this paragraph.

(2) A proprietary brand name or trademark that does not resemble an official grade designation will not be deemed to be a description of grain by grade (but see paragraph (c) of this section).

(3) With respect only to grain shipped in interstate commerce, the use of one or more grade factor designations set forth in the official grain standards or other factor information will not be deemed in itself to be a description of grain by grade.

(c) *When a brand name or trademark resembles an official grade designation.* A proprietary brand name or trademark that denotes a level of quality will be deemed to resemble an official grade designation if it includes any of the following: The letters "U.S."; a numeral or the term "Sample Grade"; or the name of a kind, class, subclass, or special grade of grain specified in the official grain standards.

§ 26.114 Use of official grade designations, official inspection marks and other descriptions of or representations concerning grain.

(a) *Grade designations and marks.* Paragraph (a) (5) of section 13 of the Act prohibits any person from knowingly using any official grade designation or official inspection mark on any container of grain by means of a tag, label, or otherwise, unless the grain in such container was officially inspected on the basis of an official sample taken while the grain was being loaded into or was in such container and the grain was found to qualify for such designation or marks. The official grade designations are those specified in the official grain standards for the various grades of grain, e.g. No. 1 Hard Winter Wheat. The official inspection mark is the statement "Loaded Under Continuous Official Inspection", authorized for use in accordance with § 26.14(1).

(b) *False representations.* Paragraph (a) (6) of section 13 of the Act prohibits any person from knowingly making any false representation that any grain has been officially inspected, or officially inspected and found to be of a particular kind, class, quality, condition, or quantity, or that particular facts have been established with respect to grain by official inspection under the Act. This paragraph applies to such representations on containers, or in invoices, bills of lading, or other shipping documents, or elsewhere. The showing in any advertising, price quotation, other negotiation of sale, contract of sale, invoice, bill of lading, or similar merchandising documents of an official grade designation, with or without factor information, or the showing of the term "official grain standards" shall not, of itself, be a representation that grain has been officially inspected. However, the showing, as applying to any grain, of terms such as, but not limited to, the following, shall be deemed to be a representation that the grain has been officially inspected: "Official inspection," "Officially inspected," "U.S. inspected," and "Official certificate." The use of an official grade designation on a container of grain is subject to the restrictions in paragraph (a) (5) of section 13 of the Act.

(c) *Other descriptions.* Paragraph (b) of section 6 of the Act provides that no person shall, in any sale, offer for sale, or consignment for sale, of any grain which involves the shipment of such grain from the United States to any place outside thereof, knowingly describe such grain by any official grade designation, or other description, which is false or misleading.

§ 26.115 Limitations on the validity of inspection certificates.

Only official inspection certificates issued in accordance with the provisions of § 26.110 shall be deemed to meet the inspection requirements of section 5 of the Act. No "Partial-Inspection—Heavily Loaded", or "Bottom Not Sampled", or "Warehouseman's Sample—Lot Inspection", or "Submitted Sample", certificate shall be deemed to meet the inspection requirements of section 5 of the Act.

§ 26.116 Deceptive loading, handling, sampling.

(a) *General.* For the purposes of paragraph (u) of section 3 and paragraph (a) (3) of section 13 of the Act, the acts and practices specified in paragraphs (b) through (d) of this section shall, in the absence of adequate notice to the involved official inspection personnel, be deemed deceptive.

(b) *Loading.* (1) It is deemed deceptive to load economically superior grain in a container with economically inferior grain on the floor of the container; in the lower portion of the load; next to the end or side walls of the container; in other locations not in the

prescribed sampling patterns or otherwise in such a manner that a true average sample would not be obtained during the normal course of sampling the grain in the container in the manner prescribed in the instructions.

(2) It is deemed deceptive to load grain in a container that contains residue from previous cargoes or is otherwise in such condition at the time of loading as to contaminate the grain or lower the grade or other quality of the grain.

(c) *Handling.* (1) It is deemed deceptive to handle inbound, outbound, or bin-run grain by layering economically inferior grain on a belt or conveyor with economically superior grain or otherwise in such a manner that a true average sample would not be obtained during the normal course of sampling the grain in the manner prescribed in the instructions; or offering part of a lot for sampling and representing that it is the entire lot.

(2) It is deemed deceptive to add any material to grain, prior to sampling, for the purpose or with the effect of masking the true odor, class, grade or other quality or condition of the grain.

(d) *Sampling.* It is deemed deceptive to:

(1) Alter an official sample in such a manner that it loses its representativeness, including, but not limited to (i) adding any material to or removing any material from the grain in the sample; or (ii) drying, cleaning, or otherwise processing the grain in the sample; or (iii) treating the grain in the sample to mask the true odor, class, grade or other quality or condition of the grain.

(2) It is deemed deceptive to substitute any unofficial sample for an official sample, including, but not limited to, (i) substituting, in whole or in part, the grain in an official sample with grain from an unofficial sample; or (ii) representing that a submitted sample is an official sample.

(e) *Adequate notice.* (1) For the purpose of this section, notice of deceptive loading, handling, or sampling will not be deemed adequate unless it is given to the involved official inspection agency or field office, either orally or in writing, prior to any official sampling in the case of deceptive loading and deceptive handling, and prior to any official inspection in the case of deceptive sampling, and if oral is subsequently confirmed in writing. The notice shall explain the nature and extent of the deceptive loading, handling, or sampling, and specifically identify the means of conveyance or other container involved.

(2) In the case of a deceptive loading of grain in a railroad car, truck, river barge, or other means of conveyance, additional notice may also be given by the shipper to the involved official inspection personnel by posting, in a clear and conspicuous place on the means of conveyance, a statement showing the nature and extent of the deceptive loading.

§ 26.117 Inspection not to be denied.

Whenever an inspection, including, but not limited to, an original inspection, reinspection, or appeal inspection, is required or desired under the Act and the regulations, no person entitled to such inspection shall be denied or deprived of his right thereto by reason of any rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department, or similar organization, or by any contract, agreement, or other understanding.

§ 26.118 Procedure for withholding or refusal of official inspection service.

(a) *Conditional withholding.* A dismissal of a request for inspection or the temporary withholding of inspection for a correctible cause, such as failure to pay bills shall be in accordance with the provisions of §§ 26.10 and 26.11 of the and the rules of practice in Subpart C of this part.[5]

(b) *Refusal of official inspection.* (1) Official inspection may also be refused for any grain in accordance with section 10 of the Act and the rules of practice in Subpart C of this part.[5] In proceedings under section 10 of the Act, if it is determined that there is a basis for refusal of inspection service with respect to any person, the order refusing inspection may be made applicable to all operations of such person, or it may be restricted to a particular location or to a particular type of inspection, in accordance with the provisions of section 10 of the Act.

GENERAL PROVISIONS

§ 26.125 Procedure for establishing standards.

Proposals to establish, amend, or revoke any standard under the Act will be published in the FEDERAL REGISTER as proposed rule making. Interested persons will be given opportunity to submit data, views, and arguments in writing and, upon request, will be given an opportunity to present data, views, and arguments orally in an informal manner. After a review of the available data, the final standard, amendment, notice of revocation, or such other notice as is warranted, will be published in the FEDERAL REGISTER. If the proposal is adopted, in whole or in part, an effective date of not less than 1 calendar year will be shown, unless for good cause, the Administrator determines in accordance with section 4 of the Act that the document shall become effective sooner.

§ 26.126 Supervision and enforcement procedures.

(a) *Supervision procedure (general).* All sampling, testing, inspection, certification, and related activities and functions performed under the Act by official inspection personnel or their agents shall be subject to supervision at all times by the Administrator and his duly authorized representatives. Whenever it is found that any official inspection personnel have performed any official function in an improper manner or have otherwise violated the Act, the regulations or the instructions issued to them by the Administrator, remedial action shall be promptly initiated in accordance with § 26.89.

(b) *Supervision tests.* Tests made in determining whether inspection results, and other representations, designations, or descriptions are false, incorrect, or misleading, shall be performed in accordance with the instructions. In reviewing the results of the tests, statistical tolerances established and published by the Administrator for expected variations between inspections shall be applied.

§ 26.127 Informal complaints.

Any person desiring to complain of any alleged violation of any provision of the Act, or of any regulation or instruction issued pursuant thereto, or of any allegedly arbitrary, capricious, or unwarranted action by official inspection personnel, may file with the Administrator an informal complaint as provided in the rules of practice in Subpart C of this part.[5]

§ 26.128 Demonstrations and standard line samples.

(a) *Availability.* Demonstrations of prescribed inspection procedures and interpretations of the official grain standards will, upon request, and insofar as practicable, be made by employees of the Grain Division. Limited numbers of samples illustrating the official grain standards and standard line samples representing official factor and other criteria determinations, will, upon request, and insofar as practicable, be made available by the Grain Division on a first-come, first-served basis. When the Administrator determines that furnishing such services or samples would be of benefit to any program of the Department, no charge shall be made. Otherwise, charges for the services and samples will be in accordance with the provisions of § 26.73(f).

(b) *Loaning samples.* Limited numbers of samples illustrating the official grains standards, or specifically prepared exhibits illustrating any part of such standards, may, at the discretion of the Administrator be loaned by the Grain Division without charge to Governmental agencies for official purposes or to educational institutions of higher learning and to trade organizations for demonstration purposes.

§ 26.129 Publications.

Publication under the Act and the regulations shall be made in the FEDERAL REGISTER and such other media as the Administrator may approve for the purpose.

Effective date. This revision shall become effective 30 days after publication in the FEDERAL REGISTER, except that the provisions listed below shall become effective as provided below:

[5] Such rules will be issued later.

[5] Such rules will be issued later.

Provisions of regulations	Subject matter	Effective date
§ 26.30(d)(2) 26.38(d) 26.48(d)	Tolerences	September 1, 1969.
26.55(b)(2) 26.57	File Samples	August 1, 1969: *Provided*, That any official inspection agency may voluntarily adopt the prescribed system for file samples at any earlier date.
§ 26.59	Inspection certificate forms.	February 11, 1970: *Provided*, That any official inspection agency may voluntarily use the certificate forms prescribed by the regulations at any earlier date after the forms have been approved; *And provided further*, That effective 30 days after publication hereof the statements prescribed in section 26.59 of the revised regulations shall be shown on the certificates when such statements are necessary to describe the results of official inspection functions and until Feb. 11, 1970, such statements may be shown on the reverse of the certificates if the statement "See reverse side for required statements" is shown in the space provided for in "Remarks" on the face of the certificate.
§ 26.99	Designation of inspection areas.	May 1, 1969.
§ 26.100(f)	Volume-of-inspection reports.	August 1, 1969.

The regulations set forth in this document differ in various respects from those in the notice of rule making. The differences are due to nonsubstantial changes made for clarity, consistency, or conformity with the Act, or changes made as a result of comments received pursuant to the notice. It does not appear that additional information concerning these changes would be made available to this Department by further notice of rule making and public participation in the rule making proceeding. Therefore, under the administrative procedure provision in 5 U.S.C. 553, it is found that such further notice and public procedure is impracticable and unnecessary.

Done at Washington, D.C., this 4th day of February 1969.

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

G. R. GRANGE,
Deputy Administrator, Marketing Services.

[F.R. Doc. 69-1610; Filed, Feb. 7, 1969; 8:45 a.m.]

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Navel Orange Reg. 167, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 33 F.R. 15471), 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. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Navel oranges grown in Arizona and designated part of California.

Order, as amended. The provisions in paragraph (b)(1) (i) and (ii) of § 907.467 (Navel Orange Regulation 167, 34 F.R. 1436) are hereby amended to read as follows:

§ 907.467 Navel Orange Regulation 167.

* * * * *

(b) *Order.* (1) * * *

(i) District 1: 941,000 cartons;

(ii) District 2: 209,000 cartons.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: February 5, 1969.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-1675; Filed, Feb. 7, 1969; 8:51 a.m.]

[Lemon Reg. 360]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.660 Lemon Regulation 360.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 4, 1969.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period February 9, 1969, through February 15, 1969, are hereby fixed as follows:

(i) District 1: 18,600 cartons;

(ii) District 2: 106,950 cartons;

(iii) District 3: 83,700 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: February 5, 1969.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69-1695; Filed, Feb. 7, 1969; 8:51 a.m.]

[Grapefruit Reg. 53]

PART 912—GRAPEFRUIT GROWN IN INDIAN RIVER DISTRICT IN FLORIDA

Limitation of Handling

§ 912.353 Grapefruit Regulation 53.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 912, as amended (7 CFR Part 912), regulating the handling of grapefruit grown in the Indian River District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Indian River Grapefruit Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Indian River grapefruit, and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time; are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Indian River grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 6, 1969.

(b) *Order.* (1) The quantity of grapefruit grown in the Indian River District which may be handled during the period February 10, 1969 through February 16, 1969, is hereby fixed at 135,000 standard packed boxes.

(2) As used in this section, "handled," "Indian River District," "grapefruit," and "standard packed box" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: February 7, 1969.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69–1755; Filed, Feb. 7, 1969; 11:27 a.m.]

[Grapefruit Reg. 22]

PART 913—GRAPEFRUIT GROWN IN INTERIOR DISTRICT IN FLORIDA

Limitation of Handling

§ 913.322 Grapefruit Regulation 22.

(a) *Findings.* (1) Pursuant to the marketing agreement and Order No. 913 (7 CFR Part 913; 30 F.R. 15204), regulating the handling of grapefruit grown in the Interior District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Interior Grapefruit Marketing Committee, established under the said marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Interior grapefruit, and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee; and information concerning such provisions and effective time has been disseminated among handlers of such Interior grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 4, 1969.

(b) *Order.* (1) The quantity of grapefruit grown in the Interior District which may be handled during the period February 10, 1969 through February 16, 1969, is hereby fixed at 200,000 standard packed boxes.

(2) As used in this section, "handled," "Interior District," "grapefruit," and "standard packed box" have the same meaning as when used in said marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: February 5, 1969.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 69–1646; Filed, Feb. 7, 1969; 8:48 a.m.]

Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

PART 1002—MILK IN NEW YORK-NEW JERSEY MARKETING AREA

Order Terminating Certain Provisions; Correction

In paragraph (a) of the termination order issued December 26, 1968, to be effective January 1, 1969, the applicable section reference (§ 1002.50(a)) to the New York-New Jersey order was incorrectly stated as "§ 1002.40(a)". The reference is hereby corrected to read "§ 1002.50(a)".

Signed at Washington, D.C., on February 5, 1969.

J. PHIL CAMPBELL,
Under Secretary.

[F.R. Doc. 69–1677; Filed, Feb. 7, 1969; 8:51 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 68–CE–66]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

On pages 11175 and 11176 of the FEDERAL REGISTER dated August 7, 1968,

the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the control zone at Davenport, Iowa, and the transition area at Moline, Ill.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendments.

No objections have been received and the amendments as so proposed are hereby adopted, subject to the following changes:

(1) The Davenport, Iowa, Municipal Airport latitude coordinate recited in the transition area alteration as "latitude 41°36'30" N." is changed to read "latitude 41°36'40" N.".

(2) Also change the VORTAC radial recited in the transition area designation as "Cordova VORTAC 220° radial" to read "Cordova VORTAC 219° radial".

This amendment shall be effective 0901 G.m.t., May 1, 1969.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348; Sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on January 22, 1969.

EDWARD C. MARSH,
Director, Central Region.

(1) In § 71.171 (33 F.R. 2058), the following transition area is amended to read:

DAVENPORT, IOWA

Within a 5-mile radius of Davenport Municipal Airport (latitude 41°46'40" N., longitude 90°35'20" W.); within 2 miles each side of the 224° bearing from the Davenport RBN, extending from the 5-mile radius zone to 8 miles SW of the RBN; and within 2 miles each side of the Cordova VORTAC 219° radial, extending from the 5-mile radius zone to the VORTAC. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(2) In § 71.181 (33 F.R. 2137), the following transition area is amended to read:

MOLINE, ILL.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Quad City Airport (latitude 41°26'55" N., longitude 90°30'30" W.); within 5 miles N and 8 miles S of the Quad City ILS localizer W course, extending from 1 mile E to 12 miles W of the OM; within a 6-mile radius of Davenport, Iowa, Municipal Airport (latitude 41°36'40" N., longitude 90°35'20" W.); within 2 miles each side of the 224° bearing from the Davenport RBN extending from the 6-mile radius area to 12 miles SW of the RBN; within 2 miles each side of the Cordova VORTAC 219° radial, extending from the 6-mile radius area to the VORTAC; and that airspace extending upward from 1200 feet above the surface bounded on the N by latitude 41°55'00" N., on the E by longitude 89°50'00" W., on the S by latitude 41°10'00" N., and on the W by longitude 91°00'00" W.

[F.R. Doc. 69-1586; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68-CE-97]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

On page 16284 of the FEDERAL REGISTER dated November 6, 1968, the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Yankton, S. Dak.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendments.

No objections have been received and the amendments as so proposed are hereby adopted, subject to the following change:

The Chan Gurney Municipal Airport coordinates recited in the Yankton, S. Dak., control zone and transition area alterations as "latitude 42°54'55" N., longitude 97°23'05" W." are changed to read "latitude 42°54'55" N., longitude 97°23'15" W.".

This amendment shall be effective 0901 G.m.t., April 3, 1969.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348; Sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on January 22, 1969.

EDWARD C. MARSH,
Director, Central Region.

(1) In § 71.171 (33 F.R. 2058), the following control zone is amended to read:

YANKTON, S. DAK.

Within a 5-mile radius of Chan Gurney Municipal Airport (latitude 42°54'45" N., longitude 97°23'15" W.); within 2 miles each side of the Yankton VOR 321° radial, extending from the 5-mile radius zone to 8 miles northwest of the VOR; and within 2 miles each side of the Yankton VOR 135° radial, extending from the 5-mile radius zone to 8 miles southeast of the VOR. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(2) In § 71.181 (33 F.R. 2137), the following transition area is amended to read:

YANKTON, S. DAK.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Chan Gurney Municipal Airport (latitude 42°54'45" N., longitude 97°23'15" W.); and within 5 miles northeast and 8 miles southwest of the Yankton VOR 321° radial, extending from the 8-mile radius area to 12 miles northwest of the VOR; and that airspace extending upward from 1,200 feet above the surface within 5 miles southwest and 8 miles northeast of the Yankton VOR 135° radial, extending from the VOR to 12 miles southeast of the VOR.

[F.R. Doc. 69-1587; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68-CE-67]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On page 11176 of the FEDERAL REGISTER dated August 7, 1968, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Clinton, Iowa.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the amendment as so proposed is hereby adopted, subject to the following change:

The coordinates recited in the Clinton, Iowa, Municipal Airport transition area designation as "latitude 41°49'45" N., longitude 90°19'50" W." are changed to read "41°49'55" N., longitude 90°19'45" W.".

This amendment shall be effective 0901 G.m.t., May 1, 1969.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on January 22, 1969.

EDWARD C. MARSH,
Director, Central Region.

In § 71.181 (33 F.R. 2137), the following transition area is amended to read:

CLINTON, IOWA

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Clinton Municipal Airport (latitude 41°-49'55" N., longitude 90°19'45" W.); within 2 miles each side of the Cordova VORTAC 043° radial, extending from the 7-mile radius area to the VORTAC; and within 8 miles southwest and 5 miles northeast of the 324° bearing from Clinton Municipal Airport, extending from the airport to 12 miles northwest of the airport.

[F.R. Doc. 69-1588; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68-PC-2]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration and Designation of VOR Federal Airways and Reporting Points

On November 26, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 17662) stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would alter and designate VOR Federal airways and reporting points in the Hawaiian Islands.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective, 0901 G.m.t., April 3, 1969, as hereinafter set forth.

1. Section 71.127 (33 F.R. 2047, 2765) is amended as follows:

a. In V–2 Hawaii "12 AGL INT Honolulu 113° and Lanai, Hawaii, 304° radials; 12 AGL Lanai," is deleted and "12 AGL Lanai, Hawaii," is substituted therefor.

b. In V–8 Hawaii "268° radials," is deleted and "262° radials," is substituted therefor.

c. In V–11 Hawaii "Maui, Hawaii, 080° radials." is deleted and "Maui, Hawaii, 080° radials; 12 AGL Maui; 12 AGL INT Maui 331° and Molokai, Hawaii, 091° radials; 12 AGL Molokai; 12 AGL INT Molokai 262° and Honolulu, Hawaii, 179° radials." is substituted therefor.

d. In V–15 Hawaii all between "12 AGL South Kauai;" and "12 AGL Koko Head, Hawaii;" is deleted and "12 AGL Honolulu, Hawaii;" is substituted.

e. In V–16 Hawaii "Lanai, Hawaii, 289° radials;" is deleted and "Lanai, Hawaii, 285° radials;" is substituted therefor.

f. V–21 Hawaii is designated as follows:

V–21 Hawaii From INT of Hilo, Hawaii, 013° and Lanai, Hawaii, 107° radials, 12 AGL Lanai; 12 AGL INT Lanai 285° and Honolulu, Hawaii, 179° radials.

g. V–22 Hawaii is designated as follows:

V–22 Hawaii From Maui, Hawaii, 12 AGL INT Maui 095° and Hilo, Hawaii, 322° radials; 12 AGL Hilo.

2. Section 71.215 (33 F.R. 2294) is amended as follows:

a. "Southgate INT:" is revoked.

b. Palmtree INT: is amended to read:

Palmtree INT: INT Honolulu, Hawaii, 119° and Molokai, Hawaii, 262° radials.

c. "Makai INT:" is added.

Makai INT: INT Honolulu, Hawaii, 179° and Molokai, Hawaii, 262° radials.

d. "Snapper INT:" is added:

Snapper INT: INT Maui, Hawaii, 331° and Molokai, Hawaii, 091° radials.

(Secs. 307(a), 1110, Federal Aviation Act of 1958; 49 U.S.C. 1348, 1510; Executive Order 10854; 24 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 4, 1969.

H. B. Helstrom,
Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 69–1590; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68–SO–99]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On December 19, 1968, a notice of proposed rule making was published in the Federal Register (33 F.R. 18939), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Alexander City, Ala., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., April 3, 1969, as hereinafter set forth.

In § 71.181 (33 F.R. 2137), the Alexander City, Ala. transition area is amended as follows:

"* * * extending from the 5-mile radius area to 8 miles south of the RBN * * *" is deleted and "* * * extending from the 5-mile radius area to 11 miles south of the RBN * * *" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in East Point, Ga., on January 28, 1969.

Gordon A. Williams, Jr.,
Acting Director, Southern Region.

[F.R. Doc. 69–1591; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68–WE–93]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On December 28, 1968, a notice of proposed rule making was published in the Federal Register (33 F.R. 19953) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Lewiston, Idaho, transition area.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received and the proposed amendment is hereby adopted without change.

Effective date. This amendment shall be effective 0901 G.m.t., April 3, 1969.

Issued in Los Angeles, Calif., on January 28, 1969.

A. E. Horning,
Acting Director, Western Region.

In § 71.181 (33 F.R. 2210) the Lewiston, Idaho transition area is amended by adding "* * * that airspace extending upward from 6,500 feet MSL within 12 miles northwest and 8 miles southeast of the Lewiston VOR 065° and 245° radials, extending from 23 miles northeast to 11 miles southwest of the VOR."

[F.R. Doc. 69–1592; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68–WE–89]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On December 28, 1968, a notice of proposed rule making was published in the Federal Register (33 F.R. 19952) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Portland, Oreg., transition area.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received and the proposed amendment is hereby adopted subject to the following change:

In § 71.181 (33 F.R. 2240), in the description of the Portland, Oreg., transition area delete "* * * V–99, * * *" in lines 7 and 8 and substitute "* * *, V–165, * * *" therefor, and delete "* * * V–99 * * *" in line 10 and substitute "* * * V–287W, * * *" therefor.

Effective date. This amendment shall be effective 0901 G.m.t., April 3, 1969.

Issued in Los Angeles, Calif., on January 30, 1969.

Arvin O. Basnight,
Director, Western Region.

In § 71.181 (33 F.R. 2240) the Portland, Oreg., transition area is amended as follows:

1. Delete all between "* * * (latitude 45°35'20" N., longitude 122°35'35" W.) * * *" and "* * * that airspace extending upward from 4,500 feet MSL * * *" and substitute therefor "* * *, within a 5-mile radius of Kelso-Longview, Wash., airport (latitude 46°07'12" N. longitude 122°53'58" W.) and within 2 miles each side of the 012° bearing from the Kelso, Wash., RBN (latitude 46°09'14" N., longitude 122°54'-40" W.) extending from the 5-mile radius area to 8 miles north of the RBN; that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of the Portland International Airport, that airspace northwest of Portland extending from the 30-mile radius area bounded on the south by latitude 45°38'00" N., on the west by longitude 123°17'00" W., and on the north by V–112, within 5 miles east and 5 miles southwest of and parallel to the 021° and 336° bearings, respectively, from the Kelso RBN extending from the RBN to latitude 46°26'00" N., within 5 miles northeast and 5 miles northwest of and parallel to the 151° and 216° bearings, respectively, from the Kelso RBN extending from the RBN to the 30-mile radius area and the north edge of V–112, and within 5 miles east and 8 miles west of the 012° bearing from the Kelso RBN extending from the RBN to 12 miles north of the RBN * * *"

2. Delete "V–99" each place it appears in the text and substitute "V–165" therefor.

[F.R. Doc. 69–1593; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68–WE–90]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On December 28, 1968, a notice of proposed rule making was published in the Federal Register (33 F.R. 19953) stating

that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Phoenix, Ariz., transition area.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received and the proposed amendment is hereby adopted without change.

Effective date. This amendment shall be effective 0901 G.m.t., April 3, 1969.

Issued in Los Angeles, Calif., on January 30, 1969.

ARVIN O. BASNIGHT,
Director, Western Region.

In § 71.181 (33 F.R. 4171) as modified (by 33 F.R. 4981) the Phoenix, Ariz., transition area is amended by adding: "That airspace west of Phoenix extending upward from 5,500 feet MSL bounded on the north by the south edge of V-16, on the east by longitude 113°00'-00" W., on the south by the north edge of V-66 and on the west by longitude 114°00'00" W., and that airspace extending upward from 7,000 feet MSL bounded on the north by latitude 34°00'-00" N., on the east by longitude 113°00'-00" W., on the south by the north edge of V-16 and on the west by longitude 114°00'00" W., excluding that airspace within restricted areas R-2308A, R-2308B, and R-2307."

[F.R. Doc. 69-1594; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68-WE-91]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On December 28, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 19953) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Moses Lake, Wash., transition area.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No objections have been received and the proposed amendment is hereby adopted without change.

Effective date. This amendment shall be effective 0901 G.m.t., April 3, 1969.

Issued in Los Angeles, Calif., on January 30, 1969.

ARVIN O. BASNIGHT,
Director, Western Region.

In § 71.181 (33 F.R. 2224) the Moses Lake, Wash., transition area is amended by deleting all after "* * * (latitude 47°36'55" N., longitude 117°39'20" W.), * * *" and substituting therefor "* * *, on the southeast by a line 6 miles southeast of and parallel to the Moses Lake VOR 066° radial, on the west by longitude 119°15'00" W., that airspace west of Moses Lake bounded on the north by latitude 47°30'00" N., on the east by longitude 119°15'00" W., on the south by a line 6 miles south of and parallel to the Moses Lake VOR 266° radial, on the west by an arc of a 39-mile radius circle centered on the Grant County Airport, and that airspace southwest of Moses Lake extending upward from 5,500 feet MSL within 7 miles northwest and 10 miles southeast of the Moses Lake VOR 238° radial extending from 10 to 50 miles southwest of the VOR, excluding that airspace overlying R-6715."

[F.R. Doc. 69-1595; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68-CE-102]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On page 17245 of the FEDERAL REGISTER dated November 21, 1968, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Alma, Mich.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., April 3, 1969.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on January 22, 1969.

EDWARD C. MARSH,
Director, Central Region.

In § 71.181 (33 F.R. 2137), the following transition area is amended to read:

ALMA, MICH.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Gratiot Community Airport (latitude 43°19'25" N., longitude 84°41'40" W.); and within 2 miles each side of the 278° bearing from Gratiot Community Airport, extending from the 6-mile radius area to 8 miles west of the airport.

[F.R. Doc. 69-1596; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68-CE-103]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On page 17245 of the FEDERAL REGISTER dated November 21, 1968, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Holland, Mich.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., April 3, 1969.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on January 22, 1969.

EDWARD C. MARSH,
Director, Central Region.

In § 71.181 (33 F.R. 2137), the following transition area is amended to read:

HOLLAND, MICH.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Park Township Airport (latitude 42°47'45" N., longitude 86°09'45" W.); within a 6-mile radius of Tulip City Airport (latitude 42°44'45" N., longitude 86°06'30" W.); and within 2 miles each side of the Pullman, Mich., VORTAC 358° radial, extending from the 6-mile radius area to 12 miles north of the VORTAC.

[F.R. Doc. 69-1597; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68-CE-79]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Control Zone and Alteration of Transition Area

On page 14602 of the FEDERAL REGISTER dated September 28, 1968, the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a control zone and alter the transition area at Hays, Kans.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendments.

No objections have been received and the amendments as so proposed are hereby adopted, subject to the following change:

The Hays Municipal Airport latitude coordinate recited in the Hays, Kans., control zone designation and transition area alteration as "latitude 38°51'00" N." is changed to read "latitude 38°50'45" N.".

This amendment shall be effective 0901 G.m.t., May 29, 1969.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on January 22, 1969.

EDWARD C. MARSH,
Director, Central Region.

(1) In § 71.171 (33 F.R. 2058) the following control zone is added:

HAYS, KANS.

Within a 5-mile radius of Hays Municipal Airport (latitude 38°50'45" N., longitude 99°16'30" W.); and within 2 miles each side of the Hays, Kans., VOR 162° radial, extending from the 5-mile radius zone to 8 miles south of the VOR. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(2) In § 71.181 (33 F.R. 2137), the following transition area is amended to read:

HAYS, KANS.

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Hays Municipal Airport (latitude 38°50'-45" N., longitude 99°16'30" W.); and that airspace extending upward from 1,200 feet above the surface within 5 miles west and 8 miles east of the Hays, Kans., VOR 162° radial, extending from the VOR to 14 miles south of the VOR.

[F.R. Doc. 69-1598; Filed, Feb. 7, 1969; 8:46 a.m.]

[Airspace Docket No. 68-CE-75]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On pages 18941 and 18942 of the FEDERAL REGISTER dated December 19, 1968, the Federal Aviation Administration published a supplemental notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Poplar Bluff, Mo.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., April 3, 1969.

(Sec. 307(a) Federal Aviation Act of 1958; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on January 22, 1969.

EDWARD C. MARSH,
Director, Central Region.

In § 71.181 (33 F.R. 2137), the following transition area is added:

POPLAR BLUFF, MO.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Earl Fields Memorial Airport (latitude 36°46'20" N., longitude 90°19'20" W.); and within 2 miles each side of the 187° bearing from Earl Fields Memorial Airport, extending from the 6-mile radius area to 8 miles south of the airport; and that airspace extending upward from 1,200 feet above the surface within 5 miles west and 8 miles east of the 187° bearing from Earl Fields Memorial Airport, extending from the airport to 12 miles south of the airport; and within 5 miles each side of the 075° bearing from Earl Fields Memorial Airport, extending from the airport to V-9.

[F.R. Doc. 69-1599; Filed, Feb. 7, 1969; 8:46 a.m.]

[Airspace Docket No. 68-CE-94]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On page 16285 of the FEDERAL REGISTER dated November 6, 1968, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Morris, Minn.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., April 3, 1969.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on January 22, 1969.

EDWARD C. MARSH,
Director, Central Region.

In § 71.181 (33 F.R. 2137), the following transition area is added:

MORRIS, MINN.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Morris Municipal Airport (latitude 45°34'05" N., longitude 95°58'10" W.); and within 2 miles each side of the 148° bearing from Morris Municipal Airport, extending from the 6-mile radius area to 8 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within 5 miles southwest and 8 miles northeast of the 148° bearing from Morris Municipal Airport, extending from the airport to 12 miles southeast of the airport.

[F.R. Doc. 69-1600; Filed, Feb. 7, 1969; 8:46 a.m.]

[Airspace Docket No. 68-AL-4]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

PART 75—ESTABLISHMENT OF JET ROUTES

Alteration and Designation of Federal Airways; Extension of Jet Route; Designation of Reporting Points

On September 12, 1968, a notice of proposed rule making (NPRM) was published in the FEDERAL REGISTER (33 F.R. 12918) stating that the Federal Aviation Administration (FAA) proposed amendments to Parts 71 and 75 of the Federal Aviation Regulations that would alter controlled airspace along the Alaska, Aleutian Islands chain.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections. No comments were received.

Subsequent to the issuance of the NPRM, the FAA again reviewed portions of proposed Green Federal airway Nos. 8 and 11 between Cold Bay, Alaska, RBN, and Nikoloski, Alaska, RBN, to ascertain what adjustments could be made to avoid high terrain. It has been concluded that these airways would best serve the users if they were designated via the intersection of Cold Bay RR, 225° T (238° M) and Cape Sarichef, Alaska, RBN, 344° T (328° M) bearings rather than via Cape Sarichef RBN. This minor adjustment would permit establishment of a lower minimum en route altitude thereby providing additional altitudes for the air traffic control system.

Since this realignment is minor in nature and does not alter the extent of controlled airspace, notice and public procedure are unnecessary.

In consideration of the foregoing, Parts 71 and 75 of the Federal Aviation Regulations are amended, effective 0901 G.m.t., April 3, 1969, as hereinafter set forth.

1. Section 71.103 (33 F.R. 2006, 17103) is amended as follows:

a. G-8 Delete "From King Salmon, Alaska, RR," and substitute "From Shemya, Alaska, RBN, 20 AGL Adak, Alaska, RBN; 20 AGL Nikolski, Alaska, RBN; 20 AGL Driftwood Bay, Alaska, RBN; 20 AGL INT Cold Bay, Alaska, RR, 255° and Cape Sarichef, Alaska, RBN, 344° bearings; 20 AGL Cold Bay RR; 20 AGL King Salmon, Alaska, RR;" therefor.

b. Green Federal airway No. 11 is designated as follows:

G-11 From Shemya, Alaska, RBN, 20 AGL, Amchitka, Alaska, RBN; 20 AGL Adak, Alaska, RBN; 20 AGL Nikolski, Alaska, RBN; 20 AGL Driftwood Bay, Alaska, RBN; 20 AGL INT Cold Bay, Alaska, RR, 255° and Cape Sarichef, Alaska, RBN, 344° bearings; 20 AGL Cold Bay, RR; 20 AGL INT Cold Bay, RBN, 041° and Port Moller, Alaska, RBN, 313° bearings; 20 AGL Port Heiden, Alaska, RBN; 174 miles, 85 MSL, 20 AGL Kodiak, Alaska, RR.

2. In § 71.109 (33 F.R. 2007, 17103) is amended to read as follows:

B-17 From Kodiak, Alaska, RR, 45 miles, 12 AGL, 68 miles, 95 MSL, 12 AGL King Salmon, Alaska, RR; 43 miles, 12 AGL, 94 miles, 70 MSL, 12 AGL Bethel, Alaska (BET) RBN; 46 miles, 12 AGL, 173 miles, 30 MSL, 12 AGL Nome, Alaska, RR; 35 miles, 12 AGL, 89 miles, 55 MSL, 12 AGL Kotzebue, Alaska, RBN.

3. Section 71.125 (33 F.R. 2046, 17103) is amended as follows:

a. V-506 Delete "27 miles, 12 AGL, 40 MSL INT Kodiak 332° and King Salmon, Alaska, 097° radials; 50 miles, 95 MSL, 12 AGL King Salmon;" and substitute "45 miles, 12 AGL, 68 miles, 95 MSL; 12 AGL King Salmon, Alaska;" therefor.

b. V-456 Delete "From King Salmon, Alaska," and substitute "From Cold Bay,

Alaska, 20 AGL King Salmon, Alaska;" therefor.

4. In § 75.100 (33 F.R. 2349) J-115 is amended to read as follows:

JET ROUTE No. 115 (SHEMYA, ALASKA, TO FAIRBANKS, ALASKA)

From Shemya, Alaska, RBN, via Adak, Alaska, RBN; Nikolski, Alaska, RBN; Cold Bay, Alaska; King Salmon, Alaska; Anchorage, Alaska; to Fairbanks, Alaska.

5. In § 71.211 (33 F.R. 2292) add the following Alaskan low altitude reporting points:

a. Wide Bay INT: INT 164° bearing King Salmon, Alaska, RR, 074° bearing Port Heiden, Alaska, RBN.

b. Marlin INT: INT 041° bearing Cold Bay, Alaska, RR, 313° bearing Port Moller, Alaska, RBN.

c. Anvil INT: INT 006° bearing Amchitka, Alaska, RBN, 281° bearing Adak, Alaska, RBN.

d. Mordvinoff INT: INT 255° bearing Cold Bay, Alaska, RR, 344° bearing Cape Sarichef, Alaska, RBN.

e. Nikolski, Alaska, RBN.

f. Amchitka, Alaska, RBN.

g. Cape Sarichef, Alaska, RBN.

6. In § 71.213 (33 F.R. 2294) add the following Alaskan high altitude reporting points:

a. Anvil INT: INT 006° bearing Amchitka, Alaska, RBN, 281° bearing Adak, Alaska, RBN.

b. Nikolski, Alaska, RBN.

7. Section 71.163 (33 F.R. 2051, 14061) is amended as follows:

a. Control 1484 is revoked.

b. In Control 1235 delete reference to "Control 1484".

8. In § 71.181 (33 F.R. 2137, 14891, 16482) the King Salmon, Alaska, transition area is amended by deleting, "to the southwest boundary Airway Blue 27" and substituting "to a line 4 north miles south of and parallel to the King Salmon, RR, 130° bearing" and deleting reference to "Control 1484."

(Secs. 307(a), 1110, Federal Aviation Act of 1958; 49 U.S.C. 1348, 1510. Executive Order 10854; 25 F.R. 9565; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 3, 1969.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 69-1589; Filed, Feb. 7, 1969; 8:45 a.m.]

[Airspace Docket No. 68-WE-78]

PART 75—ESTABLISHMENT OF JET ROUTES

Revocation

On November 21, 1968, a notice of proposed rule making was published in the FEDERAL REGISTER (33 F.R. 17246) stating that the Federal Aviation Administration was considering the revocation of Jet Route No. 10 segment between Denver, Colo., and O'Neill, Nebr.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended effective 0901 G.m.t., April 3, 1969, as hereinafter set forth.

In § 75.100 (33 F.R. 2349) Jet Route No. 10 caption is amended by deleting "to O'Neill, Nebr." and substituting "to Denver, Colo." and in the text all after "Denver, Colo." is deleted.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on February 4, 1969.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 69-1601; Filed, Feb. 7, 1969; 8:46 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of International Commerce, Department of Commerce

SUBCHAPTER B—EXPORT REGULATIONS

[11th Gen. Rev. of Export Regs., Amdt. 19]

PART 384—GENERAL ORDERS

Extension of Validity Period of Licenses Affected by Longshoreman's Work Stoppage

Part 384 of the Code of Federal Regulations is hereby amended to read as set forth below.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023; E.O. 10945, 26 F.R. 4487, 3 CFR 1959-1963 Comp.; E.O. 11038, 27 F.R. 7003, 3 CFR 1959-1963 Comp.)

Effective date: February 5, 1969.

RAUER H. MEYER,
Director, Office of Export Control.

A new section designated § 384.8 is hereby added to read as follows:

§ 384.8 Extension of validity period of licenses affected by longshoremen's work stoppage.

The validity period of any validated export license which covers an export to be made by water from any port affected by the current work stoppage of longshoremen, and which expired or will expire during any month while this work stoppage was or is in effect, is hereby extended to the last day of the month following the month in which the strike terminates.

[F.R. Doc. 69-1650; Filed, Feb. 7, 1969; 8:48 a.m.]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R-332; Order 378-A]

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

Uniform System of Accounts; Outside Consultative and Professional Services

FEBRUARY 3, 1969.

On January 7, 1969, the Commission issued Order No. 378 amending the schedule "charges for professional services", page 354, of FPC Form No. 1 and FPC Form No. 2. As revised, detailed information will now have to be supplied by all Class A companies (as opposed to only those Class A companies that have operating corporate revenues under $25 million) that make payments in the amount of $10,000 or more and by Class B companies that make payments in the amount of $5,000 or more for outside consultative and other professional services. For such payments by Class A companies of less than $10,000 but in the amount of $600 or more and similar payments by Class B companies of less than $5,000 but in the amount of $600 or more to any individual, group or partnership, companies will have to report the name of the payee, the predominant nature of the service performed and the amount of the payment.

It has come to our attention that the revision can be read as applying to individual payments rather than to aggregate payments made during the course of the reporting year. The Commission intended that the prescribed dollar limits now provided in the schedule are to be applied to aggregate annual payments. That is, if a Class B company retains the services of a particular outside consultant several times during the course of a reporting year it will be required to supply detailed information if the aggregate payments paid to that consultant total $5,000 or more and the less detailed information if the aggregate payments total $600 or more even though no single payment exceeded either of those amounts. It should be noted that the schedule, prior to the most recent revision, in terms required aggregating. There was no intention to alter this requirement.

The second paragraph of revised instruction 1 of the schedule provides for the reporting of certain information with respect to payments "in excess of $600." As the explanatory text of the order indicates, in selecting the $600 figure the Commission was endeavoring to minimize the burden that would be imposed upon reporting companies by tracking the

existing Internal Revenue Service requirement. The instruction should read for payments "in the amount of $600 or more."

Accordingly, the Commission finds that it is appropriate to revise the instructions to the schedule "Charges for professional services" in order to remove any possible ambiguity and conform the language to the Commission's intent in ordering the revision.

The Commission, acting pursuant to the provisions of the Federal Power Act as amended, particularly sections 304 and 309 thereof (49 Stat. 855, 858; 16 U.S.C. 835c, 835h) and the Natural Gas Act, as amended, particularly sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), orders:

(A) Effective for the reporting year 1969, the Commission's annual reports, FPC Form No. 1 and FPC Form No. 2, prescribed respectively by § 141.1 of Subchapter D and § 260.1 of Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations, are amended with respect to the schedule "Charges for Professional Services,"

(1) By revising the title of such schedule to read "Charges for Outside Professional and Other Consultative Services,"

(2) By revising Instruction 1 of such schedule to read as follows:

1. Report the information specified below for all charges made during the year included in any account (including plant accounts) for outside consultative and other professional services, such as services concerning rate, management, construction, engineering, research, financial, valuation, legal, accounting, purchasing, advertising, labor relations, and public relations, rendered the respondent under written or oral arrangement, for which aggregate payments during the year to any corporation, partnership, organization of any kind, or individual (other than for services as an employee or for payments made for medical and related services) amounted to $5,000 in the case of a Class B company or $10,000 in the case of a Class A company, including payments for legislative services except those which should be reported in Account 426.4, Expenditures for Certain Civic, Political, and Related Activities.

For aggregate payments by Class A companies of less than $10,000 and in the amount of $600 or more and aggregate payments by Class B companies of less than $5,000 and in the amount of $600 or more to any one individual, group or partnership there shall be reported the name of the payee, the predominant nature of the services performed and the amount of payment.

(3) By revising Instruction 1(d) of such schedule to read as follows: "total charges for the year detailing utility department and account charged;" and

(4) By deleting the word "Professional" in Instruction 2.

(Secs. 304, 309, 49 Stat. 855, 858; 16 U.S.C. 825c, 825h; secs. 10, 16 Stat. 826, 830; 15 U.S.C. 717i, 717o)

(b) The Secretary of the Commission shall cause prompt publication of this order to be made in the FEDERAL REGISTER

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 69-1619; Filed, Feb. 7, 1969; 8:46 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Department of Housing and Urban Development

SUBCHAPTER G—HOUSING FOR MODERATE INCOME AND DISPLACED FAMILIES

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

MORTGAGE FINANCING PURCHASE OF EXISTING PROJECT BY COOPERATIVE

In § 221.559b paragraphs (a) and (c) are amended to read as follows:

§ 221.559b Eligibility for insurance under section 221(j) of mortgage financing purchase of existing project by cooperative.

(a) A mortgage given to finance the purchase by a cooperative mortgagor from a mortgagor other than a cooperative or a private nonprofit corporation or association shall be eligible for insurance under this subpart, if such mortgage meets the requirements of this subpart, except as modified by this section.

* * * * *

(c) The insurance of such mortgage shall be governed by the following:

(1) The amount of the mortgage shall not exceed the lesser of the amounts determined by applying the formulas in subdivision (i) or (ii) of this subparagraph as follows:

(i) An amount, the debt service of which can be met from project income remaining after payment of all operating expenses, taxes, and required services, provided the project is operated on a nonprofit basis and the rental charges in effect at the time of purchase are not raised.

(ii) The project's actual cost at the time of completion (as determined by the Commissioner) or the project's fair market value for residential purposes as determined by the Commissioner on the basis of operating the project without the benefit of any interest reduction payments or rent supplement payments and without the controls by the Commissioner over the project imposed by the provisions in this subpart, whichever amount is the greater.

(2) Subject to limitations prescribed in subparagraph (1) of this paragraph, it is intended that the mortgage will provide an amount which will enable the seller of the project to realize a net amount out of the sales proceeds sufficient to recover its investment and to retire the outstanding mortgage.

(3) The term of the mortgage may exceed the remaining term of the original mortgage on the project, but in no event may it exceed the Commissioner's estimate of the remaining economic life of the project.

(4) The mortgage shall bear interest at the below market rate prescribed in § 221.518(b).

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 221, 68 Stat. 599, as amended; 12 U.S.C. 1715l)

Issued at Washington, D.C., February 4, 1969.

PHILIP N. BROWNSTEIN, *Federal Housing Commissioner.*

[F.R. Doc. 69-1635; Filed, Feb. 7, 1969; 8:47 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7004]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Distributions in Lieu of Money

The Income Tax Regulations (26 CFR Part 1) under section 305(b) of the Internal Revenue Code of 1954 are amended as follows:

PARAGRAPH 1. Paragraph (b) of § 1.305-2 is amended by revising subparagraph (3)(ii) to read as follows:

§ 1.305-2 Election of shareholders as to medium of payment.

* * * * *

(b) * * *

(3) * * *

(ii) December 31, 1990, if made with respect to stock outstanding on September 7, 1968, or with respect to stock issued pursuant to a contract binding on September 7, 1968, upon the distributing corporation (including stock distributed, directly or indirectly, with respect to stock outstanding on September 7, 1968, or with respect to stock so issued, if this section would have applied to the distribution but for the application of this subdivision).

* * * * *

PAR. 2. Paragraph (b) of § 1.305-3 is amended by revising subparagraph (5)(ii) to read as follows:

§ 1.305-3 Distributions in discharge of preference dividends.

* * * * *

(b) * * *

(5) * * *

(ii) December 31, 1990, if made with respect to stock outstanding on September 7, 1968, or with respect to stock issued pursuant to a contract binding on September 7, 1968, upon the distributing

corporation (including stock distributed, directly or indirectly, with respect to stock outstanding on September 7, 1968, or with respect to stock so issued, if this section would have applied to the distribution but for the application of this subdivision).

Because this Treasury decision amends existing regulations by making a mere liberalizing change, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 553(b) of Title 5 of the United States Code, or subject to the effective date limitation of section 553(d) of such title.

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

[SEAL] WILLIAM H. SMITH,
Acting Commissioner of Internal Revenue.

Approved: February 4, 1969.

WILLIAM F. HELLMUTH, Jr.,
Acting Assistant Secretary for Tax Policy.

[F.R. Doc. 69-1662; Filed, Feb. 7, 1969; 8:49 a.m.]

Title 31—MONEY AND FINANCE: TREASURY

Chapter II—Fiscal Service, Department of the Treasury

SUBCHAPTER A—BUREAU OF ACCOUNTS

[Dept. Circular 881 (Rev.)]

PART 250—PAYMENT ON ACCOUNT OF AWARDS OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

Miscellaneous Amendments

The Department of the Treasury finds that it is necessary to amend its regulations at 31 CFR Part 250 (Treasury Department Circular 881 (Revised)) which govern its payments on awards of the Foreign Claims Settlement Commission because of the amendments made to the International Claims Settlement Act of 1949, as amended by Public Law 90-421, and in order to clarify the requirements for making payments due incompetent or deceased awardholders and to extend the application of those regulations to awards made by the Commission under title II of the War Claims Act of 1948. The Department also finds, in accord with 5 U.S.C. 553, that notice and public procedure thereon are not necessary since the amendments involve interpretative rules and rules of agency procedure.

Accordingly, Part 250, Subchapter A, Chapter II of Title 31 of the Code of Federal Regulations is amended in the following ways.

1. The first and fourth section headings in the table of sections are amended to read:

Sec.
250.1 Scope of regulations.
250.4 Payment on awards.

2. The paragraph of citations of authority is amended to read:

AUTHORITY: The provisions of this Part 250 issued under sec. 7, 64 Stat. 16, sec. 310, 69 Stat. 573, sec. 413, 72 Stat. 530, sec. 213, 76 Stat. 1111; 22 U.S.C. 1626, 1641i, 1642*l*, 50 U.S.C. App. 2017*l*.

3. Section 250.1 is amended by revising the section heading and body text to read:

§ 250.1 Scope of regulations.

The regulations in this part govern payment by the Department of the Treasury on awards made and certified to the Secretary of the Treasury by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1621 et seq.), and title II of the War Claims Act of 1948 (50 U.S.C. App. 2017 et seq.).

4. Section 250.4 is amended by revising the section heading, revoking paragraph (b), and revising and combining paragraphs (a), (c), and (d), to read:

§ 250.4 Payment on awards.

Payment will be made only to the person or persons on behalf of whom the award is made, except in the following circumstances:

(a) If such person is incompetent, payment will be made to his guardian, committee, or other equivalent legal representative. The law of the residence of the incompetent will determine whether the legal representative must be court-appointed. If court appointment is required, the legal representative shall submit a certificate of the clerk of the appointing court, under its seal, dated within 6 months of the date of the voucher application for payment, showing that his appointment is in full force and effect. If court appointment is not required, the legal representative shall submit a notarized statement showing (1) his relationship to the incompetent; (2) the name and address of the person having care and custody of the incompetent; (3) that any money received will be applied to the use and benefit of the incompetent, and (4) that there was no appointment of a guardian or committee.

(b) If such person is deceased, payment will be made to his legal representative.

(1) If any payment to be made is not over $1,000 and there is no qualified executor or administrator, the legal representative will be the person found by the Comptroller General to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates, upon execution and submission of Standard Form No. 1055 to the Investments Branch for transmittal to the Comptroller General. That form is available from the Investments Branch.

(2) In all other cases, the term legal represenative shall include court-appointed or statutory administrators or executors, and successors in interest of the decedent, e.g., his legatees or heirs as determined by an appropriate court or by the law of his residence. If administration of the decedent's estate is closed, the legal representative shall submit a copy of the appropriate court's final order of distribution or other pertinent order, identifying the distributees and their addresses. If administration continues and the legal representative is court-appointed, he shall submit a certificate of the clerk of the appointing court, under its seal, dated within 6 months of the date of the voucher application for payment, showing that such appointment is in full force and effect. If the legal representative is not court-appointed, he shall submit evidence sufficient to prove his interest and authority to apply for payment. If that evidence is a copy of the decedent's will, it shall show on its face or by attachments thereto that it has been offered for probate, and that the appropriate court has affixed its seal and attached its certification of authenticity that the will is in fact the decedent's last will and testament.

* * * * *

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

Dated: February 4, 1969.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[F.R. Doc. 69-1661; Filed, Feb. 7, 1969; 8:49 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 5—General Services Administration

PART 5-12—LABOR

Equal Opportunity in Employment

This amendment of the General Services Administration Procurement Regulations implements and supplements the July 23, 1968, amendment of Subpart 1-12.8 of the Federal Procurement Regulations which was based on the May 21, 1968, revision by the Secretary of Labor of his rules and regulations on the obligations of contractors and subcontractors regarding equal opportunity in employment. The amendment also implements the Secretary of Labor's September 9, 1968, order on validation of employment tests of contractors and subcontractors.

Part 5-12 is amended by revising Subpart 5-12.8, reading as follows:

Subpart 5-12.8—Equal Opportunity in Employment

5-12.800	Scope of subpart.
5-12.803	Basic requirements.
5-12.803-2	Equal Opportunity clause.
5-12.803-9	Notice to bidders regarding pre-award equal opportunity compliance reviews.
5-12.803-50	Equal opportunity representation.
5-12.804	Exemptions.

AUTHORITY: The provisions of this Subpart 5–12.8 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 5–12.8—Equal Opportunity in Employment

§ 5–12.800 Scope of subpart.

This subpart implements and supplements FPR 1–12.8 (which implemented the rules and regulations of the Secretary of Labor, 33 F.R. 7804, May 28, 1968), implements the September 9, 1968, Order of the Secretary of Labor (33 F.R. 14392, September 24, 1968) regarding the validation of employment tests by contractors and subcontractors, and sets forth the GSA Contractor Equal Employment Opportunity Program procedures and requirements regarding Government contracts.

§ 5–12.803 Basic requirements.

§ 5–12.803–2 Equal Opportunity clause.

(a) Executive Order No. 11246 dated September 24, 1965 (30 F.R. 12319), on Equal Employment Opportunity provides for the inclusion of a clause pertaining to equal opportunity in every Government contract not exempted by the order. The clause as prescribed for use by § 1–12.803–2 has been approved by the Department of Labor.

(b) The following Government contract forms contain the Equal Opportunity clause:

(1) Standard Form 2–A, General Provisions and Instructions, U.S. Government Lease for Real Property (February 1965 edition), as prescribed by § 1–16.601(b).

(2) Standard Form 23A, General Provisions (Construction Contract) (June 1964 edition), as prescribed by § 1–16.401 (h).

(3) Standard Form 32, General Provisions (Supply Contract) (June 1964 edition), as prescribed by § 1–16.101(c).

(4) GSA Form 1714, Equal Opportunity Clause (August 1966 edition). This form (illustrated at § 5–16.950–1714) is a preprinting of the Equal Opportunity clause which may be incorporated by attachment, in invitations for bids and requests for proposals where Standard Forms 23A or 32 are not used (see required footnote to the clause prescribed by § 1–12.803–2).

(5) Government Bills of Lading. Section 1–12.803–7 provides that inclusion of the Equal Opportunity clause in Government bills of lading may be by reference. Comptroller General Decision B–109776 dated November 4, 1968, provides that the incorporation of the Equal Opportunity clause by reference shall be by inclusion of a provision on the Government bill of lading form (see Condition 9 on the back of the form) as follows:

> The nondiscrimination clause contained in section 202 of Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor are incorporated herein.

Government bills of lading forms which contain a Condition 9 based on Executive Orders Nos. 10925, 11114, or 11246 may be used until exhausted without modification of the condition.

(6) Commercial Bills of Lading. The reference to the Equal Opportunity clause prescribed in § 5–12.803–2(b)(5) for use in standard Government bills of lading shall also be incorporated by attachment or reference in each of the following:

(i) Commercial bills of lading which are to be converted to Government bills of lading; and

(ii) Commercial bills of lading (including GSA Form 1642, straight Bill of Lading—Domestic) when they cover the transportation of property of the United States Government or when the transportation charges will be paid by the Government, either directly to the carrier or to the contractor when the transportation charges are listed separately on the invoice for the property.

§ 5–12.803–9 Notice to bidders regarding preaward equal opportunity compliance reviews.

(a) *Supply contracts.* A notice of preaward equal opportunity compliance review for inclusion in invitations for bids which may result in an award of a supply contract of $1 million or more is required by § 1–12.803–9.

(b) *Construction, repair and improvement contracts.* A notice of preaward equal opportunity compliance reviews for inclusion in invitations for bids and requests for proposals for construction, repair, and improvement contracts expected to exceed $100,000 is required as follows:

PREAWARD EQUAL OPPORTUNITY COMPLIANCE REVIEWS

As a part of the procedure for determining the responsibility of the apparent low bidder as to his ability to conform with the Equal Opportunity clause, he may be required to visit the office of the contracting officer to discuss his Equal Employment Opportunity Program and provide such assurances as the contracting officer may require.

§ 5–12.803–50 Equal opportunity representation.

A statement by the bidder or prospective contractor as to whether he has participated in any previous contract or subcontract subject to the Equal Opportunity clause (see § 1–12.805–4(b)) is included in Standard Form 19–B, Representations and Certifications (Construction Contract) (December 1965 edition) and in Standard Form 33, Solicitation, Offer, and Award (July 1966 edition).

§ 5–12.804 Exemptions.

§ 5–12.804–1 General.

Contracts and subcontracts exempt from the requirements of the Equal Opportunity clause are covered in § 1–12.804–1.

§ 5–12.804–2 Specific contracts.

Requests for exemption from use of the Equal Opportunity clause for specific contracts or categories of contracts shall be (a) considered by the service or staff office prior to submission of the request, (b) submitted with a complete justification to the appropriate Assistant Contract Compliance Officer for consideration, and (c) transmitted to the Contract Compliance Officer prior to submission to the Director, Office of Federal Contract Compliance (hereafter referred to as OFCC), Department of Labor, for approval, as required.

§ 5–12.804–3 Facilities not connected with contracts.

Requests by GSA contractors and subcontractors for exemption from the Equal Opportunity clause of facilities not involved in the performance of Government contracts shall be submitted with a complete justification to the appropriate Assistant Contract Compliance Officer for consideration and transmission by the Contract Compliance Officer to the Director, OFCC, Department of Labor.

§ 5–12.805 Administration.

§ 5–12.805–1 Duties of agencies.

(a) *GSA responsibility.* GSA is primarily responsible for obtaining compliance of contractors and subcontractors (for which it is the compliance agency) with requirements of the equal opportunity program.

(b) *Designations.* (1) The GSA Contract Compliance Officer is the Deputy Administrator of General Services (hereafter referred to as the Contract Compliance Officer).

(2) The Deputy GSA Contract Compliance Officer is the Deputy Director (Compliance), Office of Audits and Compliance (hereafter referred to as the Deputy Contract Compliance Officer).

(3) The GSA Assistant Contract Compliance Officers are the FSS and PBS Assistant Contract Compliance Officers in the Central Office and the PBS Assistant Contract Compliance Officers in the regional offices (hereafter referred to as Assistant Contract Compliance Officers). The FSS Assistant Contract Compliance Officer also is responsible for equal opportunity matters related to contracts of service and staff offices, other than PBS.

(4) The GSA Associate Contract Compliance Officers are the GSA Associate Contract Compliance Officers in the regional offices (hereafter referred to as Associate Contract Compliance Officers). They perform duties assigned by the FSS Assistant Contract Compliance Officer and maintain liaison with regional contracting officers (except PBS) and the FSS Assistant Contract Compliance Officer.

(c) *Procedures before award of contracts.* The following procedures shall be employed in connection with the award of contracts rather than the procedures prescribed in § 1–12.805–1(d). However, use of the procedures may be waived, except for the procedures in (c)(2)(i), (ii), and (iii), when the contracting officer determines, with the approval of the appropriate Commissioner, that the time limitations of a particular procurement will not permit their application.

(1) *$10,000 and under.* The contracting officer is not required to obtain equal opportunity representations or certifications of nonsegregated facilities or to evaluate the ability of prospective contractors to comply with the Equal Opportunity clause where contracts are $10,000 and under unless the normal exemption of such contracts from the applicability of the equal opportunity program has been withdrawn by the Director, OFCC. In the event of a withdrawal, a review shall be made as provided in paragraph (c)(2) of this section.

(2) *Over $10,000 but not over $100,000.* The contracting officer, with respect to all nonexempt contracts over $10,000 but not over $100,000, shall determine whether the prospective contractor:

(i) Has executed the required Equal Opportunity representation (see § 1–12.805–4(b)(1)) affirmatively regarding the submission of compliance reports;

(ii) Has executed the Certification of Nonsegregated Facilities;

(iii) Has been debarred by reason of noncompliance with the Equal Opportunity clause;

(iv) Requires an evaluation of his ability to comply with the Equal Opportunity clause. When such an evaluation is required the appropriate Assistant Contract Compliance Officer shall be requested to evaluate currently available information and to inform the contracting officer of his views regarding the ability of the contractor to comply with the Equal Opportunity clause;

(v) Is able to comply with the provisions of the Equal Opportunity clause; and

(vi) Is a responsible contractor insofar as the equal opportunity program is concerned, based on (i) thru (v) of paragraph (c)(2) of this section.

(3) *Over $100,000.* The contracting officer, with respect to all nonexempt contracts over $100,000, shall:

(i) Follow the procedures prescribed by paragraphs (c)(2)(i), (ii), and (iii) of this section;

(ii) Notify the appropriate Assistant Contract Compliance Officer as follows:

(*a*) The impending award of each nonexempt contract;

(*b*) Name and address of the prospective prime contractor;

(*c*) The date of expiration of bids;

(*d*) Anticipated time of performance;

(*e*) Name and address of subcontractors (see § 5–12.805–52 regarding identification of subcontractors);

(*f*) Whether the prospective prime contractor has, or has not, had any contracts subject to an Equal Opportunity (or Nondiscrimination) clause and filed all required compliance reports; and

(*g*) Whether the prospective prime contractor has agreed that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards.

(iii) Request the Assistant Contract Compliance Officer to do the following:

(*a*) Review the compliance status of the prospective prime contractor and the subcontractors identified pursuant to § 5–12.805–52 on the basis of information currently available to GSA and compliance agencies. Compliance agencies shall not be requested to conduct special compliance reviews for the purpose of satisfying the review requirement of this paragraph, unless there are specific reasons to believe that the prospective contractor may not be able to comply with the Equal Opportunity clause;

(*b*) Conduct preaward conferences, as necessary, and negotiate an agreement with the prospective prime contractor providing for the elimination of deficiencies, except that for PBS he shall assist contracting officers to perform these functions;

(*c*) Notify the contracting officer that the prospective prime contractor has, or has not, agreed to take action to correct deficiencies and provide the contracting officer with the text of the agreement, if any, and a list of any unresolved deficiencies;

(*d*) Inform the contracting officer of his recommendations regarding the ability of the contractor to comply with the Equal Opportunity clause; and

(*e*) Notify prospective FSS prime contractors of any unresolved deficiences (for PBS see § 5–12.805–1(c)(3)(iv)).

(iv) Notify prospective PBS prime contractors of any unresolved deficiencies;

(v) Direct prospective prime contractors to meet with Assistant Contract Compliance Officers to negotiate agreements providing for the elimination of unresolved deficiencies;

(vi) Incorporate agreements, as required, with prospective prime contractors (dealing with the correction of deficiencies) into contracts;

(vii) Determine whether a prospective contractor is able to comply with the requirements of the Equal Opportunity clause; and

(viii) Determine whether the prospective contractor is a responsible contractor insofar as the equal opportunity program is concerned.

(4) *Construction contracts over $100,000.* In addition to the requirements of paragraph 3, the contracting officer, with respect to all nonexempt construction contracts over $100,000, shall request the Assistant Contract Compliance Officer to assist him to hold preaward equal employment opportunity conferences with prospective prime contractors and their designated subcontractors. At the time the prime contractor is notified to attend the conference, he shall be instructed to be prepared to submit at the conference the program (including policies and procedures) which he will employ to fulfill his contractual responsibility to achieve equal employment opportunity (based on full and effective utilization of minority manpower) as required by the Equal Opportunity clause in his contract and the contracts of his subcontractors.

(5) *Supply contracts over $1 million.* The contracting officer, with respect to formally advertised supply contracts which may exceed $1 million, shall:

(i) Follow the procedures in § 5–12.805–1(c)(2)(i), (ii), and (iii);

(ii) Request the Assistant Contract Compliance Officer to provide for preaward compliance reviews as required by §§ 1–12.803–9, 1–12.805–5(d), and 5–12.805–5(b);

(iii) After reviewing the recommendations of the Assistant Contract Compliance Officer, determine whether the prospective prime contractor (and his subcontractors subject to the review) are able to comply with the Equal Opportunity clause or carry out an acceptable program for compliance; and

(iv) Determine whether the prospective contractor is a responsible contractor insofar as the equal opportunity program is concerned.

(d) *Reports on contractor deficiencies.* Assistant Contract Compliance Officers shall forward reports to the contracting officer and to the Deputy Contract Compliance Officer regarding the actions taken with respect to the deficiencies of prospective contractors. The Deputy shall forward copies of such reports to the Director, OFCC (see § 1–12.805–1(d)(2)).

§ 5–12.805–4 Reports and other required information.

(a) Each nonexempt contractor and subcontractor shall file, or already have filed prior to award, information reports in accordance with § 1–12.805–4 and the printed instructions (except as provided in (b) of this § 5–12.805–4) on Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1. In addition, such contractors and subcontractors may be required, prior to award, to furnish such other information regarding their equal employment opportunity policies and procedures

as may be required by the Contract Compliance Officer (or his deputy or assistants).

(b) If a nonexempt prospective prime contractor or subcontractor has not filed a Standard Form 100 as required, the contracting officer shall supply such contractors with copies of the forms for completion and immediate return to the contracting officer. Contractors shall be instructed to submit a copy of the Standard Form 100 directly to the contracting officer, in order to expedite the determinations of their ability to comply with the provisions of the Equal Opportunity clause.

(c) Upon receipt of the Standard Form 100, the contracting officer shall immediately forward it to the appropriate Assistant Contract Compliance Officer for review and recommendations regarding the prospective contractor's ability to comply with the provisions of the Equal Opportunity clause.

(d) The Assistant Contract Compliance Officer shall retain a copy of the Standard Form 100 for his own files and transmit a copy to the Deputy Contract Compliance Officer for his files.

(e) The Assistant Contract Compliance Officer may request a contractor or subcontractor to furnish a copy of any Equal Employment Opportunity Employer Information Report previously filed by the contractor or subcontractor.

(f) Employer information reports shall be submitted to GSA by the contractor within 30 days after the award of the contract, and by each subcontractor subject to the reporting requirement within 30 days after the award of each subcontract, if:

(1) A complete Employer Information Report has not been submitted within 12 months preceding the date of the contract award (prime or sub); and

(2) The contractor and subcontractors concerned are employers within the definition of "employer" of the instructions to the information report, Standard Form 100.

§ 5–12.805–5 Compliance reviews.

(a) *Definition.* A compliance review (see § 1–12.805–5) is a review designed to determine whether a prime contractor or subcontractor (also a specified prospective prime or subcontractor) maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin (see § 5–12.805–51). Further, it is a review (including a complete listing of positions in order of progression sequence, rates of pay, and the number of incumbents by race) to determine if there is any significant difference between the pattern of employment, utilization and other opportunities enjoyed by minorities and those enjoyed by other members of the workforce. In addition, the review includes an analysis of the recruitment, hiring, placement, training, promotion, demotion, and other practices as appropriate for the purpose of determining if any significant differences disclosed are the result of and/or are being perpetuated by the contractor's employment practices. The review also includes an examination of the contractor's affirmative action program to determine if the contractor has eliminated all practices that create or tend to perpetuate discrepancies between minorities and others in the employment, utilization, and other opportunities and has instituted measures to correct employment conditions that are the result of these practices.

(b) *When required.* Compliance reviews are required as follows:

(1) Once each calendar year during the performance of any contract exceeding $100,000 where GSA is the compliance agency;

(2) Within the 6 months period preceding the award of any formally advertised supply contract (see § 1–12.805–5(d)) exceeding $1 million. GSA shall conduct the review where it is the compliance agency and shall provide awarding agencies with reports within 30 days. Where GSA is not the compliance agency, the Assistant Contract Compliance Officer shall request the compliance agency to make the review;

(3) When requested by the Assistant Contract Compliance Officer;

(4) Preceding the award of any contract, or the approval of any subcontract, when requested by the Director, OFCC (see § 1–12.805–11(a)); and

(5) When otherwise requested by the Director, OFCC.

(c) *Conduct of compliance reviews—*(1) *Responsibilities.* Compliance reviews (and follow-ups as appropriate) shall be conducted by the Office of Audits and Compliance pursuant to schedules and priorities established by the Deputy Contract Compliance Officer in cooperation with the Assistant Contract Compliance Officers. Advance arrangements shall be made with the contractor or subcontractor to establish a definite date and time for visiting the facilities involved. GSA Form 1950B(FL), Notification of Planned Review of Contractor's Equal Employment Opportunity Program (see § 5–16.950–1950B(FL)), addressed to the contractor, shall be utilized for this purpose. If time is of the essence, advance arrangements may be made by telephone.

(2) *Procedures.* Compliance reviews shall be conducted as follows:

(i) GSA Form 1953, Nondiscrimination Survey of Government Contractor (see § 5–16.950–1953), shall be completed in conducting a compliance review. Copies of GSA Form 1953 shall be furnished to the Assistant Contract Compliance Officer, the contracting officer, and the Deputy Contract Compliance Officer. The form shall not be furnished to contractors or subcontractors either in blank or otherwise;

(ii) Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance;

(iii) A specific time in which to correct deficiencies should be stipulated;

(iv) The reviewing official may make recommendations to a contractor or subcontractor designed to correct deficiencies in equal opportunity policies and practices. Deficiencies and recommendations for their correction shall be reported on GSA Form 1953 or as attachments thereto. Such recommendations may include, but are not limited to, elimination of segregated facilities, improvement of recruitment techniques, promulgation and dissemination of program policies, preparation of plans to merge functionally related but racially segregated lines of progression, and preparation of plans to remedy the effects of all other discriminatory employment policies. Any refusal on the part of a contractor or subcontractor to correct deficiencies shall be fully reported;

(v) GSA officials conducting a compliance review shall not advise a contractor or subcontractor that he is in compliance nor shall representations be made that he will be in compliance if he adopts the recommendations of such officials;

(vi) Before a contractor or subcontractor having deficiencies can be found to be in compliance, he must make a specific commitment, in writing, to correct such deficiencies. The commitment must include the precise action to be taken and it must be approved by the Assistant Contract Compliance Officer; however, for PBS contracts the approval shall be by the contracting officer;

(vii) Notification of a contractor or subcontractor of his compliance posture shall be made by the Assistant Contract Compliance Officer; however, for PBS contracts the notification shall be by the contracting officer. The notification shall be given after consideration of all data available, including reports relating to all of the facilities of a contractor or subcontractor (see § 1–12.805–4). A copy of such notification will be forwarded to the Deputy Contract Compliance Officer (and the contracting officer in FSS);

(viii) A multifacility contractor or subcontractor may have some facilities where equal opportunity is practiced and other facilities where it is not. When this situation prevails, the contractor or subcontractor shall not be deemed to be in compliance;

(ix) Contractor compliance with the affirmative action program requirements of § 1–12.810 shall be ascertained during the review;

(x) The Assistant Contract Compliance Officer (in PBS the contracting officer) may request additional information whenever it is determined to be necessary or appropriate;

(xi) Recommendations for sanctions, where deemed appropriate, shall be made by the Assistant Contract Compliance Officer to the contracting officer, the Deputy Contract Compliance Officer, and the Contract Compliance Officer; and

(xii) Schedules of compliance reviews and the compliance review reports shall be furnished to the Director, OFCC, by the Deputy Contract Compliance Officer.

§ 5–12.805–6 Complaints.

(a) *Initiation.* Complaints received by GSA that pertain to the GSA program under the Equal Opportunity clause shall be referred to the Contract Compliance

Officer, with a copy to the Assistant Contract Compliance Officer. Such complaints shall be handled in accordance with §§ 1–12.805–6 and 1–12.805–7, including the submission of a copy of the complaint to the Director, OFCC, within 10 calendar days.

(b) *Investigation.* If GSA is the compliance agency, the Contract Compliance Officer (or his deputy) shall have the complaint investigated and a complete case record developed as provided in § 1–12.805–7(b). The investigation shall include, where appropriate, a review of the pertinent personnel practices and policies of the contractor or subcontractor (see § 5–12.805–51), the circumstances under which the alleged discrimination occurred, and other relevant factors. Within 30 days after the complaint, the case record and summary report shall be submitted to the Contract Compliance Officer with a copy to the Assistant Contract Compliance Officer.

(c) *Evaluation and further action.* The Contract Compliance Officer (or his deputy) shall determine whether or not there has been any violation of the Equal Opportunity clause. If additional facts are required, further investigation shall be requested.

(d) *Reports to the Director, OFCC.* Within 60 days from the receipt of a complaint, the Contract Compliance Officer (or his deputy) shall forward the case record and summary report to the Director, OFCC, as provided in § 1–12.805–7(d)(1).

(1) If it is determined that no violation has occurred, and the Office of Federal Contract Compliance concurs with the summary report, the persons concerned shall be notified of such findings by the Contract Compliance Officer (or his deputy) and the case shall be closed. If the Director, OFCC, does not concur, the Contract Compliance Officer (or his deputy) shall take such action as the Director may direct.

(2) If it is determined that there has been an apparent violation of the Equal Opportunity clause, the Contract Compliance Officer (his deputy or assistants) shall attempt to resolve the complaint by informal means. Where the complaint cannot be resolved by informal means within 30 days, the firm complained against shall be given a hearing pursuant to § 1–12.807, if requested.

§ 5–12.805–9 Sanctions and penalties.

Sanctions and penalties shall be employed as provided in § 1–12.805–9. Recommendations for sanctions and penalties shall be proposed by the Deputy Contract Compliance Officer (or an Assistant Contract Compliance Officer or hearing officer through the Deputy Contract Compliance Officer) and submitted to the Contract Compliance Officer for consideration. The Contract Compliance Officer, as appropriate, shall act on the recommendation as follows: (a) Direct that a hearing be held, if requested; (b) accept or reject the recommendation where a hearing has not been requested; and (c) accept or reject the recommendation following a hearing. Where a recommendation is accepted, it shall be forwarded to the Director, OFCC, for approval when required by § 1–12.805–9(a)(2). Referrals to the Justice Department are subject to the provisions in § 1–12.805–9(d).

§ 5–12.805–50 Ability to comply with the Equal Opportunity clause.

(a) Contracting officers are responsible for determining whether a bidder is able to comply with the provisions of the Equal Opportunity clause. Where equal employment opportunity compliance reviews or complaints have been processed pursuant to this Subpart 5–12.8 regarding any contractor or subcontractor, the contracting officer shall coordinate with the Assistant Contract Compliance Officer before making his determination regarding a prospective contractor's ability to comply with the Equal Opportunity clause.

(b) Where a prospective contractor appears on the list of bidders, as set forth in § 5–12.805–50(c), contracting officers shall, prior to award, request the Assistant Contract Compliance Officer to review the ability of the bidder to comply with the Equal Opportunity clause.

(c) The Contract Compliance Officer (or his deputy) shall develop and furnish contracting officers, through the respective Assistant Contract Compliance Officers, with a list of firms or individuals who, because of questionable ability to comply with the provisions of the Equal Opportunity clause, require special consideration before contracts are awarded. This list shall be administered by the Contract Compliance Officer (or his deputy) as part of the review list of bidders established pursuant to § 5–1.310–50.

(d) In order to supplement compliance reviews, regional Quality Control Divisions, FSS, will, as requested, during preaward plant facilities surveys or contract administration visits, review the progress made by the contractor in implementing affirmative action to correct previously reported deficiencies. As a result of plant visits, the quality control representatives will report pertinent information concerning the contractor's equal employment opportunity posture, such as:

(1) Changes observed in employment patterns or practices;

(2) Evidence of segregation of restrooms, drinking fountains, or eating facilities;

(3) Displays of equal employment opportunity notices and posters;

(4) Changes in subcontractors since award of the contract;

(5) Subcontractors meeting the criteria of the rules and regulations of the Secretary of Labor who have not been advised by the contractor of the requirement for filing the Standard Form 100 Employer Information Report with the Office of Federal Contract Compliance;

(6) Additional information requested by the Assistant Contract Compliance Officer; and

(7) Civil disturbances, strikes, and evidence of minority group dissatisfaction.

Information developed by Quality Control Divisions shall be documented on GSA Form 2194 and forwarded to the contracting officer and the Assistant Contract Compliance Officer.

§ 5–12.805–51 Equal opportunity considerations.

(a) *General.* The procedures employed by a contractor in connection with recruitment, hiring, training, job assignment, and promotion are major considerations in determining if discrepancies in the employment and utilization of minorities are the result of discrimination and the failure to take affirmative action and in determining the contractor's ability to comply with the provisions of the Equal Opportunity clause.

(b) *Recruitment practices.* (1) All applicants for employment, regardless of race, color, religion, sex, or national origin, should receive equal consideration for all available jobs in accordance with equal qualification standards.

(2) Contractor standards for minority applicants should be no more stringent than for others and minority group applicants should be considered for all types of jobs.

(3) Applications for employment should be objectively solicited from recruitment sources which reach all members of the community regardless of race, color, religion, sex, or national origin, e.g., advertising as an equal opportunity employer through newspapers and other public news media (see § 1–12.813).

(4) Contractors should take all actions necessary to ensure that there are no barriers to the employment of minority group members. Such action should include, where necessary, positive steps to convince minority groups in the community that the contractor does provide equal opportunity. In this connection, effective communication with minority group organizations, Fair Employment Committees in the community, and schools and colleges attended by minority group members should be developed.

(5) Contractors should employ procedures for handling of applicants that are compatible with equal employment opportunity. In this regard, employee referrals or "walk-ins" require particular attention since these recruitment procedures are most susceptible to discrimination. Employees tend to refer friends from their own racial and ethnic backgrounds and, therefore, if few minority group workers are already employed, few minority group workers are likely to be referred. With regard to "walk-ins," the entire recruitment program is strongly dependent upon the attitudes of guards and receptionists and can thus be easily frustrated.

(c) *Hiring and initial placement.* The hiring process involves three distinct operations, namely, completion of formal applications, determination of applicants' qualifications, and determination as to whether or not to hire the applicant. Equal opportunity procedures should reflect the following:

(1) Absence of any qualifications based on race, color, religion, sex, or national origin;

(2) Administration of qualification tests fairly and without regard to race, color, religion, sex, or national origin (see § 5–12.850);

(3) Absence of special tests for minority groups only, except for special tests designed to facilitate, rather than exclude, employment of members of minority groups; and

(4) Objective qualification standards reasonably related to the skill and promotional requirements of the contractor.

(d) *Other practices.* (1) It is possible for an employer to have a high percentage of minority group employees in his total workforce but have the greatest number of the group assigned to duties in the lower skills. This situation may be the result of discriminatory placement or promotion policies, segregated lines of progression in the facility, or any collective bargaining arrangements impeding the movement of minority employees (see Standard Form 100 with particular attention to any attachment indicating dual local unions, i.e., two local unions of the same international union listed as bargaining units). Very often where there are dual local unions they are racially segregated. Experience has demonstrated that where racially segregated local unions exist, segregated progression lines and a system of racially reserved positions also exist.

(2) A contractor shall not be deemed to be in compliance if he maintains facilities having racially segregated lines of progression, racially reserved positions, departments or divisions, separate seniority lists, or racially segregated facilities such as lunchrooms and restrooms (see § 1–12.803–10).

(3) Segregation by reason of collective bargaining agreements shall not be deemed to relieve a contractor of his equal opportunity obligations.

(4) Compliance requires that contractors eliminate racially segregated facilities, merge functionally related but racially segregated lines of progression, reconstitute seniority lists, districts, and lines on a nondiscriminatory basis, provide equal promotion, progression, and transfer opportunities based on nondiscriminatory qualifications alone, even to the extent of renegotiating collective bargaining agreements.

(5) Reviews should include consideration of the contractor's organizational structure, payrolls, wage rates, personnel instructions, procedures and guidelines, promotional lists and rules, job descriptions and methods of job classification, seniority lists, recall lists, and collective bargaining agreements.

(6) Management controls are indicators of ability to comply. A contractor who has formulated and disseminated a firm policy on equal opportunity throughout his entire organization, designated a responsible official for implementation of the policy, and instituted a system of control and evaluation of the program usually can effect equal employment opportunity. On the other hand, in those instances where there is no such policy and program, no fixed responsibility and no feedback and evaluation, the possibility of coming into compliance is diminished.

(7) When dealing with prospective construction and repair contractors, contracting officers should be aware of local trades and crafts that historically have discriminated and maintained exclusionary policies. In this connection, consideration should be given to having contractors require their subcontractors to do more than obtain written assurances that their sources of recruitment hire on a nondiscriminatory basis. Contractors and subcontractors have found it necessary to locate qualified minority group individuals and refer them to their appropriate sources as apprentices or journeymen. Most construction craft collective bargaining agreements afford the contractor or subcontractor an opportunity to employ individuals for limited periods of time (7 days to 30 days) who are not members of the bargaining unit before offering such individuals for membership. Contractors or subcontractors should be directed to exercise this right where necessary to ensure an integrated work force on GSA construction and repair projects. In addition, the contractor's or subcontractor's equal opportunity programs should include encouragement of local labor organizations to demonstrate evidence of their equal opportunity policy as recited in written assurances.

§ 5–12.805–52 Identification of subcontractors.

(a) *Supply and service contracts (other than construction).* Invitations for bids and requests for proposals expected to exceed $100,000 shall include a provision regarding the identification of known subcontractors whose subcontracts will exceed $50,000 as follows:

IDENTIFICATION OF SUBCONTRACTORS

Bidders (offerors) shall list known subcontractors whose subcontracts will exceed $50,000 below:

	Name of Subcontractor	*Address*
1.	----------	----------
2.	----------	----------
Etc.	----------	----------

(b) *Construction contracts.* Invitations for bids and requests for proposals for construction shall provide for the listing of subcontractors in accordance with the procedures prescribed by the Commissioner of PBS.

§ 5–12.805–53 Compliance agency.

The Office of Federal Contract Compliance, Department of Labor, will designate GSA or one of the other agencies to perform the responsibilities of "compliance agency" with respect to individual contractors and subcontractors. In the absence of such a designation, the rules in § 1–12.802(d) shall be employed to determine whether GSA or some other agency has the "compliance agency" responsibility. The Contract Compliance Officer (or his deputy) shall keep the services and staff offices informed regarding the identity of the contractors and subcontractors for which GSA has "compliance agency" responsibility. Problems related to GSA's "compliance agency" responsibilities shall be referred to the Deputy Contract Compliance Officer for resolution with OFCC and other agencies, as appropriate.

§ 5–12.805–54 Furnishing information to contractors.

Contracting officers, when mailing contract documents to contractors that are subject to the Equal Opportunity clause, shall incude appropriate information explaining the contract requirements concerning submission of Employer Information Report forms, notices to labor unions or other organizations of workers, and use of required posters (see § 1–12.805–3). For this purpose, form letters have been developed for use as follows:

(a) GSA Form 1949, Transmittal Letter, may be used with invitations for bids on Standard Form 20, Invitation for Bids (Construction Contract), or GSA Form 1467, Invitation, Bid, and Award (Contract for Building Services), when bids are estimated to exceed $10,000 (see § 5–16.950–1949).

(b) GSA Form 1950(FL), Transmittal Letter, may be used to transmit construction contract awards that are subject to the Equal Opportunity clause (see § 5–16.950–1950(FL)).

(c) GSA Form 1950A(FL), Transmittal Letter, may be used to transmit contract awards for supplies and services other than construction that are subject to the Equal Opportunity clause (see § 5–16.950–1950A(FL)).

§ 5–12.807 Hearings.

Hearings shall be conducted in accordance with the provisions of § 1–12.807.

§ 5–12.807–2 Informal hearings.

Informal hearings shall be conducted by the Assistant Contract Compliance Officer concerned with the contractual matter involved.

§ 5–12.807–3 Formal hearings.

(a) Formal hearings shall be conducted by the Contract Compliance Officer or his designee.

(b) Hearings shall be conducted (to the extent consistent with § 1–12.807) in accordance with the rules of the General Services Administration Board of Contract Appeals, as set forth in Subpart 5–60.2. When those rules are employed, pursuant to the provisions of this paragraph (b), references to the Board shall be deemed to be references to the Contract Compliance Officer (or his designee).

(c) Assistant Contract Compliance Officers, contracting officers, and other GSA personnel shall participate as may be appropriate.

§ 5–12.810 Affirmative action compliance programs.

(a) Assistant Contract Compliance Officers shall determine whether contractors (for which they are cognizant) have established affirmative action compliance programs as required by § 1–12.810. Disagreements between an Assistant Contract Compliance Officer and a contractor shall be referred to the Contract

Compliance Officer or his deputy. In PBS the referral shall be through the contracting officer. If the disagreement is not resolved, it is subject to § 1–12.805–10.

(b) The contractor's affirmative action program should be tailored to meet the problems disclosed in compliance reviews. It should contain documentation of the elimination of deficient employment practices and policies and specific steps, including goals and timetables for the full and effective utilization of minority manpower.

§ 5–12.812 Rulings and interpretations.

The Contract Compliance Officer (or his deputy) shall advise Assistant Contract Compliance Officers and contracting officers of any rulings and interpretations of the Secretary of Labor or his designee.

§ 5–12.850 Validation of employment tests.

(a) This section sets forth policies and procedures regarding the validation of employment tests by contractors and subcontractors subject to the provisions of Executive Order No. 11246, as required by the September 9, 1968, order of the Secretary of Labor.

(b) The term "test" as used in this section, means any paper-and-pencil or performance measure used to judge qualifications for hire, transfer, or promotion. This definition includes, but is not restricted to, measures of general intelligence, mental ability, and learning ability; specific intellectual abilities; mechanical, clerical, and other aptitudes; knowledge and proficiency; occupational and other interests; and personality or temperament.

§ 5–12.850–1 General.

(a) Properly validated and standardized tests, by virtue of their relative objectivity and freedom from the biases that are apt to characterize more subjective evaluation techniques, can contribute substantially to the implementation of equitable and nondiscriminatory personnel policies. In many cases contractors have come to rely almost exclusively on tests as the basis for making employment and promotion decisions, with candidates sometimes selected or rejected on the basis of a single test score. Minority candidates frequently experience disproportionately high rates of rejection through failing to attain score levels that have been established as minimum standards for qualification.

(b) Where evidence in support of presumed relationships between test performance and job behavior is lacking, the possibility of discrimination in the application of test results must be recognized. A test lacking validity (i.e., having no significant relationship to job behavior) and yielding lower scores for minority candidates may resultantly reject many who have probabilities of successful work performance equal to those of nonminority candidates.

(c) Test usage, as well as test validity, must be reviewed to determine its effect on the employment of mionrities. Similarly, a test or other qualification standard should not be used in a situation involving the transfer or promotion of minority employees when such employees would already have occupied the positions involved without such qualifications were it not for past discriminatory practices.

§ 5–12.850–2 Evidence of validity.

(a) Contractors regularly using tests to select from among candidates for hire, transfer or promotion to jobs other than professional, technical and managerial occupations (defined as occupational groups "O" and "1" in the Dictionary of Occupational Titles, Third Ed.) shall have available for inspection, within a reasonable time, evidence that the tests are valid for their intended purposes. Such evidence shall be examined in compliance reviews for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates.

(b) Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior comprising or relevant to the job(s) for which candidates are being evaluated.

§ 5–12.850–3 Minimum standards for validation.

Empirical evidence in support of a test's validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in the American Psychological Association's Standards for Education and Psychological Tests and Manuals. (Evidence of content or construct validity may also be appropriate where criterion-related validity is not technically feasible, but it should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content in the case of job knowledge or proficiency tests or the construct in the case of trait measures.) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards must be met by any approach used so far as applicable:

(a) Where a predictive validity study is conducted, the sample of subjects must be representative of the normal or typical candidate group for the job(s) in question. Where a concurrent validity study is conducted, the sample should be, so far as technically feasible, representative of the minority groups currently included in the candidate population.

(b) Tests must be administered and scored under controlled and standardized conditions, with proper safeguards employed to protect the security of test scores and ensure that scores do not enter into any judgments of individual adequacy that are to be used as criterion measures.

(c) The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance, and tenure. In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be developed carefully and the ratings themselves examined closely for evidence of bias. Whatever criteria are used, however, they should represent major or critical work behaviors as revealed by careful job analyses.

(d) Presentations of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior.

(e) Data must be generated and results reported separately for minority and nonminority groups wherever technically feasible.

§ 5–12.850–4 U.S. Employment Service validation.

Where testing services of a State employment agency are used, the following rules shall apply:

(a) In cases where a contractor uses the testing services of a State employment service office, and the tests used by the State office have been validated pursuant to the requirements of the Secretary of Labor's order, the employer shall have on file the U.S. Employment Service certification of this fact, which shall be accepted as compliance with the Secretary's order. (If further tests are required by the contractor, he remains responsible for determination of the validity of such further tests.)

(b) In cases where a contractor uses the testing services of a State employment service office and the tests used by the State office have not been validated for particular jobs pursuant to the requirements of the Secretary's order, the contractor shall, as a condition for future use, cooperate with the State office to effect validation of tests as they relate to job requirements of the contractor.

§ 5–12.850–5 Use of validity studies.

Where the validity of a test cannot be determined pursuant to § 5–12.850–3 (e.g., the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when: (a) The studies pertain to jobs which are comparable (i.e., have basically the same task elements), and (b) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity.

§ 5–12.850–6 Assumptions of validity.

(a) The general reputation of a test, its author or its publisher, or casual reports of test utility will not be accepted in lieu of evidence of validity. Specifically ruled out are: Assumptions of validity based on test names or descriptive labels, all forms of promotional literature, data

bearing on the frequency of a test's usage, testimonial statements of sellers or users, and other nonempirically based and anecdotal accounts of testing practices or testing outcomes.

(b) Although professional supervision of testing activities may help greatly to ensure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity.

§ 5–12.850–7 Continued use of tests.

A contractor may be permitted, under certain conditions, to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, evidence of criterion-related validity in a specific setting is technically feasible and required but not yet obtained, the use of the test may continue provided: (a) The contractor can cite substantial evidence of validity as described in § 5–12.850–5, and (b) he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the contractor will use cutoff scores which yield score ranges broad enough to permit the identification of criterion-related validity.

§ 5–12.850–8 Other selection techniques.

Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored interviews, unscored application forms, and records of educational and work history. Where there are data suggesting that such unfair discrimination exists (e.g., differential rates of rejecting applicants from different ethnic groups or disproportionate representation of some ethnic groups in employment in certain classes of jobs), then the contractor may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in § 5–12.850–2 and –3. If the contractor is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of unfair discrimination.

§ 5–12.850–9 Compliance reviews.

(a) Contractor practices in the use of employment tests and other selection techniques as qualification standards should be examined carefully for possible noncompliance with the requirements of Executive Order No. 11246 when:

(1) There is a lack of evidence of test validity, but the contractor continues to use test scores as a basis for personnel decisions; or,

(2) The contractor is unwilling to conduct test validation studies, when such studies are technically feasible, or otherwise provide evidence of validity as a requirement for continued test usage; or,

(3) When other selection techniques are used as identified in § 5–12.850–8 above, and there is information suggesting unfair discrimination in employment of minority groups, and the contractor refuses to validate these techniques or to eliminate the conditions suggestive of unfair discrimination.

(b) A determination on noncompliance pursuant to the provisions of the Secretary's order shall be grounds for the imposition of sanctions under Executive Order No. 11246.

(c) The use by a contractor of tests or other selection techniques for which there is evidence of unfair discrimination or differential validity patterns for minority and nonminority groups, and no adjustment has been made for this finding, shall be grounds for the imposition of sanctions under Executive Order No. 11246.

§ 5–12.850–10 Priorities for program enforcement.

(a) Reviews of the selection programs of contractors subject to the Equal Opportunity clause for which GSA is the compliance agency shall be made in accordance with the following schedule:

(1) Contractors employing 2,500 or more beginning March 9, 1969;

(2) Contractors employing 1,000 or more beginning September 9, 1969; and

(3) All other contractors beginning March 9, 1970.

(b) In addition to the provisions of § 5–12.850–10(a), the use of tests and other selection techniques not in accordance with the provisions of the Secretary's order shall be identified through a review of GSA files of compliance reviews or complaints.

(c) After such identification and consultation with the Office of Federal Contract Compliance, contractors shall be informed of the possible violation of the order and asked to submit a written program within 30 days that will conform to the order.

(d) Compliance with the provisions of this section shall be the responsibility of the Contract Compliance Officer.

§ 5–12.850–11 Investigation procedures.

Personnel conducting investigations pursuant to this section shall:

(a) Make only a determination of facts from the company records and appropriate interviews with management;

(b) Carefully document the effect of the current selection program on minority applicants and employees;

(c) Inquire as to whether validation studies have been completed for any tests being used. If the contractor's answer is affirmative, the investigator will obtain copies of the validation studies to include in the report;

(d) With respect to other selection techniques, if information suggests the existence of unfair discrimination against minority groups, he will inquire as to whether validation studies have been completed for these techniques. If the contractor's answer is affirmative, the investigator will obtain copies of the validation studies to include in the report. If the answer is negative, he will inquire as to whether such validation studies are being undertaken or, if not, what measures the contractor contemplates to eliminate the conditions suggestive of unfair discrimination; and

(e) Make reports of findings to the Assistant Contract Compliance Officer.

Effective date. This regulation is effective February 3, 1969.

Dated: February 3, 1969.

LAWSON B. KNOTT, Jr.,
Administrator of General Services.

[F.R. Doc. 69–1634; Filed, Feb. 7, 1969; 8:47 a.m.]

Chapter 101—Federal Property Management Regulations

SUBCHAPTER H—UTILIZATION AND DISPOSAL

ABANDONED OR FORFEITED PERSONAL PROPERTY

Part 101–43 is amended by providing for the retention of forfeited or voluntarily abandoned property for official use without reporting to GSA in certain cases, and by providing for the reporting to the Regional Administrator, General Services Administration Region 3, of such property not desired for retention for official use generally in the manner prescribed for the reporting of excess personal property. Motor vehicles will be reported provided they are less than 4 years old. Distilled spirits, wine, and malt beverages determined to be fit for human consumption need not be tested with consequent wastage of one bottle in each lot. Transfers to other Federal agencies will be accomplished by means of a Standard Form 122, Transfer Order Excess Personal Property.

Title to abandoned or other unclaimed property shall vest in the United States 30 days after such property is found. Abandoned or other unclaimed property, if not utilized by the finding agency, shall be reported to the appropriate GSA regional office and handled in the same manner as excess property. Reimbursement at fair market value will be required if abandoned or other unclaimed property is utilized by the finding agency or transferred.

Part 101–44 is amended by providing for a revised GSA Form 18, Application of Eleemosynary Institution, for use by eleemosynary institutions in establishing eligibility for donation of forfeited distilled spirits, wine, and malt beverages.

Part 101–45 is amended by reducing the period of time for holding abandoned and other unclaimed property prior to disposal to 30 days after it is found.

The table of contents for Subchapter H is amended to provide new and revised entries as follows:

Sec.	
101–43.402	Forfeited or voluntarily abandoned property.
101–43.402–1	Sources of property available for utilization.
101–43.402–2	Custody of property.
101–43.402–3	Cost of care and handling.
101–43.402–4	Retention by holding agency.
101–43.402–5	Property required to be reported.
101–43.402–6	Transfer to other Federal agencies.

PART 101-43—UTILIZATION OF PERSONAL PROPERTY

Subpart 101-43.4 is revised as follows:

Subpart 101-43.4—Utilization of Abandoned and Forfeited Personal Property

§ 101-43.400 Scope of subpart.

This Subpart 101-43.4 prescribes the policies and methods for the utilization and transfer within the Government of forfeited or voluntarily abandoned personal property subject to the provisions of 40 U.S.C. 304 f through m, and abandoned and other unclaimed property found on premises owned or leased by the Government subject to the provisions of 40 U.S.C. 484(m), which may come into the custody or control of any Federal agency in the United States, Puerto Rico, or the Virgin Islands. Such property located elsewhere shall be utilized and transferred in accordance with the regulations of the agency having custody thereof.

§ 101-43.401 Definitions.

As used in this Subpart 101-43.4, the following terms have the meanings set forth in this § 101-43.401.

(a) Abandoned or other unclaimed property means personal property found on premises owned or leased by the Government and which is subject to the filing of a claim therefor by the former owner(s) within 3 years from the vesting of title in the United States.

(b) Distilled spirits as defined in the Federal Alcohol Administration Act (27 U.S.C. 211), as now in force or hereafter amended, means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof.

(c) Firearms, as defined in 18 U.S.C. 921, as now in force or hereafter amended, means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; or any destructive device. Such term does not include an antique firearm.

(d) Forfeited property means personal property acquired by a Federal agency, either by summary process or by order of a court of competent jurisdiction pursuant to any law of the United States.

(e) Malt beverages as defined in the Federal Alcohol Administration Act (27 U.S.C. 211), as now in force or hereafter amended, means beer or ale made by the alcoholic fermentation of an infusion or decoction, or combination of both, in portable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

(f) Property means all personal property, including but not limited to vessels, vehicles, aircraft, distilled spirits, wine, and malt beverages.

(g) Voluntarily abandoned property means personal property abandoned to a Federal agency in such a manner as to vest title thereto in the United States.

(h) Wine as defined in sections 5381 and 5385 of the Internal Revenue Code of 1954 (26 U.S.C. 5381, 5385), as now in force or hereafter amended, and other alcoholic beverages not so defined, but made in the manner of wine, includes sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for nonindustrial use.

§ 101-43.402 Forfeited or voluntarily abandoned property.

Forfeited or voluntarily abandoned property, subject to the provisions of 40 U.S.C. 304 f through m, except as otherwise indicated in this Subpart 101-43.4, shall be reported and handled in the same manner as excess property under Subpart 101-43.3.

§ 101-43.402-1 Sources of property available for utilization.

Property available for utilization under § 101-43.402 is property which is in the custody or under the control of any agency of the U.S. Government, as a result of forfeiture or voluntary abandonment.

§ 101-43.402-2 Custody of property.

(a) GSA generally will not take possession of property that is forfeited or voluntarily abandoned. Such property shall remain in the custody of and be the responsibility of the holding agency.

(b) In the case of forfeiture of any firearms subject to the disposal provisions of 26 U.S.C. 5862(b), GSA shall direct the disposition thereof. GSA authorizes the retention of any such firearm by the Secretary of the Treasury or his delegate for official use.

(c) In the case of distilled spirits, wine, and malt beverages forfeited other than by court decree or by order of a court, GSA shall direct the disposition of such distilled spirits, wine, and malt beverages by:

(1) Transfer to Government agencies which have a need for such beverages for medicinal, scientific, or mechanical purposes, or for any other purpose for which appropriated funds may be expended by a Government agency;

(2) Donation to eleemosynary institutions which have a need for such beverages for medicinal purposes; or

(3) Destruction.

§ 101-43.402-3 Cost of care and handling.

Each holding agency shall be responsible for performing care and handling of forfeited or voluntarily abandoned personal property pending disposition.

§ 101-43.402-4 Retention by holding agency.

(a) Any property in the custody of a Federal agency, which has been forfeited otherwise than by court decree, or which is determined by it to be voluntarily abandoned, may be retained by such agency and devoted to official use, subject to the limitations on certain types of passenger vehicles as provided in § 101-43.302(e).

(b) A holding agency, when reporting property pursuant to § 101-43.402-5, which is subject to pending court proceedings for forfeiture, may at the same time file a request for such property for its official use. GSA will then make application to the court requesting delivery of the property to the holding agency.

(c) Limousines, heavy sedans, and medium sedans may be retained by an agency and devoted to official use only if such retention is clearly authorized by the provisions of Bureau of the Budget Circular No. A-22, Revised, dated October 17, 1967, or specific and current authorizations issued by the Bureau of the Budget pursuant thereto.

(d) Any property retained by a Federal agency for official use under this Subpart 101-43.4 shall thereupon otherwise lose its identity as forfeited or voluntarily abandoned property. When such property is no longer required for official use, it shall be reported as excess in accordance with § 101-43.311.

§ 101-43.402-5 Property required to be reported.

(a) Property forfeited other than by court decree or voluntarily abandoned, in the custody of any Federal agency, not desired for retention by that agency for its official use, and property on which proceedings are being or have been commenced for forfeiture by court decree, shall be promptly reported in accordance with §§ 101-43.311 through 101-43.313, except that:

(1) Reports shall be submitted to the Regional Administrator, General Services Administration Region 3, Washington, D.C. 20407, in lieu of being submitted

to the GSA regional office for the region in which the property is located;

(2) The reporting agency's internal documents containing information relevant to the property may be used in lieu of the Standard Form 120; and

(3) Distilled spirits, wine, and malt beverages fit for human consumption in seizures of 5 wine gallons or more will be reported regardless of acquisition cost.

(b) The following information will be furnished:

(1) Whether property was:

(i) Abandoned;

(ii) Forfeited otherwise than by court decree; or

(iii) Subject of a court proceeding, and, if so, the name of the defendant and the place and judicial district of the court from which the decree has been or will be issued;

(2) Existence or probability of a lien or claim of lien, or other accrued or accruing charges, and the amount involved;

(3) If the property is distilled spirits, wine, or malt beverages: Quantities and kinds (rye or bourbon or other whiskey and its brand, if any; sparkling or still wine and its color or brand; cordial, brandy, gin, etc.), proof rating, and condition for shipping.

(c) In addition to the exceptions and special handling described in §§ 101–43.312 and 101–43.313, the following forfeited or voluntarily abandoned property need not be reported:

(1) Forfeited arms or munitions of war which are handled pursuant to 22 U.S.C. 401;

(2) Forfeited firearms which are transferable by the holding agency to the Secretary of Defense;

(3) Abandoned, condemned, or forfeited tobacco, snuff, cigars, or cigarettes which the holding agency estimates will not, if offered for sale by competitive bid, bring a price equal to the internal revenue tax due and payable thereon; and which is subject to destruction or delivery without payment of any tax to any hospital maintained by the United States for the use of present or former members of the military or naval forces of the United States;

(4) Forfeited distilled spirits (including alcohol), wine, and malt beverages not fit for human consumption, or for medicinal, scientific, or mechanical purposes. Domestic forfeited distilled spirits, wine, and malt beverages which were not produced at a registered distillery, winery, or brewery, or which are in containers that have been opened or entered, will be regarded as not fit for human consumption (see § 101–45.402 for disposition);

(5) Distilled spirits, wine, and malt beverages in any one seizure of less than 5 wine gallons (see § 101–44.601–5 and § 101–45.402 for disposition);

(6) Effects of deserters from the Coast Guard or the military services, or of deceased persons of the Coast Guard or the military services, or of deceased inmates of naval or soldier's homes or Government hospitals;

(7) Seeds, plants, or misbranded packages seized by the Department of Agriculture, pursuant to authorities provided by law;

(8) Game and equipment (other than vessels, including cargo) seized by the Department of the Interior pursuant to authorities provided by law;

(9) Files of papers, all dead and undeliverable mail matter, and nonmailable matter in the custody of the Postmaster General;

(10) Infringing articles in the custody of the Patent Office, Department of Commerce;

(11) Unclaimed and abandoned personal property subject to applicable Customs laws and regulations;

(12) Collection seizures to satisfy tax liens and property acquired by the United States in payment of or as security for debts arising under the internal revenue laws;

(13) Property, the vesting and disposition of which is controlled by the provisions of 38 U.S.C. 5201 (et seq.), Disposition of deceased veterans' personal property; and

(14) Motor vehicles which are 4 or more years old.

(d) The general rule for reporting specified in this § 101–43.402–5 is modified with respect to the following:

(1) Narcotics, regardless of quantity, condition, or acquisition cost, shall be reported to the Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20530.

(2) Forfeited firearms not desired for retention by the seizing agency, except those covered by (c) (1) and (2) above, shall be reported provided such firearms are in excellent serviceable condition and known to be used for law enforcement or security purposes, or are sufficiently unique to be of interest to a Federal museum. Forfeited firearms not reportable in accordance with the foregoing criteria will be destroyed and disposed of pursuant to § 101–45.403;

(3) Property forfeited other than by court decree which is suitable for human consumption or which may be used in the preparation of food may be immediately transferred by the agency having custody to the nearest Federal agency known to be a user of such property, without specific authorization from GSA;

(4) Vessels of 1,500 gross tons or more which the Maritime Administration determines to be merchant vessels or capable of conversion to merchant use shall be reported to the Maritime Administrator;

(5) Property, seized by one Federal agency, but adopted by another for prosecution under laws enforced by the adopting Federal agency, shall be reported by the adopting agency to the extent and in the manner required by this Subpart 101–43.4; and

(6) Lost, abandoned, or unclaimed personal property controlled by the provisions of 10 U.S.C. 2575 will be disposed of as provided by 10 U.S.C. 2575 and regulations issued thereunder by appropriate authority.

(e) Property not required to be reported pursuant to this § 101–43.402–5, and not excepted or modified with respect to reporting pursuant to this § 101–43.402–5, shall be handled as set forth in § 101–43.306.

§ 101–43.402–6 Transfer to other Federal agencies.

(a) The transfer of forfeited or voluntarily abandoned personal property normally shall be accomplished by the submission for approval of a Standard Form 122, Transfer Order Excess Personal Property (see § 101–43.4906), to the Regional Administrator, General Services Administration Region 3, Washington, D.C. 20407.

(b) Except for property which is subject to court action, the Standard Form 122 shall indicate the agency having custody of the property, the location of the property, the report or case number on which the property is listed, the property required, and the fair value, if applicable.

(c) Property subject to court action may be requested by submitting a Standard Form 122 or a memorandum setting forth the need for the property by the agency. If proceedings are being, or have been, commenced for the forfeiture of the property by court decree, application will be made by GSA to the court, prior to entry of a decree, for an order requiring delivery of the property to an appropriate recipient for its official use.

(d) Transfers of forfeited or voluntarily abandoned distilled spirits, wine, and malt beverages shall be limited to those for medicinal, scientific, or mechanical purposes, or for any other official purposes for which appropriated funds may be expended by a Government agency. Transfer orders shall be signed by the head of a requesting agency, or by an official designated by him to sign. Where officials are designated to sign, the Regional Administrator, General Services Administration Region 3, Washington, D.C. 20407, shall be advised of designees by letter over the signature of the head of the agency concerned. No transfer order will be acted upon unless signed as provided herein.

(e) Requests for the transfer of forfeited or voluntarily abandoned firearms should set forth the need for the property by the requesting agency.

(f) Any property transferred for official use under this Subpart 101–43.4 shall thereupon otherwise lose its identity as forfeited or voluntarily abandoned property. When no longer required for official use, it shall be reported as excess in accordance with § 101–43.311.

§ 101–43.402–7 Reimbursement and costs incident to transfer.

(a) Reimbursement upon transfer of personal property forfeited or voluntarily abandoned other than by court decree shall be in accordance with § 101–43.315–3.

(b) Reimbursement for judicially forfeited property shall be in accordance with provisions of the court decree.

(c) Commercial charges incurred at the time of and subsequent to forfeiture or voluntary abandonment but prior to transfer shall be borne by the transferee

agency when billed by the commercial organization.

(d) The direct costs incurred by the holding agency prior to the transfer of forfeited or voluntarily abandoned property shall be borne by the transferee agency when billed by the holding agency. Overhead or administrative costs or charges shall not be included. Only costs set forth in 40 U.S.C. 304j, such as storage, packing, preparation for shipment, loading, and transportation shall be recovered by the holding agency.

§ 101–43.402–8 Billing.

(a) Each holding agency shall be responsible for billing and collecting the costs of care and handling, as well as the fair value of property transferred to other agencies when such reimbursement is required in accordance with § 101–43.315–3.

(b) Commercial organizations accruing charges prior to transfer shall be responsible for billing and collecting such charges from the transferee agency.

§ 101–43.402–9 Disposition of proceeds.

Where reimbursement for fair value is to be made in accordance with § 101–43.315–3, the fair value proceeds shall be deposited in the Treasury to miscellaneous receipts or the appropriate agency account by the transferor agency.

§ 101–43.403 Abandoned or other unclaimed property.

§ 101–43.403–1 Vesting of title in the United States.

Abandoned or other unclaimed property, subject to the provisions of section 203(m) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(m)), shall remain in the custody of and be the responsibility of the agency finding such property. The property shall be held for a period of 30 days from the date of finding such property. Upon expiration of this 30-day period, title to such property vests in the United States, except that title reverts to the owner where a proper claim is filed by the owner prior to official use, transfer for official use, and if no official use or transfer for official use, prior to sale of the property.

§ 101–43.403–2 Reporting.

(a) Abandoned or other unclaimed property not utilized by the holding agency shall be reported and handled in the same manner as excess property under Subpart 101–43.3, except as provided in § 101–43.403–2(b).

(b) Abandoned or other unclaimed property which, by the provisions of § 101–43.311, is not required to be reported, and which is not otherwise transferred pursuant to Subpart 101–43.3, shall be subject to the provisions of Subpart 101–45.4.

§ 101–43.403–3 Reimbursement.

Reimbursement of fair market value, as determined by the head of the finding or transferor agency, shall be required in connection with official use by the finding agency or transfer for official use of abandoned or other unclaimed property. Fair market value as used herein does not mean fair value as determined under § 101–43.315–3.

§ 101–43.403–4 Proceeds.

Reimbursement for official use by the finding agency or transfer for official use of abandoned or other unclaimed property shall be deposited in a special fund by the finding or transferor agency for a period of at least 3 years. A former owner may be reimbursed from the special fund, based upon a proper claim made to the finding or transferor agency and filed within 3 years from the date of vesting of title in the United States. Such reimbursement shall not exceed fair market value at the time title was vested in the United States, less the costs incident to the care and handling of such property as determined by the head of the agency concerned.

PART 101–44—DONATION OF PERSONAL PROPERTY

Subpart 101–44.6—Donation of Abandoned and Forfeited Personal Property

Sections 101–44.601–2, 101–44.601–3, and 101–44.601–5 are revised as follows:

§ 101–44.601–2 Establishment of eligibility.

Eleemosynary institutions desiring to obtain available distilled spirits, wine, and malt beverages shall submit GSA Form 18, Application of Eleemosynary Institution (see § 101–44.4904), to the General Services Administration Region 3, Property Management and Disposal Service, Washington, D.C. 20407.

§ 101–44.601–3 Requests by institutions.

Eligible institutions desiring to obtain available distilled spirits, wine, and malt beverages shall show on the GSA Form 18, Application of Eleemosynary Institution, the kind and quantity desired. The Property Management and Disposal Service, GSA Region 3, will advise the eligible institution when such alcoholic beverages become available, request confirmation that the institution's requirement is current, and advise the institution that shipment will be initiated upon such confirmation.

§ 101–44.601–5 Donation of lots not required to be reported.

Forfeited distilled spirits, wine, and malt beverages not required to be reported under § 101–43.402–5 may be donated to eleemosynary institutions known to be eligible therefor if determined by the seizing agency to be suitable for human consumption. The holding agency shall promptly report such donations by letter to the General Services Administration Region 3, Property Management and Disposal Service, Washington, D.C. 20407, and such report shall state the quantity and type so donated, the name and address of the donee institution, and the date of the donation.

Subpart 101–44.49—Illustrations

Section 101–44.4900 is added and § 101–44.4904 is revised as follows:

§ 101–44.4900 Scope of subpart.

This subpart contains instructions, lists, and illustrations of the forms and formats prescribed in this Part 101–44. GSA forms in this Subpart 101–44.49 may be obtained by addressing requests to: General Services Administration Region 3, Office of Administration, Printing and Publications Division—3BRD, Washington, D.C. 20407. Standard Forms 123, Application for Donation of Surplus Personal Property; and 123–A, Application for Donation of Surplus Personal Property-Continuation Sheet, may be obtained only from General Services Administration Region 3, Federal Supply Service, Special Programs Division—3FRD, Washington, D.C. 20407.

§ 101–44.4904 GSA Form 18, Application of Eleemosynary Institution.

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Subpart 101–45.4 is revised as follows:

Subpart 101–45.4—Disposal of Abandoned and Forfeited Personal Property

§ 101–45.400 Scope of subpart.

This Subpart 101–45.4 prescribes the policies and methods governing the disposal of abandoned or other unclaimed, voluntarily abandoned, or forfeited personal property which may come into the custody or control of any Federal agency in the United States, Puerto Rico, or the Virgin Islands. Such property located elsewhere shall be disposed of in accordance with the regulations of the agency having custody thereof.

§ 101–45.401 General.

Any such property in the custody of a Federal agency which is not desired for retention by that agency, nor utilized within any Federal agency in accordance with Subpart 101–43.4, nor donated in accordance with Subpart 101–44.6, shall be disposed of in accordance with the provisions of this Subpart 101–45.4.

§ 101–45.402 Distilled spirits, wine, and malt beverages.

(a) Distilled spirits, wine, and malt beverages (as defined in § 101–43.401) which are not required to be reported under § 101–43.402–5(c)(4) shall be destroyed as prescribed in § 101–45.402(b); distilled spirits, wine, and malt beverages which are not required to be reported under § 101–43.402–5(c)(5) and have not been donated as prescribed in Subpart 101–44.6 shall be destroyed in like manner.

(b) When reportable abandoned or forfeited distilled spirits, wine, and malt beverages are not retained by the holding agency, transferred to another agency, or donated to an eleemosynary

institution by GSA, the Regional Administrator, General Services Administration Region 3, shall issue clearance to the agency which submitted the report as prescribed by § 101–43.402–5, for destruction of the distilled spirits, wine, and malt beverages. A record of the destruction showing time, place, and nomenclature and quantities destroyed shall be filed with papers and documents relating to the abandonment or forfeiture.

§ 101–45.403 Firearms.

Abandoned or forfeited firearms, or voluntarily abandoned firearms, shall not be sold as firearms. They may be disposed of by sale as scrap in the manner prescribed in § 101–45.309–4.

§ 101–45.404 Property other than distilled spirits, wine, and malt beverages and firearms.

(a) Property forfeited other than by court decree or voluntarily abandoned, except distilled spirits, wine, and malt beverages and firearms, which is not returned to a claimant, retained by the agency of custody, or transferred in accordance with Subpart 101–43.4, may be released to the holding agency by the Regional Administrator, General Services Administration Region 3, for public sale except as otherwise provided by law.

(b) Abandoned or other unclaimed property which is not retained by the holding agency, transferred to another agency, or not required to be reported by the provisions of § 101–43.403 may be reported for sale to the appropriate selling activity at any time after title vests in the United States as provided in § 101–43.403–1.

(c) Voluntarily abandoned, abandoned or other unclaimed property, and, in the absence of specific direction by a court, forfeited property normally shall be sold by competitive bid as prescribed in § 101–45.304–1, subject to the same terms and conditions as would be applicable to the sale of surplus personal property. Voluntarily abandoned, abandoned or other unclaimed, and forfeited property may be sold also by negotiation at the discretion of the selling agency but only under circumstances set forth in § 101–45.304–2. Such property will be identified by the holding agency as abandoned or other unclaimed, voluntarily abandoned, or forfeited and reported for sale to the appropriate GSA regional office or such other agency as otherwise is responsible for selling its surplus personal property unless specifically required by law to be sold by the holding agency.

§ 101–45.405 Disposition of proceeds from sale.

§ 101–45.405–1 Abandoned or other unclaimed property.

(a) Proceeds from sale of abandoned or other unclaimed property shall be deposited in a special fund by the finding agency for a period of 3 years. A former owner may be reimbursed for abandoned or other unclaimed property which had been disposed of in accordance with the provisions of this Subpart 101–45.4, upon filing a proper claim with the finding agency within 3 years from the date of vesting of title in the United States. Such reimbursement shall not exceed the proceeds realized from the disposal of such property less disposal costs and costs of the care and handling of such property, as determined by the head of the agency concerned.

(b) Records of abandoned or other unclaimed property will be maintained in such a manner as to permit identification of the property with the original owner, if known, when such property is offered for sale. Records of proceeds received from the sale of abandoned or other unclaimed property will be maintained as part of the permanent file and record of sale until the 3-year period for filing claims has elapsed.

§ 101–45.405–2 Forfeited or voluntarily abandoned property.

Proceeds from sale of property which has been forfeited other than by court decree or by court decree or which has been voluntarily abandoned shall be deposited in the Treasury of the United States as miscellaneous receipts, or in such other agency accounts as provided by law or regulations.

NOTE: The form in § 101–44.4004 is filed as part of the original document. Federal agencies may obtain copies from the General Services Administration Region 3, Office of Administration, Printing and Publications Division—3BRD, Washington, D.C. 20407.

(Sec. 307, 49 Stat. 880, as amended, 63 Stat. 380; 40 U.S.C. 304*l*; sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective March 1, 1969.

Dated: February 4, 1969.

LAWSON B. KNOTT, Jr.,
Administrator of General Services.

[F.R. Doc. 69–1663; Filed, Feb. 7, 1969; 8:50 a.m.]

Title 49—TRANSPORTATION

Chapter III—Federal Highway Administration, Department of Transportation

SUBCHAPTER A—MOTOR VEHICLE SAFETY STANDARDS

[Docket No. 69–4; Notice No. 1]

PART 371—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Motor Vehicle Safety Standard No. 109, New Pneumatic Tires—Passenger Cars, and No. 110, Tire Selection and Rims—Passenger Cars

On October 5, 1968, the Federal Highway Administration published guidelines in the FEDERAL REGISTER (33 F.R. 14964) by which routine additions could be added to Appendix A of Standard No. 109 and the Appendix A of Standard No. 110. These guidelines provided an abbreviated rule making procedure for adding tire sizes to Standard No. 109 and alternative rim sizes to Standard No. 110, whereby the addition becomes effective 30 days from date of publication in the FEDERAL REGISTER if no objections to the proposed additions are received. If comments objecting to the admendment warrant, rule making pursuant to the rule making procedures for motor vehicle safety standards (49 CFR Part 353)[1] will be followed.

The Rubber Manufacturers Association has petitioned for the addition of the C70–15 tire size designation to Table I–B and the F60–15 tire size designation as a new category of tire to be listed within the tables. The Firestone Tire & Rubber Co. has petitioned for the addition of the E50C–16, F50C–16, and H50C–17 tire size designations as a new category of tires.

On the basis of the data submitted by the Rubber Manufacturers Association and the Firestone Tire & Rubber Co. indicating compliance with the requirements of Federal Motor Vehicle Safety Standards No. 109 and No. 110 and other information submitted in accordance with the procedural guidelines set forth, Appendix A of Motor Vehicle Safety Standard No. 109 is being amended and Table I of Appendix A of Standard No. 110 is being amended.

In consideration of the foregoing, § 371.21 of Part 371[2] Federal Motor Vehicle Safety Standards, Appendix A of Standard No. 109 (33 F.R. 14964) and Appendix A of Standard No. 110 (33 F.R. 14969) are amended as set forth below effective 30 days from date of publication in the FEDERAL REGISTER.

These amendments are issued under the delegation of authority published October 5, 1968 (33 F.R. 14964) and sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1392, 1407) and the delegation from the Secretary of Transportation, Part I of the regulations of the Office of the Secretary (49 CFR 1.4(c)).

Issued on February 3, 1969.

H. M. JACKLIN, Jr.,
Acting Director, Motor Vehicle Safety Performance Service, National Highway Safety Bureau.

MOTOR VEHICLE SAFETY STANDARD No. 109

1. Table I–B of Appendix A is amended by inserting between the tire size designation L70–14 and D70–15 the following new tire size C70–15 data.

2. The following new Tables I–K and I–L are added to Appendix A listing new categories of tire size designations.

[1] Formally contained in 23 CFR Part 216.
[2] Formally contained in 23 CFR Part 255.

APPENDIX A—FEDERAL MOTOR VEHICLE SAFETY STANDARD NO. 109

TABLE I-B

TIRE LOAD RATINGS, TEST RIMS, MINIMUM SIZE FACTORS AND SECTION WIDTHS FOR "70 SERIES" BIAS PLY TIRES

Tire size [1] designation	Maximum tire loads (pounds) at various cold inflation pressures (p.s.i.)											Test rim width (inches)	Minimum size factor (inches)	Section width [2] (inches)
	20	22	24	26	28	30	32	34	36	38	40			
C70-15	950	1,000	1,050	1,100	1,140	1,190	1,230	1,270	1,320	1,360	1,390	5½	32.75	7.50

[1] The letter "H", "S" or "V" may be included in any specified tire size designation adjacent to or in place of the "dash".

[2] Actual section width and overall width shall not exceed the specified section width by more than 7 percent.

TABLE I-K

TIRE LOAD RATINGS, TEST RIMS, MINIMUM SIZE FACTORS AND SECTION WIDTHS FOR "60 SERIES" BIAS PLY TIRES

Tire size [1] designation	Maximum tire loads (pounds) at various cold inflation pressures (p.s.i.)											Test rim width (inches)	Minimum size factor (inches)	Section width [2] (inches)
	20	22	24	26	28	30	32	34	36	38	40			
F60-15	1,160	1,220	1,280	1,340	1,400	1,450	1,500	1,550	1,610	1,650	1,700	7	34.94	9.40

[1] The letter "H", "S" or "V" may be included in any specified size designation adjacent to or in place of the "dash".

[2] Actual section width and overall width shall not exceed the specified section width by more than 7 percent.

TABLE I-L

TIRE LOAD RATINGS, TEST RIMS, MINIMUM SIZE FACTORS AND SECTION WIDTHS FOR SERIES 50 CANTILEVERED SIDEWALL TIRES

Tire size [1] designation	Maximum tire loads (pounds) at various cold inflation pressures (p.s.i.)											Test rim width (inches)	Minimum size factor (inches)	Section width [2] (inches)
	20	22	24	26	28	30	32	34	36	38	40			
E50C-16	1,070	1,130	1,190	1,240	1,300	1,350	1,400	1,440	1,490	1,540	1,580	3½	33.31	7.95
F50C-16	1,160	1,220	1,280	1,340	1,400	1,450	1,500	1,550	1,610	1,650	1,700	3½	34.04	8.20
H50C-17	1,360	1,440	1,510	1,580	1,650	1,710	1,770	1,830	1,890	1,950	2,010	3½	36.30	8.80

[1] The letter "H", "S" or "V" may be included in any specified tire size designation adjacent to or in place of the "dash".

[2] Actual section width and overall width shall not exceed the specified section width by more than 7 percent.

MOTOR VEHICLE SAFETY STANDARD NO. 110

The following alternative rims for the indicated tire size designations to Table I of Appendix A are added:

Tire size	Rim [1]
C70-15	5½ JJ.
F60-15	6½ JJ, *7JJ.*
E50C-16	3½.
F50C-16	3½.
H50C-17	3½.

[1] Italic denotes Test Rims.

[F.R. Doc. 69-1613; Filed, Feb. 7, 1969; 8:46 a.m.]

PART 371—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Appendix A—Interpretations

MINI-BIKES

American Honda Motor Co., Inc., has asked for a determination whether its "Honda Mini-Trail" and other similar motor-driven cycles ("mini-bikes") are "motor vehicles" within the meaning of section 102(3) of the National Traffic and Motor Vehicle Safety Act of 1966.

Section 102(3) defines a motor vehicle as a vehicle "manufactured primarily for use on the public streets, roads, and highways." Honda states, both in its petition and its sales literature, that the mini-bike is a recreational vehicle designed for private property or backyard usage, and is not a vehicle manufactured for use on the public roads. Honda further states that mini-bikes would be legally barred from the public roads of most States since they are not equipped with lights, batteries, or generating systems.

In the absence of clear evidence that as a practical matter a vehicle is not being, or will not be, used on the public streets, roads, or highways the operating capability of a vehicle is the most relevant fact in determining whether or not that vehicle is a motor vehicle under the Act, and what category of vehicle it is under the standards. Thus, if it is initially determined that a vehicle is designed so that it is physically capable (either as offered for sale or without major additions or modifications) of being operated on the public streets, roads, or highways, the vehicle will be considered as having been "manufactured primarily for use on the public streets, roads, and highways". To overcome the conclusion reached by an examination of the operating capability a manufacturer would need to show substantially more than that it has advertised the vehicle as a recreational or private property vehicle or that its use on a public roadway, as manufactured and sold, would be illegal. Thus for example, if a vehicle was manufactured that was substantially identical to the typical present day, six-passenger sedan but was advertised for farm and other private property usage, and was manufactured without any lighting equipment, the vehicle would be presumed to be a motor vehicle, since it clearly would be fully capable of being operated on the public streets, roads, and highways. To overcome this presumption, the manufacturer would have to show that there were reasons why as a practical matter the vehicle would not in fact be operated on the public streets, roads, and highways. The logic of this approach is clear since once a vehicle is introduced on the public streets, roads, and highways it is, if not properly equipped, a safety hazard. Therefore, a manufacturer who produces a vehicle that is designed to be capable of that use cannot be permitted to avoid compliance with the safety standards through advertising that states a contrary intention or by making the vehicle physically capable of, although technically ineligible for, that use.

The Administrator concludes therefore that mini-bikes are "motor vehicles" within the meaning of section 102(3) of the Act, and specifically "motorcycles" or "motor-driven cycles" within the meaning of 49 CFR 371.3(b) (formerly 23 CFR 255.3(b)).

Issued on February 4, 1969.

JOHN R. JAMIESON,
Deputy Federal Highway Administrator.

[F.R. Doc. 69-1676; Filed, Feb. 7, 1969; 8:51 a.m.]

Proposed Rule Making

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 68-EA-145]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Batavia, N.Y., Transition Area.

A new public use VOR instrument approach procedure has been authorized for Genesee County Airport, Batavia, N.Y., and will require alteration of the Batavia, N.Y., 700-foot floor transition area to provide the additional airspace necessary to protect aircraft executing this instrument approach procedure and to reflect the correct name of the airport.

Interested persons may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received within 30 days after publication in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Standards Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Batavia, N.Y., proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete in the description of the Batavia, N.Y., transition area "4-mile radius" wherever it appears and insert in lieu thereof "5-mile radius"; delete the name "Batavia Airport" and insert in lieu thereof "Genesee County Airport". Following the words "miles S of the airport" add "and within 2 miles each side of the Geneseo, N.Y., VORTAC 302° radial, extending from the 5-mile radius area to 20 miles NW of the Geneseo, N.Y., VORTAC".

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the DOT Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on January 28, 1969.

R. M. BROWN,
Acting Director, Eastern Region.

[F.R. Doc. 69-1602; Filed, Feb. 7, 1969; 8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 270]

[Release No. IC-5586]

VARIABLE ANNUITY SEPARATE ACCOUNTS

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission has under consideration the promulgation of proposed rules which would provide certain conditional exemptions from various provisions of the Investment Company Act of 1940 (the "Act") for registered separate accounts established by insurance companies proposing to engage in the sale of variable annuity contracts and would define the term "separate account." The securities issued by these separate accounts and the circumstances surrounding and the conditions attached to their issuance create unique problems. The Commission has developed some experience in processing a number of individual exemptive applications filed by separate accounts registered under the Investment Company Act. With the experience so gained, the Commission is of the view that it may now be appropriate to provide, by means of the above proposed rules, the limited exemptions which have been granted by order in the past. These rules will eliminate the need for preparing, filing, and processing applications which are of a routine nature and will provide a further specification of the manner in which relevant regulatory provisions will be applied in connection with the organization and operation of separate accounts. Such rules, if adopted, would be promulgated pursuant to authority conferred by sections 6(c) and 38(a) of the Act.

I. *Rule 14a-2 (17 CFR 270.14a-2).* Section 14(a) of the Act prohibits a registered investment company or its principal underwriter from publicly offering its securities for sale unless it has a net worth of $100,000 or has made provision in connection with registration of its securities under the Securities Act of 1933 insuring that before making a public offering it will have firm agreements with no more than 25 responsible persons to purchase its securities in an amount which, when added to the then net worth of the company, if any, will equal $100,000.

Many registered separate accounts are utilized only in connection with the sale of variable annuity contracts which meet the requirements of sections 401, 403(b), or 404(a)(2) of the Internal Revenue Code, as amended ("Code"). These sections provide the criteria for pension and profit sharing plans which receive special tax treatment under the Code.

Such variable annuity contracts contemplate relatively small periodic payments made by or on behalf of a large number of individual employees. The tax treatment afforded assets arising from these payments varies from payments made under other variable annuity contracts. A privately contributed $100,000 in such account therefore requires separate accounting, and problems could occur concerning investment objectives.

Proposed Rule 14a-2 (§ 270.14a-2) would exempt from the provisions of section 14(a) (of the Act) a registered separate account having assets from variable annuity contracts sold under plans or agreements meeting the requirements of sections 401, 403(b), or 404(a)(2) of the Code. It is further provided by the rule that a sponsoring insurance company would be precluded from placing non-tax-benefited money in such account at any time in the future. The rule would be available to such account only if, at the commencement of the offering, the establishing insurance company possesses a combined capital and surplus if a stock company, or unassigned surplus, if a mutual company, of $1 million.

The text of the proposed § 270.14a-2 is as follows:

§ 270.14a-2 Exemption from section 14(a) (of the Act) for certain registered separate accounts and their principal underwriters.

(a) A registered separate account, and any principal underwriter for such account, shall be exempt from section 14(a) of the Act with respect to a public offering of tax-benefited variable annuity contracts participating in such account: (1) If at the commencement of such offering such insurance company shall have (i) a combined capital and surplus, if a stock company, or (ii) an unassigned surplus, if a mutual company, of not less than $1 million as set forth in the balance sheet of such insurance company contained in the registration statement or any amendment thereto relating to such

variable annuity contracts filed pursuant to the Securities Act of 1933, as amended, and (2) if at no time thereafter such insurance company shall place payments from contracts which are not tax-benefited in such separate account. For the purpose of this section (Rule 14a–2), the term "tax-benefited variable annuity contracts" means variable annuity contracts which are purchased in connection with a plan which meets the requirements for qualification under section 401 of the Internal Revenue Code, as amended ("Code") or the requirements for deduction of the employer's contributions under section 404(a)(2) of the Code, or are contracts which meet the requirements of section 403(b) of the Code.

II. *Rules 14a–3, 16a–1, and 32a–2 (17 CFR 270.15a–3, 270.16a–1, 270.32a–2).* Sections 15(a), 16(a), and 32(a) of the Act require (1) shareholder approval of the initial investment advisory agreement, (2) the election of directors by shareholders, and (3) shareholder ratification of the selection of an independent public accountant. If a registered separate account receives an exemption under section 14(a) of the Act, there are normally no security holders eligible to vote on these matters. If such account receives an exemption from section 14(a) of the Act, proposed Rules 15a–3, 16a–1, and 32a–2 (§§ 270.15a–3, 270.16a–1, and 270.32a–2 of this chapter) would permit the investment adviser, directors and independent public accountants to act as such until the first meeting of variable annuity contract owners. This meeting may not be later than 1 year after the effective date of the registration statement under the Securities Act of 1933.

The text of proposed §§ 270.15a–3, 270.16a–1, and 270.32a–2 (Rules 15a–3, 16a–1, and 32a–2) follows:

§ 270.15a–3 Exemption for initial period of investment adviser of certain registered separate accounts from requirement of security holder approval of investment advisory contract.

(a) An investment adviser of a registered separate account shall be exempt from the requirement under section 15(a) of the Act that the initial written contract pursuant to which the investment adviser serves or acts shall have been approved by the vote of a majority of the outstanding voting securities of such registered separate account, subject to the following conditions:

(1) Such registered separate account qualifies for exemption from section 14(a) of the Act pursuant to § 270.14a–2 (Rule 14a–2), or is exempt therefrom by order of the Commission upon application; and

(2) Such written contract shall be submitted to a vote of variable annuity contract owners at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, relating to variable annuity contracts participating in such account, provided that such meeting shall take place within 1 year after such effective date.

§ 270.16a–1 Exemption for initial period of directors of certain registered separate accounts from requirement of election by security holders.

(a) Persons serving as the directors of a registered separate account shall, prior to the first meeting of such account's variable annuity contract owners, be exempt from the requirement of section 16(a) of the Act that such persons be elected by the holders of outstanding voting securities of such account at an annual or special meeting called for that purpose, subject to the following conditions:

(1) Such registered separate account qualifies for exemption from section 14(a) of the Act pursuant to § 270.14a–2 (Rule 14a–2), or is exempt therefrom by order of the Commission upon application; and

(2) Such persons have been appointed directors of such account by the establishing insurance company; and

(3) An election of directors for such account shall be held at the first meeting of variable annuity contract owners after the effective date of the registration statement under the Securities Act of 1933, as amended, relating to contracts participating in such account, provided that such meeting shall take place within 1 year after such effective date.

§ 270.32a–2 Exemption for initial period from vote of security holders on independent public accountant for certain registered separate accounts.

(a) A registered separate account shall be exempt from the requirement under paragraph (2) of section 32(a) of the Act that selection of an independent public accountant shall have been submitted for ratification or rejection at the next succeeding annual meeting of security owners, subject to the following conditions:

(1) Such registered separate account qualifies for exemption from section 14(a) of the Act pursuant to § 270.14a–2 (Rule 14a–2), or is exempt therefrom by order of the Commission upon application; and

(2) The selection of such accountant shall be submitted for ratification or rejection to variable annuity contract owners at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, relating to contracts participating in such account, provided that such meeting shall take place within 1 year after such effective date.

III. *Rules 22e–1 and 27c–1 (17 CFR 270.22e–1, 270.27c–1).* Section 27(c)(1) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless it is a "redeemable security." Section 22(e) of the Act provides that no registered investment company shall (a) suspend the right of redemption, or (b) postpone the date of payment on any redeemable security for more than 7 days after its tender for redemption, except in certain prescribed circumstances. Since variable annuity contracts are considered to be periodic payment plan certificates, these redemption provisions have been deemed applicable. Accordingly, it has been necessary for each registered separate account issuing or proposing to issue variable annuity contracts to obtain an exemption from the requirement of redemption during the annuity, or pay-out, period of such contracts, since the mortality tables employed to determine payments of variable amounts for life annuitants assume that all annuitants will continue in the group and receive the payments specified in the contract. To permit redemptions during the annuity period would undermine the actuarial basis of the contracts.

Rule 22e–1 (§ 270.22e–1 of this chapter) would provide an exemption from section 22(e) (of the Act) during the period in which the variable annuity contract holder receives payments from the separate account. Rule 27c–1 (§ 270.27c–1 of this chapter) would provide an exemption, again during the pay-out period, from the section 27(c)(1) (of the Act) requirement that a periodic payment plan certificate be a redeemable security. These exemptions would be limited to variable annuity contracts under which payments are made based upon life expectancies.

The text of proposed §§ 270.22e–1 and 270.27c–1 (Rules 22e–1 and 27c–1) follows:

§ 270.22e–1 Exemption from section 22(e) [of the Act] during annuity payment period of variable annuity contracts participating in registered separate accounts.

(a) A registered separate account shall, during the annuity payment period of variable annuity contracts participating in such account, be exempt from the provisions of section 22(e) of the Act prohibiting the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption of any redeemable security, with respect to such contracts under which payments are made based upon life contingencies.

§ 270.27c–1 Exemption from section 27(c)(1) [of the Act] during annuity payment period of contracts participating in certain registered separate accounts.

(a) A registered separate account and any depositor of or underwriter for such account, shall, during the annuity payment period of variable annuity contracts participating in such account, be exempt from the requirement of paragraph (1) of section 27(c) of the Act that a periodic payment plan certificate be a redeemable security as to such contracts under which payments are made based upon life contingencies.

IV. *Rules 27a–1, 27a–2, and 27a–3 (§§ 270.27a–1, 270.27a–2, 270.27a–3).* Section 27(a) of the Act provides that it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate except

in compliance with the conditions set forth therein.

Section 27(a)(1) (of the Act) prohibits the sales load on such a certificate from exceeding 9 per centum of the total payments to be made thereon. Proposed Rule 27a–1 (§ 270.27a–1 of this chapter) would permit a variable annuity contract to provide for a sales load which will not exceed 9 per centum of the total payments to be made thereon as of a date not later than the end of the 12th year of such payments. If a contract should be issued for a shorter period, the 9 per centum limitation must be met for such shorter period. Since section 27(a)(1) (of the Act) does not expressly provide what the permissible period shall be for bringing the sales load within the 9 per centum limitation, the effect of the rule would be to establish such a permissible period for a variable annuity contract.

Section 27(a)(3) (of the Act) prohibits the amount of sales load deducted from any one of the first 12 monthly payments on a periodic payment plan certificate from exceeding proportionately the amount deducted from any other such payment. It prohibits, as well, the amount of sales load deducted from any subsequent payment from exceeding proportionately the amount so deducted from any other subsequent payment. The effect of Rule 27a–2 (§ 270.27a–2 of this chapter) would be to permit more than one reduction in the sales load on a variable annuity contract and to permit the first reduction to take place later than the end of the first contract year. The rule would require that sales load deductions within the first year and within any later year be uniform and it would prohibit an increase in the level of deductions.

Section 27(a)(4) (of the Act) prohibits the first payment on a periodic payment plan certificate from being less than $20, or any subsequent payment from being less than $10. The effect of Rule 27a–3 (§ 270.27a–3 of this chapter) would be to exempt from such prohibitions payments under variable annuity contracts (a) issued in connection with plans meeting the requirements for qualification under section 401 or the requirements for deduction of the employer's contributions under section 404(a)(2) of the Internal Revenue Code or (b) which meet the requirements of section 403(b) of such Code. Section 270.27a–3 would also exempt from section 27(a)(4) variable annuity contracts which permit no sales load deduction from any payment in excess of 9 per centum of such payment.

The text of proposed §§ 270.27a–1, 270.27a–2, and 270.27a–3 (Rules 27a–1, 27a–2, and 27a–3) follows:

§ 270.27a–1 Conditions for compliance with section 27(a)(1) (of the Act) by registered separate accounts.

(a) A registered separate account and any depositor of or underwriter for such account, shall, with respect to any variable annuity contract participating in such account, be deemed to satisfy the requirements of paragraph (1) of section 27(a) of the Act if such contract provides for a sales load which will not exceed 9 per centum of the total payments to be made thereon as of a date not later than the end of the 12th year of such payments: *Provided*, That if a contract be issued for any stipulated shorter payment period the sales load under such contract shall not exceed 9 per centum of the total payments thereunder for such period.

§ 270.27a–2 Exemption from paragraph (3) of section 27(a) (of the Act) for registered separate accounts.

(a) A registered separate account and any depositor of or underwriter for such account, shall be exempt from paragraph (3) of section 27(a) of the Act provided that with respect to any variable annuity contract participating in such account:

(1) The proportionate amount of sales load deducted from any payment in the first 12-month period shall be the same throughout such period; and

(2) The proportionate amount of sales load deducted from any payment in any 12-month period subsequent to the first 12-month period shall be the same throughout such period and shall not exceed the proportionate amount deducted in any prior period.

§ 270.27a–3 Exemption from paragraph (4) of section 27(a) (of the Act) for registered separate accounts.

(a) A registered separate account and any depositor of or underwriter for such account, shall be exempt from paragraph (4) of section 27(a) of the Act as to payments under any variable annuity contract participating in such account which (1) is purchased in connection with a plan which meets the requirements for qualification under section 401 of the Internal Revenue Code, as amended ("Code") or the requirements for deduction of the employer's contributions under section 404(a)(2) of the Code, or (2) meets the requirements of section 403(b) of the Code, but such exemption shall apply only to contributions or payments within the exclusion allowance for any employee under section 403(b) except as clause (3) hereof applies, or (3) permits no sales load deduction from any payment in excess of 9 per centum of such payments.

V. *Rule 0–1(e) (17 CFR 270.0–1(e))*. This proposed rule (§ 270.0–1(e) of this chapter) generally defines the term "separate account" as employed in rules under the Investment Company Act of 1940. It provides that, unless otherwise specified or the context otherwise requires, the term "separate account" means a legally segregated asset account of an insurance company, the specified assets of which, as well as the income, gains or losses attributable to such assets, are inviolable; that is, free from being subject to, or chargeable with, liabilities, or claims against the insurance company, or any entity or organization other than the separate account, arising out of any other business which the insurance company or such other entity or organization may conduct.

The State legislation concerning the inviolability of separate account assets varies in form and substance from State to State. A separate account can be established in some States without immunity for its assets from charges and liabilities arising out of the other business which the sponsoring insurance company conducts directly or indirectly. In such States, in order for the separate account to qualify under the proposed rules, arrangements would have to be made by the insurance company to render certain assets of the separate account inviolate.

The text of proposed paragraph (e) of § 270.0–1 (Rule 0–1(e)) is as follows:

§ 270.0–1 Definition of terms used in this part.

* * * * *

(e) As used in the rules and regulations prescribed by the Commission pursuant to the Investment Company Act of 1940, unless otherwise specified or the context otherwise requires, the term 'separate account' shall mean a legally segregated asset account established and maintained by an insurance company pursuant to the law of any state or territory of the United States or the District of Columbia, under which income, gains, and losses, whether or not realized, from assets allocated to such account are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company, the assets of which account have a value at least equal to the reserves and other contract liabilities with respect to such account; and that portion of such assets, which has a value equal to the reserves and other contract liabilities of such account, is not chargeable with liabilities arising out of any other business which the insurance company may conduct.

Section 6(c) of the Act provides that the Commission by rule, regulation or order may conditionally or unconditionally exempt any person, security, or transaction, or any class of persons, securities, or transactions, from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 38(a) of the Act authorizes the Commission to issue rules necessary or appropriate to the exercise of the powers conferred upon the Commission in the Act.

All interested persons are invited to submit their views and comments on the proposed rules, in writing, to the Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, on or before February 24, 1969. Except where it is requested that such communications not be disclosed, they will be considered available for public inspection.

(Secs. 6, 38(a), 54 Stat. 800, 841, 15 U.S.C. 80a–6, 80a–37)

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

JANUARY 24, 1969.

[F.R. Doc. 69–1637; Filed, Feb. 7, 1969; 8:47 a.m.]

Notices

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

AGRICULTURAL RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69–00067–33–46040. Applicant: U.S. Department of Agriculture, Animal Husbandry Research Division, Agricultural Research Center, Beltsville, Md. 20705. Article: Electron microscope, Model EM 200. Manufacturer: N. V. Philips, The Netherlands. Intended use of article: The article will be used to accomplish the following research objectives:

1. Studies to determine the frequency of occurrence of microchromosomes in avian testes, feathers, and spleens.

2. Investigation of parthenogenetic and nonparthenogenetic lines of turkeys and chickens to determine the basic cause of this phenomenon.

3. Studies concerning the basic cellular and subcellular mechanisms of ovarian follicle rupture.

4. Studies concerning the morphology of spermatozoa.

5. Investigations of the effects of endocrine state, state of pregnancy, and ovarian hormones on the cellular and subcellular components of endocrine glands and uterine tissues of farm and laboratory animals.

6. Studies to elucidate the cellular and subcellular regulatory mechanisms of the uterine inflammatory response following induced infection.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured at the time the applicant placed the order for the article. Reasons: The application is a resubmission of Docket No. 68–00444–33–46040, dated March 14, 1968. At that time, the only available domestic electron microscope was the Model EMU–4 which was manufactured by the Radio Corporation of America (RCA). The foreign article provides accelerating voltages of 40, 60, 80, and 100 kilovolts, whereas the RCA Model EMU–4 provided accelerating voltages of 50 and 100 kilovolts. The lower accelerating voltage of the foreign article provides better contrast for unstained specimens and the voltages intermediate between 50 and 100 kilovolts provide optimum contrast for negatively stained specimens. The applicant's research techniques include the use of both unstained and negatively stained specimens and, therefore, the additional accelerating voltages furnished by the foreign article are pertinent characteristics. For this reason, we find that the RCA Model EMU–4 was not of equivalent scientific value to the foreign article, for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States and was made available to the applicant at the time the institution placed the order for the foreign article.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69–1673; Filed, Feb. 7, 1969; 8:50 a.m.]

COLUMBIA UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69–00101–33–46500. Applicant: Columbia University, Francis Delafield Hospital, 99 Fort Washington Avenue, New York, N.Y. 10032. Article: Ultramicrotome, Model LKB 8800A Ultrotome III and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of Article: The article will be used in connection with studies concerning mitochondrial structure. Various tissues are being studied from diabetic and insulin treated animals. The ultrathin sections needed for the experiments must be prepared in long series and it is very important that they be of equal thickness for observation under the electron microscope. It is imperative that the operator of the ultramicrotome be able to quickly and easily change the cutting thickness anywhere from 50 angstroms to 2 microns. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article has a guaranteed minimum thickness capability of 50 angstroms. The only known comparable domestic ultramicrotome is the Model MT–2, manufactured by the Ivan Sorvall, Inc. (Sorvall), which has a guaranteed minimum thickness capability of 100 angstroms. In its memorandum dated October 18, 1968, the Department of Health, Education, and Welfare advised that the capability to routinely produce sections of 50 angstroms is pertinent to the purposes for which the foreign article is intended to be used. For this reason, we find that the Sorvall Model MT–2 is not of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69–1664; Filed, Feb. 7, 1969; 8:50 a.m.]

JOHNS HOPKINS UNIVERSITY ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Scientific Instrument Evaluation Division, Business and Defense Services Administration, Washington, D.C. 20230, within 20 calendar days after date on which this

notice of application is published in the FEDERAL REGISTER.

Regulations issued under cited Act, published in the February 4, 1967, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

A copy of each comment filed with the Director of the Scientific Instrument Evaluation Division must also be mailed or delivered to the applicant, or its authorized agent, if any, to whose application the comment pertains, and mailed or delivered to the applicant.

Docket No. 69-00371-01-77040. Applicant: The Johns Hopkins University, Charles and 34th Streets, Baltimore, Md. 21218. Article: Mass spectrometer, Model RMU-6. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used in inorganic research for the study of transition metal organometallic compounds. This study will be directed principally to the identification of unusual compounds of widely varying molecular weights. In addition, information regarding bond strengths is necessary in order to predict new chemical reactions. Specific objectives as concerned with the mass spectra are as follows:

1. Fragmentation pattern;
2. Precise mass measurements;
3. Metastable measurements;
4. Appearance potential measurements;
5. Measurements at variable temperatures;
6. Measurements at variable pressures.

Application received by Commissioner of Customs: January 16, 1969.

Docket No. 69-00373-98-34040. Applicant: University of California, Lawrence Radiation Laboratory, East End of Hearst Avenue, Berkeley, Calif. 94720. Article: Microwave generator, backward wave oscillator/carcinotron tube, Model CSF CO-40B. Manufacturer: Compagnie Generale de Telegraphie Sans Fil, France. Intended use of Article: The article will be used as a replacement tube for three existing tubes in a polarized proton target used in high energy physics experiments in conjunction with the laboratory's Bevatron accelerator, 184-inch synchrocyclotron, and the Stanford linear accelerator (SLAC). The tube must be interchangeable with existing tubes and compatible with existing equipment. Application received by Commissioner of Customs: January 17, 1969.

Docket No. 69-00374-33-77030. Applicant: University of California, San Francisco Medical Center, Parnassus and Arguello, San Francisco, Calif. 94122. Article: Nuclear magnetic resonance spectrometer, Model JNM-4H-100. Manufacturer: Japan Electron Optics Laboratory Co., Ltd., Japan. Intended use of article: The article will be used by faculty, graduate students, and postdoctoral research students in various research problems. In addition to the research uses, the article will be used in the training and education of graduate students in the general areas of organic, analytical and physical chemistry as applied to pharmaceutical chemistry and pharmacy, and in the further training of postdoctoral research associates. Application received by Commissioner of Customs: January 17, 1969.

Docket No. 69-00375-33-46040. Applicant: University of California, San Francisco Medical Center, San Francisco, Calif. 94122. Article: Electron microscope, Siemens Model Elmiskop 101. Manufacturer: Siemens AG, West Germany. Intended use of article: The article will be used for investigation of the ultrastructure of cells and macromolecules. The investigation will be directed toward several problems concerning mitochondrial membranes that remain unsolved at present. One problem concerns the relevance of the widely accepted Danielli model of cell membrane structure to the structural organization of the outer and inner membranes of mammalian heart mitochondria. Another problem of mammalian heart mitochondria concerns the functional role of the 85-90-angstrom particles seen after negative staining of submitochondrial vesicles. Application received by Commissioner of Customs: January 17, 1969.

Docket No. 69-00376-33-46500. Applicant: Health Research, Inc., 84 Holland Avenue, Albany, N.Y. 12208. Article: Ultramicrotome, LKB 8800 Ultratome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used for studies concerning the ultrastructure and cytochemistry of a number of parasitic helminths. The various cytochemical techniques have been evaluated using vertebrate tissue. One concern, therefore, is to study the reliability of these cytochemical techniques on tissues from invertebrate organisms. Further, it is anticipated that the results of studying the chemistry of certain organelles found in these parasitic worms will allow a better understanding of the relationship of these animals to their various hosts. Ultrathin sections are required in long series and equal thickness for electron microscopy of specimens concerning these studies. Application received by Commissioner of Customs: January 21, 1969.

Docket No. 69-00377-33-46040. Applicant: Temple University Medical School, 3400 North Broad Street, Philadelphia, Pa. 19140. Article: Electron microscope, Elmiskop 101. Manufacturer: Siemens, West Germany. Intended use of article: The article will be used for the following investigations:

1. The study of the cross-linkages in the filaments of the pigment synthesizing organelle of the melanocyte;

2. The localization of isoproterenol to specific organelles in the cells of the salivary gland;

3. The identification of elemental copper in the enzyme tyrosinase.

Application received by Commissioner of Customs: January 21, 1969.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-1665; Filed, Feb. 7, 1969; 8:50 a.m.]

NATIONAL INSTITUTES OF HEALTH

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00057-33-46500. Applicant: National Institutes of Health, Building 10, Bethesda, Md. 20014. Article: Ultramicrotome, LKB 8800A Ultrotome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used in studies concerning bacterial morphogenesis and differentiation. A wide range of unknown biopsies from patients is also planned and it is essential that the ultramicrotome have as much versatility as possible. The widest possible range of cutting speeds is essential for sectioning these varied types of tissues for electron microscopy. Serial sections of high quality and uniformity are required for optimal resolution of the bacterial organelles. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The only known comparable domestic instrument is the Model MT-2 ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). For the purposes for which the foreign article is intended to be used, the applicant requires an ultramicrotome capable of cutting sections of biological specimens down to 50 angstroms. The foreign article has the capability of cutting sections down to 50 angstroms (1965 catalog for the "Ultrotome III" Ultramicrotome, LKB Produkter AB, Stockholm, Sweden). The thin-sectioning capability of the Sorvall Model MT-2 is specified as 100 angstroms (1966 catalog for Sorvall "Porter-Blum" MT-1 and MT-2 Ultramicrotomes, Ivan Sorvall, Inc., Norwalk, Conn.). The better thin-sectioning capability of the foreign article is pertinent because the thinner

the section that can be examined under an electron microscope, the more is it possible to take advantage of the ultimate resolving power of the electron microscope. (2) The applicant requires an ultramicrotome capable of reproducing a series of ultrathin sections with consistent accuracy and uniformity. This capability in the required dimensions can be furnished only with microtomes based on the thermal advance principle. The foreign article is equipped with a thermal advance system for ultrathin sectioning, in addition to a mechanical advance for thicker sections (See "Ultrotome III" catalog cited above). The Sorvall Model MT-2 is equipped only with a mechanical advance system for all thicknesses. (See Sorvall Model MT-2 catalog cited above.) Ultramicrotomes employing the mechanical advance utilize a system of gears to advance the specimen and, inherent in such systems are backlash and slippage no matter how slight. In mechanical systems, the variation in thickness is bound to be greater than in thermal systems even when both are functioning at their best. We therefore find that the thermal advance of the foreign article is pertinent to the purposes for which such article is intended to be used. (3) The foreign article incorporates a device which permits measuring the knife-angle setting to an accuracy of one degree (See catalog on "Ultrotome III"), whereas no similar device is specified in the Sorvall catalog. The capability of accurately measuring the setting of the knife-angle is pertinent because the thickness of the section is varied by varying the angle at which the knife enters the specimen.

For the foregoing reasons, we find that the Sorvall Model MT-2 ultramicrotome is not of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-1668; Filed, Feb. 7, 1969; 8:50 a.m.]

NORTHWESTERN UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00102-33-46500. Applicant: Northwestern University, Cresap Biology Laboratory, Evanston, Ill. 60201. Article: Ultramicrotome—knife maker combination, Model LKB 8800 Ultrotome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used in connection with work which involves reconstruction of the three dimensional morphology of submicroscopic structures of tissues. Research projects include the development of female *Drosophila* reproductive system and the division and differentiation of *Drosophila* cystocytes. To perform these experiments, the applicant requires serial ultrathin sections of equal thickness within the range of 50 angstroms to 2 microns. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article has a guaranteed minimum thickness capability of 50 angstroms. The only known comparable domestic ultramicrotome is the Model MT-2, manufactured by the Ivan Sorvall, Inc. (Sorvall), which has a guaranteed minimum thickness capability of 100 angstroms. In its memorandum dated October 18, 1968, the Department of Health, Education, and Welfare advised that the capability to routinely produce sections of 50 angstroms is pertinent to the purposes for which the foreign article is intended to be used. For this reason, we find that the Sorvall Model MT-2 is not of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-1669; Filed, Feb. 7, 1969; 8:50 a.m.]

ST. VINCENT HOSPITAL

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00045-33-46040. Applicant: St. Vincent Hospital, 25 Winthrop Street, Worcester, Mass. 01604. Article: Electron microscope, EM 9A. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article will be used for the following projects:

1. A study to consider the ultrastructural changes in capillaries which might account for bleeding in thrombocytopenic purpura.

2. The correlation of cell ultrastructure in liver with biochemical changes produced by dietary manipulation.

3. Electron microscopic studies of mammalian respiratory cilia in oxygen toxicity.

4. Electron microscopic studies of morphologic changes in alveolar macrophages in correlation with migration of cells in experimental pulmonary infection.

5. Comparison of study of sections from renal biopsies by both light microscope and electron microscope for its teaching value to physicians and to help evaluate in which diseases electron microscopy will be specifically helpful.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: (1) The applicant requires an electron microscope which is suitable for the instruction and training of novices, medical students, interns, house officers, and other medical and paramedical personnel in the use of the electron microscope. for medical research. The foreign article is a relatively simple, medium resolution electron microscope which can be used by students with a minimum of detailed programing and which facilitates early and competent use by the student. The only domestic electron microscope is the Model EMU-4B manufactured by the Radio Corporation of America (RCA), which is a high resolution and relatively complex instrument designed for high level research. (2) The foreign article also provides a digital readout for focusing adjustments, which allows the instructor to objectively indicate the correct focusing for each type of experiment. For the foregoing reasons, we find that the RCA Model EMU-4B is not of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-1670; Filed, Feb. 7, 1969; 8:50 a.m.]

SPELMAN COLLEGE

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69–00055–33–46500. Applicant: Spelman College, 350 Spelman Lane SW., Atlanta, Ga. 30314. Article: Ultramicrotome, LKB 8800A Ultrotome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used for studies concerning the fine structure of the endogenous stages of the life cycle of a protozoan parasite of chickens. Various species of this parasite invade epithelial cells in different regions of the intestine of a chicken. Intestinal tissue infected with the several species of this protozoan will be prepared for observation with the electron microscope. This requires ultrathin sections in series and equal thickness throughout. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article has a minimum thickness capability of 50 angstroms. (1) The most closely comparable domestic instrument is the Model MT–2 ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall), which provides a minimum thickness capability of 100 angstroms. For the purposes for which the foreign article is intended to be used, the applicant requires the thinnest possible sections and, therefore, the capability of the foreign article to cut sections down to 50 angstroms is a pertinent characteristic. (2) The foreign article has a thermal advance, whereas the Sorvall Model MT–2 has a gear driven mechanical advance. For the purposes for which the foreign article is intended to be used, the applicant requires a long series of ultrathin sections. We are advised by the Department of Health, Education, and Welfare (HEW), in its memorandum dated September 30, 1968, that only thermal advance ultramicrotomes have performed satisfactorily where long series of ultrathin and uniform sections are required.

For the foregoing reasons, we find that the Sorvall Model MT–2 is not of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69–1671; Filed, Feb. 7, 1969; 8:50 a.m.]

UNIVERSITY OF MICHIGAN

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69–00058–00–54800. Applicant: University of Michigan, Department of Ophthalmology, 5044 Kresge II, Ann Arbor, Mich. 48104. Article: Optical bench components. Manufacturer: Precision Tool and Instrument Co., Ltd., United Kingdom. Intended use of article: The article will be used to replace parts of existing scientific instruments used in research on the physiology of the eye and for teaching. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The application relates to replacement parts for an optical bench which had previously been imported and is now in the possession of the applicant. Although optical benches are being manufactured in the United States, the parts for such known domestic optical benches are not interchangeable with those to which the application relates, or adaptable to the foreign optical bench for which the foreign parts are intended.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69–1666; Filed, Feb. 7, 1969; 8:50 a.m.]

UNIVERSITY OF MICHIGAN

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69–00100–33–46500. Applicant: University of Michigan Medical Center, 5534 Kresge Medical Building, Ann Arbor, Mich. 48104. Article: Ultramicrotome, Model LKB 8800 Ultrotome III. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article will be used in connection with studies concerning epidermal development in the mammalian skin. The ultrathin sections needed for a particular experiment must be prepared in long series and must be cut in equal thickness for observation under the electron microscope. It is hoped to learn the exact sequence and time relationships of the development of epidermal ultrastructures and to correlate these findings with the completion of the keratinization process. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: (1) The foreign article provides a minimum thickness capability down to 50 angstroms. The only known comparable domestic ultramicrotome is the Model MT–2, manufactured by Ivan Sorvall, Inc. (Sorvall), which has a guaranteed minimum thickness capability of 100 angstroms. We are advised by the Department of Health, Education, and Welfare (HEW), in its memorandum dated October 29, 1968, that the lower minimum thickness capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used. (2) The foreign article provides thermal advance, whereas the Sorvall Model MT–2 incorporates a mechanical advance. HEW advises (memorandum cited above) that the thermal advance is more efficient than the mechanical advance with respect to producing long series of consistently uniform and accurate thin sections. The constant uniformity and accuracy in long series of sections is pertinent to locating the ultrastructure of interest and, consequently, these are pertinent characteristics.

For these reasons, we find that the Sorvall Model MT–2 is not of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such

article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-1667; Filed, Feb. 7, 1969; 8:50 a.m.]

VANDERBILT UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder (32 F.R. 2433 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Scientific Instrument Evaluation Division, Department of Commerce, Washington, D.C.

Docket No. 69-00096-67-46040. Applicant: Vanderbilt University, Materials Science Division, School of Engineering, Nashville, Tenn. 37203. Article: Electron miscroscope, Model EM 300. Manufacturer: N. V. Philips Gloeilampenfabrienken, The Netherlands. Intended use of article: The article will be used for research projects calling for a complete description of the metallurgical state of the alloys being studied. These studies include the microstructural details of the dislocations, stacking faults, grain boundaries, and precipitate phases present, the nature of the interface between phases present in the alloys and the relative crystallographic orientations of the various phases. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, is being manufactured in the United States. Reasons: For the purposes for which the foreign article is intended to be used the applicant requires an electron microscope equipped with a goniometer stage capable of 0-360° rotation and plus or minus (±)60° tilt. The foreign article is equipped with, and will be delivered with, such a goniometer stage. The only comparable domestic instrument is the Model EMU-4B electron microscope which is manufactured by the Radio Corporation of America (RCA). The RCA Model EMU-4B is equipped with a goniometer stage having a maximum tilt of only ±30°. We are advised by the National Bureau of Standards in a memorandum dated October 25, 1968, that the difference between ±30° of the goniometer stage supplied with the RCA Model EMU-4B electron microscope and the ±60° of the goniometer stage supplied with the foreign article is pertinent for the applicant's intended purposes.

For these reasons, we find that the RCA Model EMU-4B is not of equivalent scientific value to the foreign article for the purposes for which the foreign article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Assistant Administrator for Industry Operations, Business and Defense Services Administration.

[F.R. Doc. 69-1672; Filed, Feb. 7, 1969; 8:50 a.m.]

Maritime Administration

SHIP CONSTRUCTION PLANS

Notice to Prospective Applicants

In order to assist the Maritime Administration in its policy and budgetary planning, the Administration hereby requests all interested persons, including those now subsidized and those not now subsidized, to submit ship construction and replacement plans and proposals for the consideration of the Administration. This information is requested with the understanding that if new construction requires some form of Government assistance, the Administration will require at the appropriate time formal application in accordance with pertinent regulations, and approval will depend on future consideration of national needs and the availability of funds.

The purpose of this notice is similar to that appearing in the FEDERAL REGISTER issue of January 6, 1968 (33 F.R. 234), issued under the same heading as that above.

The submissions hereby invited should cover the construction for which the respondents would propose to contract during Fiscal Years 1970-1974, inclusive (i.e., July 1, 1969 through June 30, 1974, inclusive). It is specifically requested that the responses indicate which ships are proposed for construction during Fiscal Year 1970 (July 1, 1969-June 30, 1970) and which for the subsequent four (4) Fiscal Years.

Responses are requested from persons contemplating the operation of either liner or nonliner dry cargo vessels (conventional, container, barge, or novel types) or dry bulk carriers in the foreign trade. Responses are also desired from persons contemplating the operation of oil tankers or other bulk liquid carriers in the foreign trade.

The responses to this notice should include the following information:

1. An analytical description of the system of transportation, including plans for interchange of cargo between the ocean phase and connecting phases.

2. The route or service in which the ships are proposed to be operated.

3. The number and type of ships proposed to be built, specifying their size, speed, deadweight and cubic capacities and other pertinent general characteristics.

4. Supporting statement of the traffic and economic premises for the choice of the ships and a specific outline of the basic commercial characteristics of the proposed ships.

5. Pro forma projections of revenue and expense in the operation of the proposed ships.

6. A projection of the manning scale and wage costs involved in the operation of the proposed ships, assuming achievement of reasonable manpower and wage levels.

7. The method of financing envisaged.

8. The number and type of ships proposed to be replaced by the new construction.

9. An estimate of the least amount of construction aid, operating financial aid, and/or mortgage insurance required by the respondent, if any.

Respondents are invited to refer to the Maritime Subsidy Board's statement of general policy on relative ship productivity (Appendix No. 2, 46 CFR 251.1 (30 F.R. 14598, Nov. 24, 1965)). Copies of the referenced policy announcement may be obtained from the Secretary, Maritime Subsidy Board, 441 G Street NW., Washington, D.C. 20235.

The Administration expects to place major reliance on the responses to this notice in its program planning during the coming 5 years, and respondents are therefore strongly urged to make their submissions as complete and detailed as possible.

Preliminary responses to this notice should be submitted in triplicate to the Secretary, Maritime Administration, at the above address, by the close of business on March 15, 1969. The preliminary response should, insofar as practicable, provide the information required in Items 2, 3, and 8. The final response should be submitted by April 15, 1969. All responses will be treated as business confidences.

Dated: February 6, 1969.

By order of the Acting Maritime Administrator and the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 69-1686; Filed, Feb. 7, 1969; 8:51 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

SWIFT & CO.

Notice of Filing of Petition for Food Additives

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition (FAP 9A2388) has been filed by Swift & Co., R & D Center, 1919 Swift Dr., Oak Brook, Ill. 60251, proposing the issuance

of a food additive regulation (21 CFR Part 121) to provide for the safe use of nicotinic acid to promote color retention in frozen red meats.

Dated: January 30, 1969.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 69-1655; Filed, Feb. 7, 1969; 8:49 a.m.]

Office of the Secretary

STATEMENT OF ORGANIZATION AND DELEGATION OF AUTHORITY

Handling of Claims

The Statement of Organization and Delegations of Authority of the Department of Health, Education, and Welfare (22 F.R. 1045), Part 2 thereof entitled, "Office of the Secretary" under the heading, "Office of the General Counsel," as amended by 26 F.R. 187, 30 F.R. 14225, and 31 F.R. 16375, is hereby amended as follows:

Section 2-300-40A.1 is amended by adding the following subparagraph (d):

(d) The Waiver of Claims for Overpayment of Pay Act of 1968 (5 U.S.C. 5584).

Dated: January 31, 1969.

BERNARD SISCO,
Acting Assistant Secretary for Administration.

[F.R. Doc. 69-1656; Filed, Feb. 7, 1969; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 20680]

JAPAN AIR LINES CO., LTD.

Notice of Proposed Approval

Application of Japan Air Lines Company, Ltd., for disclaimer of jurisdiction or approval under section 408 of the Federal Aviation Act of 1958, as amended, Docket 20680.

Notice is hereby given, pursuant to the statutory requirements of section 408(b) of the Federal Aviation Act of 1958, as amended, that the undersigned intends to issue the order set forth below under delegated authority. Interested persons are hereby afforded a period of 15 days from the date of service within which to file comments or request a hearing with respect to the action proposed in the order.

Dated at Washington, D.C., February 4, 1969.

[SEAL] A. M. ANDREWS,
Director, Bureau of Operating Rights.

ORDER OF APPROVAL

Issued under delegated authority.

Application of Japan Air Lines Co., Ltd., for disclaimer of jurisdiction or approval under section 408 of the Federal Aviation Act; Docket 20680.

By application filed January 27, 1969, Japan Air Lines Co., Ltd. (JAL) requests that the Board disclaim jurisdiction over or approve, pursuant to section 408(b) of the Federal Aviation Act of 1958, as amended (the Act) the lease of two Boeing 727 aircraft (aircraft) by JAL from World Airways, Inc. (World).[1] JAL is a foreign air carrier which holds a permit authorizing it to engage in foreign air transportation between points in Japan and points in the United States, and beyond to points in Europe and Asia. JAL also possesses authority from the Civil Aviation Bureau of Japan to engage in domestic air transportation within Japan. World is a certificated air carrier holding supplemental authority from the Board pursuant to which it conducts operations in various areas of the world, including the Far East.

By a lease agreement dated January 24, 1969, World has agreed to lease the aircraft to JAL for a period of 1 year beginning on March 20, 1969, and terminating on March 31, 1970. JAL has the option of extending the agreement for two additional periods of 1 year each, but not beyond March 31, 1972. Rental payments will be in monthly amounts of $90,000 and $98,500 for the passenger aircraft and Q.C. aircraft, respectively, plus specified additional amounts to cover airframe and engine overhaul.[2] The rental payments for each aircraft will be reduced in increments of $10,000 for each year that the lease agreement may be extended. The aircraft will be flown exclusively by JAL crews, and JAL will have complete control over operation of the aircraft. With the exception of rotable spare parts and engines, JAL will provide complete support and maintenance for the aircraft. JAL will also pay for complete insurance coverage for the aircraft.

The application asserts that JAL's need for the aircraft has arisen because the demand for service on JAL's domestic routes has exceeded the capacity planned for such routes through purchase of equipment of the type and size of the aircraft in question.[3] In order to satisfy its additional requirements, JAL entered into the instant lease agreement with World. In this connection, the application recites that JAL intends to use the aircraft primarily, if not exclusively, in its domestic operations. For this reason, it is alleged that the lease arrangement will not adversely affect any U.S. air carrier.[4]

The applicant asserts that it may be appropriate for the Board to disclaim jurisdiction over the agreement, since the leased aircraft may not constitute a substantial part of the properties of World. In this regard, the application indicates that World currently owns 20 aircraft, including six Boeing 727 aircraft and nine Boeing 707 aircraft. Furthermore, it is alleged that the leased aircraft would represent approximately 11 percent of the total current value of World's flight equipment, including spare engines and parts. In support of its alternative request for approval of the lease, JAL asserts that the lease will not affect the control of an air carrier engaged in air transportation, nor result in creating a monopoly, nor tend to restrain competition. Moreover, the applicant contends that the agreement will provide a financial benefit to World and contribute to an improvement in the United States balance of payments.[5]

No objections to the application or requests for a hearing have been received.

Notice of intent to dispose of the application without a hearing has been published in the FEDERAL REGISTER, and a copy of such notice has been furnished by the Board to the Attorney General not later than the day following the date of such publication, both in accordance with the requirements of section 408(b) of the Act.

Upon consideration of the application, it is concluded that the lease involves a substantial part of the properties of World and, therefore, is subject to section 408 of the Act. However, it is further concluded that the transaction does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly and does not tend to restrain competition. Furthermore, no person disclosing a substantial interest in the proceeding is currently requesting a hearing, and it is concluded that the public interest does not require a hearing. The lease will enable JAL to meet its domestic obligations, without depriving World of aircraft necessary to meet its own commitments. Under all the circumstances, it appears that approval of the lease would not be inconsistent with the public interest.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.13, it is found that the foregoing transaction should be approved under section 408(b) of the Act without a hearing.

Accordingly, it is ordered:

1. That the lease by JAL of two Boeing 727-173C aircraft and related parts and spare engines from World be and it hereby is approved; and

2. That, to the extent not granted, the application be and it hereby is denied.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 5 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 69-1653; Filed, Feb. 7, 1969; 8:49 a.m.]

[1] One of the aircraft to be leased is a Boeing 727-173C type aircraft (passenger aircraft) and the other a Boeing 727-173C quick change type aircraft (Q.C. aircraft).

[2] The agreement also provides for World to make available to JAL, on a rental basis, aircraft and engine components or spare engines. Payment for such rentals will be at the rate of 2 percent of World's acquisition cost per month.

[3] In anticipation of its domestic air transportation requirements, JAL has purchased 14 Boeing 727 aircraft, the last of which was scheduled for delivery on January 31, 1969.

[4] Although the aircraft are suitable for operation over JAL's route between Japan and Okinawa, which is also served by Northwest Airlines, Inc., the application recites that JAL does not intend to use the aircraft to serve Okinawa or use the additional capacity generated to increase its service to Okinawa.

[5] The application asserts that rental payments under the lease agreement would amount to $2,262,000 for the first year.

[Docket No. 19617]

NORTH CAROLINA POINTS SERVICE INVESTIGATION

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a public hearing in the above-entitled proceeding will be held before the undersigned Examiner on March 4, 1969, at 10 a.m., e.s.t., in the Federal Court Room of the U.S. Post Office, 401 West Trade Street, Charlotte,

N.C. Upon conclusion of the Charlotte session, the hearing will reconvene on March 10, 1969, at 10 a.m., e.s.t., in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

For information concerning the issues involved and other details of this proceeding, interested persons are referred to the various documents which are in the docket of this case on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., February 4, 1969.

[SEAL] JAMES S. KEITH,
Hearing Examiner.

[F.R. Doc. 69-1654; Filed, Feb. 7, 1969; 8:49 a.m.]

FEDERAL MARITIME COMMISSION

CITY OF MILWAUKEE ET AL.

Notice of Agreement Filed for Approval

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to Section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202, or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of agreements filed for approval by:

Mr. J. A. Seefeldt, Acting Port Director, City of Milwaukee, City Hall, Room 606, Milwaukee, Wisconsin 53202.

Agreements Nos. T-2259, T-2260, T-2261 and T-2262, between the City of Milwaukee (City) and Stearns Milwaukee Seaway, Inc., Hansen Seaway Service, Ltd., and Pluswood Industries (assigned to Pier, Inc.), respectively, provide for the lease of certain premises in Milwaukee which will be operated as marine terminal facilities. City will collect a minimum guaranteed annual rental plus a specified amount for wharfage based upon the amount of tonnage handled. If additional open storage is required and available City will provide same at effective tariff rates or on a basis of rentals and charges to be agreed upon.

Dated: February 4, 1969.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 69-1652; Filed, Feb. 7, 1969; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP69-196]

ARKANSAS LOUISIANA GAS CO.

Notice of Application

JANUARY 30, 1969.

Take notice that on January 22, 1969, Arkansas Louisiana Gas Co. (Applicant), Post Office Box 1734, Shreveport, La. 71102, filed in Docket No. CP69-196 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition, construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to:

(1) Acquire by purchase from United Gas Pipe Line Co. (United), and thereafter cause to be operated, an undivided interest in United's Lake Bistineau Storage Field and related properties and facilities in Bienville, Bossier and Webster Parishes, La.;

(2) Construct approximately 34.6 miles of 12-inch and 18-inch pipeline to connect the Lake Bistineau Storage Field with its existing Line S;

(3) Construct an 1100 horsepower compressor station and related facilities on the aforementioned connecting line;

(4) Construct a tap and short connecting line on its existing Line ST-1 at the outlet of Cities Service Oil Co.'s Panola Gasoline Plant in East Texas.

Applicant states that the purpose of the tap and short connecting line is to deliver to United natural gas for injection into the storage facility, and that it will furnish 7 million Mcf of cushion gas and will have a storage capacity of 8 million Mcf with the right to withdraw up to 100,000 Mcf of natural gas per day. The compressor station and the proposed 12-inch and 18-inch pipelines will serve to take gas from the storage area back into Applicant's main pipeline system.

Applicant states that the total cost of the project proposed is $6,457,225, which reflects the cost of acquisition of the storage interest, the cost of facilities to be constructed and the cost of the necessary volume of cushion gas to be injected by Applicant. Cash on hand and short-term loans will provide the financing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before February 26, 1969.

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 without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 69-1620; Filed, Feb. 7, 1969; 8:46 a.m.]

[Docket No. RI69-500]

BRAMMER ENGINEERING, INC., ET AL.

Order Providing for Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

JANUARY 30, 1969.

Respondent named herein has filed a proposed change in rate and charge of a currently effective rate schedule for the sale of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the National Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplement to the rate schedule filed by Respondent shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Respondent shall execute and file

under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of a copy thereof upon the purchaser under the rate schedule involved. Unless Respondent is advised to the contrary within 15 days after the filing of its agreement and undertaking, such agreement and undertaking shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37 (f)) on or before March 17, 1969.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI69-500	Brammer Engineering, Inc., agent (Operator) et al., 1009 Petroleum Tower, Shreveport, La. 71101.	[1] 1	1	Texas Gas Transmission Corp. (Ruston Field, Lincoln Parish, La.) (North Louisiana Area).	$2,169	1-6-69	[2] 2-6-69	[3] 2-7-69	[4] 16.0	[4] [5] 17.0	

[1] Contract dated after Sept. 28, 1960, the date of issuance of the Commission's statement of general policy No. 61-1, and the proposed rate does not exceed the area initial service rate ceiling of 17 cents per Mcf.
[2] The stated effective date is the first day after expiration of the statutory notice.
[3] The suspension period is limited to 1 day.
[4] Periodic rate increase.
[5] Pressure base is 15.025 p.s.i.a.
[6] Subject to a downward B.t.u. adjustment.

Brammer Engineering, Inc., Agent (Operator), et al. (Brammer) request that its proposed rate increase be permitted to become effective on February 1, 1969. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4 (d) of the Natural Gas Act to permit an earlier effective date for Brammer's rate filing and such request is denied.

The contract related to the rate filing of Brammer was executed subsequent to September 28, 1960, the date of issuance of the Commission's statement of general policy No. 61-1, as amended, and the proposed increased rate of 17 cents per Mcf exceeds the area increased rate ceiling of 14 cents per Mcf for the North Louisiana Area, but does not exceed the initial service ceiling established for the area involved. We believe, in this situation, Brammer's proposed rate filing should be suspended for 1 day from February 6, 1969, the expiration date of the statutory notice.

[F.R. Doc. 69-1628; Filed, Feb. 7, 1969; 8:47 a.m.]

[Docket No. CP67-340, etc.]

CITIES SERVICE GAS CO. ET AL.

Order Granting in Part Application for Certificate of Public Convenience and Necessity, Consolidating Proceedings and Granting Intervention

JANUARY 31, 1969.

On August 19, 1968, Cities Service Gas Co. (Applicant) filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipelines, measuring, regulating, and appurtenant facilities and the sale of natural gas to The Gas Service Co. (Gas Service) for resale in six communities in Missouri [1] and two communities in Kansas,[2] all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The Applicant proposes to construct two metering stations and taps in order to render city gate service to the two Kansas communities which are located on its main line. Applicant proposes no lateral line construction. Therefore, the question of Applicant's lateral line policy which is an issue in the CP67-340, et al. proceedings, is not raised insofar as service to the Kansas communities is concerned.

More specifically, with respect to the communities in Kansas, Applicant seeks authorization to transport and sell up to 3,551 Mcf per year for resale in the Indian Ridge Subdivision, Jefferson County, Kans., and up to 4,279 Mcf per year for resale in the Eureka School Area, Reno County, Kans.

Due notice of the filing of the application was given by publication in the FEDERAL REGISTER on September 5, 1968 (33 F.R. 12594).

On October 4, 1968, Webb Tri-State Gas Co., Inc., Tri-State Gas Co., and Al Neidert (LPG Dealers) filed a petition to intervene in the proceedings at Docket No. CP69-34 seeking deferral of Commission action pending the completion of pending Missouri litigation relating to the Applicant's proposal to serve the six Missouri communities. On December 17, 1968, the LPG Dealers clarified their petition to intervene by indicating that they have no objection to the granting of the Applicant's application as it concerns the two communities located in Kansas.

On September 5, 1968, the State Corporation Commission of the State of Kansas filed its notice of intervention at Docket No. CP69-34 and on September 20, 1968, Gas Service filed its petition to intervene in the aforementioned docket. Neither of these interventions are in opposition to the granting of the application.

At a hearing held on January 23, 1969, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of Applicant's proposal to serve the Kansas communities, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Co., a Delaware corporation having its principal place of business in Oklahoma City, Okla., is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943 in Docket No. G-298 (4 FPC 471).

(2) The transportation and sale of natural gas as hereinbefore described, as more fully described in the application, is in interstate commerce subject to the jurisdiction of the Commission, and such transportation and sale are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The filing made by the Applicant at Docket No. CP69-34 contains issues that are common to those that must be resolved in the expanded consolidated proceedings in Docket No. CP67-340 et al., particularly questions relating to the Applicant's lateral line policy.

(5) The proceeding in Docket No. CP69-34, insofar as it relates to service to the Missouri communities, should be consolidated with the heretofore consolidated proceedings in Docket No. CP67-340 et al.

(6) It is in the public interest, and the the public convenience and necessity require, that the portion of the application relating to service to the Indian Ridge Subdivision, Jefferson County, Kans., and to the Eureka School Area, Reno County, Kans., be severed from the proceeding in Docket No. CP69-34 relating to service to the six communities in Missouri, and that a certificate of public convenience and necessity be issued to the Applicant authorizing the transportation and sale of natural gas for resale in Indian Ridge and the Eureka School

[1] Goodman, Anderson, Lanagan, Pineville, Noel, and village of North Noel, Mo.
[2] Indian Ridge Subdivision and Eureka School Area, Kans.

Area, as hereinbefore described and as more fully described in the application in this proceeding.

(7) The participation in these consolidated proceedings by each of the aforementioned intervenors may be in the public interest and should be allowed.

(8) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, particularly Part 154 and the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f), and (g) of § 157.20 of the regulations.

The Commission orders:

(A) The application of Cities Service Gas Co., insofar as it requests a certificate of public convenience and necessity authorizing it to transport and sell natural gas to The Gas Service Co. for resale in the Indian Ridge Subdivision, Jefferson County, Kans., and the Eureka School Area, Reno County, Kans., is severed from the remainder of the application, insofar as it requests in Docket No. CP69-34 a certificate to serve the six communities in Missouri.

(B) A certificate of public convenience and necessity is issued to Applicant, Cities Service Gas Co., authorizing the transportation and sale of up to 3,551 Mcf per year for resale in the Indian Ridge Subdivision, Jefferson County, Kans., and up to 4,279 Mcf per year for resale in the Eureka School Area, Reno County, Kans., as hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(C) Applicant shall file executed service agreements pursuant to Part 154 of the regulations under the Natural Gas Act in conformance with the data submitted in the subject application.

(D) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (e), (f), and (g) of § 157.20 of the regulations.

(E) The proceeding relating to the application of Cities Service Gas Co., insofar as it relates to service to the six Missouri communities at Docket No. CP69-34, is consolidated with the proceedings in Docket No. CP67-340 et al.

(F) The Gas Service Co. and Webb Tri-State Gas Co., Inc., Tri-State Gas Co., Inc., and Al Neidert, are hereby permitted to intervene in the captioned proceedings subject to the rules and regulations of the Commission: *Provided, however*, That the participation of The Gas Service Co. and Webb Tri-State Gas Co., Inc., Tri-State Gas Co., Inc., and Al Neidert, shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions to intervene: *And, provided further*, That the admission of The Gas Service Co. and Webb Tri-State Gas Co., Inc., Tri-State Gas Co., Inc., and Al Neidert, shall not be construed as recognition by the Commission that it might be aggrieved by any order or orders entered in these proceedings.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 69-1621; Filed, Feb. 7, 1969; 8:46 a.m.]

[Docket No. RI69-353 etc.]

DARCESA CORP. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates; Correction

JANUARY 30, 1969.

Darcesa Corp. et al., Docket No. RI69-353 etc.; Pan American Petroleum Corp. (Operator) et al., Docket No. RI69-368.

In the order providing for hearings on and suspension of proposed changes in rates issued December 27, 1968, and published in the FEDERAL REGISTER January 7, 1969 (34 F.R. 224), In Appendix A, line 1, page 7, Docket No. RI69-368, Pan American Petroleum Corp. (Operator) et al. (Opposite Supplement No. 17 to Rate Schedule No. 199): Under column headed "Proposed Increased Rate" change "14.-2578" to read "14.2678."

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 69-1622; Filed, Feb. 7, 1969; 8:46 a.m.]

[Project Nos. 2243, 2273]

PACIFIC NORTHWEST POWER CO. AND WASHINGTON PUBLIC POWER SUPPLY SYSTEM

Order for Continuance

FEBRUARY 3, 1969.

This order continues the hearing in the above-entitled matter to May 1, 1969.

Pacific Northwest Power Co. and Washington Public Power Supply System, as joint applicants, and the Secretary of the Interior on November 8, 1968, filed a joint motion for continuance of the hearing. On December 2, 1968, the Presiding Examiner certified the joint motion to the Commission for its consideration and directed all parties to file a statement of their views with regard to the motion. In the responses received no objection has been raised to the continuance to May 1, 1969.

The Commission orders: It is necessary and appropriate for the purposes of the Federal Power Act that the hearing in the above-entitled matter be continued to May 1, 1969.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 69-1623; Filed, Feb. 7, 1969; 8:46 a.m.]

[Docket No. RI69-374 etc.]

PAN AMERICAN PETROLEUM CORP. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates; Correction

JANUARY 30, 1969.

Pan American Petroleum Corp., Docket No. RI69-374 etc.; Marathon Oil Co., Docket No. RI69-388.

In the order providing for hearings on and suspension of proposed changes in rates, issued December 30, 1968, and published in the FEDERAL REGISTER January 9, 1969 (34 F.R. 329), In Appendix A, Docket No. RI69-388, Marathon Oil Co.: Under column headed "Proposed Increased Rate" (opposite Rate Schedule No. 96) second portion of the proposed rate, change "14.5078" to read "14.0578."

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 69-1624; Filed, Feb. 7, 1969; 8:47 a.m.]

[Docket No. RI69-365]

REDFERN DEVELOPMENT CORP. ET AL.

Order Amending Order Providing for Hearings on and Suspension of Proposed Changes in Rates To Permit Substitute Rate Filing

JANUARY 30, 1969.

On November 27, 1968, Redfern Development Corp. et al. (Redfern) filed with the Commission a proposed change in rate from 13 cents to 14 cents per Mcf, designated as Supplement No. 1 to Redfern's FPC Gas Rate Schedule No. 1, which pertains to Redfern's jurisdictional sales of natural gas from the Carson Gas Unit, San Juan County, N. Mex. (San Juan Basin Area) to El Paso Natural Gas Co. The Commission by order issued December 27, 1968, in Docket No. RI69-365, suspended for 5 months Redfern's rate filing until June 1, 1969, and thereafter until made effective in the manner prescribed by the Natural Gas Act. The proposed 14 cents rate increase has not been made effective pursuant to section 4(e) of the Natural Gas Act.

On January 2, 1969, Redfern submitted an amended notice of change in rate, designated as Supplement No. 1 to Supplement No. 1 to Redfern's FPC Gas Rate Schedule No. 1, amending the supplement to the aforementioned rate schedule to provide for a rate increase to 15.0593 cents per Mcf instead of the 14 cents per Mcf rate filed on November 27, 1968. Redfern did not include as part of its previously filed 14 cents rate the 1 cent per Mcf minimum payment guarantee for liquids contained in the contract. Redfern was thus advised that if it wanted to collect under the minimum guarantee provision it could do so provided it filed a notice of change in rate. Such notification is consistent with the Commission's order issued December 7,

1967, in Docket No. RI64-491 et al., Union Texas Petroleum, a division of Allied Chemical Corp. Redfern claims that it was not aware of the Commission's policy with respect to the 1 cent per Mcf liquid guarantee, as clarified in the Union Texas order, and had it been aware of the situation, it would have included the 1 cent per Mcf guarantee in its original rate change. The amended notice of change also includes 0.0593 cent per Mcf tax reimbursement, which was inadvertently omitted from Redfern's original rate change filing. The proposed substitute rate filing is set forth in Appendix A hereof.

Redfern's proposed 15.0593 cents per Mcf rate exceeds the area ceiling for increased rates in the San Juan Basin Area as announced in the Commission's statement of general policy No. 61-1, as amended, as did the previously suspended rate in said docket. Since Redfern was unaware of the Commission's policy with respect to the 1 cent per Mcf liquid guarantee, and the amended filing includes partial reimbursement for the 0.55 percent New Mexico Emergency School Tax and 0.015 percent increase in the New Mexico Conservation Tax, we believe that it would be in the public interest to accept the amended rate filing subject to the suspension proceeding in Docket No. RI69-365, with the suspension period of such amended rate filing to terminate concurrently with the suspension period (June 1, 1969) of the original rate filing in said docket.

Redfern requests an effective date of January 1, 1969, for its 15.0593 cents per Mcf rate. Good cause has not been shown for waiving the 30-day notice requirement provided in section 4(d) of the Natural Gas Act to permit a January 1, 1969, effective date for Redfern's amended rate filing and such request is denied.

The Commission orders:

(A) The suspension order issued December 27, 1968, in Docket No. RI69-365, is amended only so far as to permit the 15.0593 cents per Mcf rate provided in Supplement No. 1 to Redfern's FPC Gas Rate Schedule No. 1 to be filed to supersede the 14 cents per Mcf rate contained in Supplement No. 1 to the aforementioned rate schedule, subject to the suspension proceeding in Docket No. RI69-365. The suspension period for such substitute filing shall terminate concurrently with the suspension period (June 1, 1969) presently in effect in said docket.

(B) In all other respects, the order issued by the Commission on December 27, 1968, in Docket No. RI69-365, shall remain unchanged and in full force and effect.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI69-365..	Redfern Development Corp. et al., Post Office Box 1747, Midland, Tex. 79701, Attention: John J. Redfern, Jr., President.	1	[1] 1 to 1	El Paso Natural Gas Co. (Carson Gas Unit, San Juan County, N. Mex.) (San Juan Basin Area).	$494	1-2-69	[2] 2-2-69	[3] 6-1-69	[4] 13.0	[4] [5] [7] 15.0593	

[1] Superseding notice of change filed to reflect tax reimbursement and 1 cent per Mcf minimum guarantee for liquids. Previous notice of change from 13 to 14 cents per Mcf was suspended in Docket No. RI69-365 until June 1, 1969.
[2] The stated effective date is the first day after expiration of the statutory notice.
[3] The end of the suspension period for the previously filed 14 cents per Mcf rate in Docket No. RI69-365.
[4] Periodic rate increase.
[5] Pressure base is 15.025 p.s.i.a.
[6] Includes 1 cent per Mcf minimum guarantee for liquids.
[7] Includes partial reimbursement for 0.55 percent New Mexico Emergency School Tax and 0.015 percent increase in New Mexico Conservation Tax.

[F.R. Doc. 69-1631; Filed, Feb. 7, 1969; 8:47 a.m.]

[Docket No. G-1915, etc.]

SOUTH GEORGIA NATURAL GAS CO.

Notice of Petition To Amend

FEBRUARY 3, 1969.

Take notice that on January 23, 1969, South Georgia Natural Gas Co., a Georgia corporation (Applicant), Woodward Building, Birmingham, Ala. 35203, and SNGC, Inc., a Delaware corporation (SNGC), Post Office Box 2563, Birmingham, Ala. 35202, filed in Docket No. G-1915, et al., a petition to amend the orders of the Commission issued since September 2, 1954, which orders granted Applicant certificates of public convenience and necessity, permitted Applicant to abandon facilities, and directed Applicant to establish physical connection with and sell natural gas to section 7(a) applicants.

By the instant filing, Applicant and SNGC request that the said orders be amended to substitute South Georgia Natural Gas Co., a Delaware corporation, for South Georgia Natural Gas Co., a Georgia corporation.

Applicant states that the requested change is necessary because Applicant plans to merge into SNGC and the surviving corporation will change its name to South Georgia Natural Gas Co., a Delaware corporation.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before March 3, 1969.

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 69-1625; Filed, Feb. 7, 1969; 8:47 a.m.]

[Docket No. G-4715]

SOUTHERN NATURAL GAS CO. AND TENNESSEE GAS PIPELINE CO.

Notice of Petition to Further Amend

JANUARY 31, 1969.

Take notice that on January 27, 1969, Southern Natural Gas Co. (Petitioner Southern), Post Office Box 2563, Birmingham, Ala. 35202, and Tennessee Gas Pipeline Co., a Division of Tenneco, Inc. (Petitioner Tennessee), Post Office Box 2511, Houston, Tex. 77001, filed in Docket No. G-4715 a petition to further amend the order issued in said docket on February 25, 1955, as amended by orders issued June 5, 1962; July 31, 1963; and February 1, 1968, which order, as subsequently amended, authorized Petitioner Tennessee to deliver natural gas to Petitioner Southern at the Patterson Field delivery point through Petitioner Southern's existing metering station at the tailgate of the Patterson Field.

By the instant filing Petitioner Tennessee seeks authorization to construct and operate a new metering station to make delivery of gas to Petitioner Southern at the Patterson Field delivery point.

The petitioner states that it is necessary for Petitioner Tennessee to make deliveries to Petitioner Southern through facilities separate and apart from Petitioner Southern's existing meter station in order to effectively administer Petitioner Tennessee's gas purchase contracts.

Total estimated cost of the proposed construction is $38,500. Financing will be from funds on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before March 3, 1969.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 69-1626; Filed, Feb. 7, 1969; 8:47 a.m.]

[Docket No. CP69-202]

UNITED GAS PIPE LINE CO.

Notice of Application

FEBRUARY 3, 1969.

Take notice that on January 27, 1969, United Gas Pipe Line Co. (Applicant), Post Office Box 1407, Shreveport, La. 71102, filed in Docket No. CP69-202 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of other natural gas facilities and the storage of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes the construction and operation of additional facilities to further develop the Lake Bistineau Storage Field in Bossier and Bienville Parishes, La., in order to increase the design withdrawal capacity by an additional 100,000 Mcf per day; the abandonment through sale to Arkansas Louisiana Gas Co. (Arkla) of an undivided interest in the Lake Bistineau Storage Field; and the receipt of gas from Arkla for injection and withdrawal from storage and redelivery to Arkla.

Applicant states that its proposals will improve Arkla's capability to serve the growing needs of the area in which it operates.

Total estimated cost of the proposed facilities is $2,720,000. Financing will be from funds on hand.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (§ 157.10) on or before March 3, 1969.

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 without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 69-1627; Filed, Feb. 7, 1969; 8:47 a.m.]

NATIONAL TRANSPORTATION SAFETY BOARD

[Docket No. SS-R-4]

ACCIDENT AT LAUREL, MISS.

Designation of Major Railroad Accident

In the matter of the investigation of the railroad accident which occurred at Laurel, Miss., on January 25, 1969, involving Southern Railway Co.'s Train 154.

Notice is hereby given that it has been determined by the Board that the railroad accident which occurred at Laurel, Miss., on January 25, 1969, and which is presently being investigated by the Federal Railroad Administration pursuant to the provisions of the Accident Reports Act (45 U.S.C. 40), is deemed to be a major accident, as defined in § 400.43(c) of the Board's regulations (14 CFR Part 400) and that the Board will exercise its authority, under section 5(b)(1) of the Department of Transportation Act (49 U.S.C. 1564(b)(1)), to determine the cause or probable cause and report the facts, conditions, and circumstances of such accident.

Notice is also given that the Board will conduct a public hearing in the near future. Thomas DeW. Styles, Chief, Railroad/Pipeline Safety Division, is designated the Board's Investigator in Charge, with Virgil F. Davis assisting. Advice, guidance, and specific requests concerning the areas of investigation to be pursued will come from these two representatives of the Board in this case. Upon completion of the field investigation by the Federal Railroad Administration, the record of the investigation, including all statements, reports, etc., must be submitted to our Investigator in Charge or his assistant for the Board's analysis and further use in setting up the public hearing, determination of cause or probable cause, and the issuance of a final report of the facts, conditions, and circumstances of this accident by the Safety Board.

Dated this 29th day of January 1969.

For the Board.

JOSEPH J. O'CONNELL, Jr.,
Chairman.

[F.R. Doc. 69-1647; Filed, Feb. 7, 1969; 8:48 a.m.]

[Docket No. SS-R-4]

ACCIDENT AT LAUREL, MISS.

Order of Hearing

In the matter of investigation of accident involving derailment with subsequent fire and explosions of Southern Railway Train at Laurel, Miss., on January 25, 1969.

A public hearing is hereby ordered by the National Transportation Safety Board in connection with the above matter at a time and place to be determined by the Chairman of the Board of Inquiry who will be hereafter designated.

Dated this 29th day of January 1969.

For the Board.

JOSEPH J. O'CONNELL, Jr.,
Chairman.

[F.R. Doc. 69-1648; Filed, Feb. 7, 1969; 8:48 a.m.]

[Docket No. SS-R-4]

ACCIDENT AT LAUREL, MISS.

Designation of Chairman of Board of Inquiry

In the matter of investigation of accident involving derailment with subsequent fire and explosions of Southern Railway Train at Laurel, Miss., on January 25, 1969.

Pursuant to the authority conferred by the National Transportation Safety Board, Department of Transportation, Washington, D.C., Board Member John H. Reed is hereby designated Chairman, Board of Inquiry to conduct a public hearing on behalf of the National Transportation Safety Board in the above matter. The said Chairman is authorized to set the time and place of the hearing, to give notice thereof, and to exercise such other powers in connection with the conduct of such proceeding as authorized by the National Transportation Safety Board.

Dated this 29th day of January 1969.

For the Board.

JOSEPH J. O'CONNELL, Jr.,
Chairman.

[F.R. Doc. 69-1649; Filed, Feb. 7, 1969; 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 811-1543]

AMERICAN ENTERPRISE DEVELOPMENT CORP.

Certificate

FEBRUARY 3, 1969.

American Enterprise Development Corp. ("American Enterprise"), 200 Berkeley Street, Boston, Mass., a closed-end, nondiversified, management investment company, organized on September 29, 1967 and registered under the Investment Company Act of 1940 ("Act")

has filed an application for an order of this Commission certifying to the Secretary of the Treasury, pursuant to section 851(e) of the Internal Revenue Code of 1954, as amended ("Code"), that American Enterprise is principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available ("development corporations").

American Enterprise proposes to qualify as a "regulated investment company" under section 851(a) of the Code for the fiscal year ending December 31, 1968.

The certification requested is a prerequisite to qualification by American Enterprise as a regulated investment company under section 851(a) of the Code, pursuant to the provisions of section 851(e) thereof.

The following table shows the composition of the total assets of American Enterprise for the calendar quarters ending March 31, June 30 and September 30, 1968:

Assets (at value)	Mar. 31, 1968	June 30, 1968	Sept. 30, 1968
Investments representing capital furnished to corporations believed to be principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available	$6,025,636	$5,872,374	$7,881,786
Other investments	133,596	133,596	433,996
Total investments	6,159,232	6,005,970	8,315,782
Cash awaiting permanent investment or temporarily invested in corporate short term notes	4,373,042	4,245,800	4,027,812
Other assets	97,385	97,553	115,797
Total assets	10,629,659	10,349,413	12,459,391

American Enterprise is a wholly owned subsidiary of American Research and Development Corp. ("American Research"), a closed-end, nondiversified, management investment company registered under the Act.

American Enterprise has submitted in support of its application, which incorporates by reference similar applications made by American Research in 1955 and subsequent years, and a similar application made by American Enterprise last year, a detailed description of each of the companies whose securities are held in its portfolio and which it alleges to be development corporations. American Enterprise represents that at December 31, 1968, there was no material change in the character of its assets.

On the basis of an examination of the reports and information filed by American Enterprise and American Research with the Commission pursuant to the provisions of the Investment Company Act and rules and regulations promulgated thereunder, as well as the data and information set forth in American Research's and American Enterprise's applications for certificates pursuant to section 851(e) of the Code filed in previous years and in the instant application, it appears to the Commission that American Enterprise is principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available within the intent of section 851(e) of the Code.

It is therefore certified to the Secretary of the Treasury, or his delegate, pursuant to section 851(e) of the Code, that American Enterprise Development Corp., a closed-end nondiversified management investment company registered under the Investment Company Act of 1940, is principally engaged in the furnishing of capital to other corporations which are principally engaged in the development or exploitation of inventions, technological improvements, new processes or products not previously generally available.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 69-1638; Filed, Feb. 7, 1969; 8:47 a.m.]

[File Nos. 7-3030—7-3032]

CHRISTIANA OIL CORP. ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

FEBRUARY 4, 1969.

In the matter of applications of the the Philadelphia-Baltimore-Washington Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Christiana Oil Corp	7-3030
International Industries, Inc	7-3031
Sperry & Hutchison Co	7-3032

Upon receipt of a request, on or before February 19, 1969, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 69-1639; Filed, Feb. 7, 1969; 8:47 a.m.]

[70-4715]

COLUMBIA GAS SYSTEM, INC.

Notice of Proposed Issue and Sale of Notes to Banks

FEBRUARY 4, 1969.

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia"), 120 East 41st Street, New York, N.Y. 10017, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6 and 7 thereof as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Columbia proposes to issue and sell its unsecured promissory notes from time to time in an aggregate face amount not exceeding $100 million to the following banks in the respective amounts shown for a term commencing on the day Commission authorization is granted and maturing 3 years from said date.

Morgan Guaranty Trust Co. of New York	$20,000,000
Chemical Bank New York Trust Co	15,000,000
Irving Trust Co	10,000,000
First National City Bank	20,000,000
Manufacturers Hanover Trust Co	15,000,000
Bankers Trust Co	10,000,000
Mellon National Bank & Trust Co	10,000,000
Total	100,000,000

Interest on the notes will be at the prime commercial bank rate in effect from time to time at Morgan Guaranty Trust Company of New York ("Morgan Guaranty") (currently 7 percent) and will be payable on each June 30th and December 31st following issuance of the notes and at maturity or earlier payment of the loan. Any change in the prime rate at Morgan Guaranty will be effective as to loans outstanding on the first business day following such change. The notes will be subordinated to the debentures of Columbia authenticated and delivered under its indenture dated as of June 1, 1950, but will not be subordinated to the debentures of Columbia authenticated and delivered under its

indenture dated as of June 1, 1961. All amounts borrowed under each bank's commitment will represent permanent reductions in the total amount of the commitment. In consideration of the commitments, Columbia has agreed to pay the banks a commitment fee of one-quarter of 1 percent per annum on the daily unused amount of each bank's commitment commencing on the day Commission authorization is granted. Columbia may terminate all or part of the commitments upon 3 days' notice, and, in such case, no commitment fee will be payable thereafter on the terminated amounts. All borrowings, prepayments, and repayments of loans under the agreement and any partial termination of commitment amounts by Columbia will be apportioned among the banks on a proportional basis. Columbia has reserved the right to prepay from funds generated from operations or from the sale of long-term debt or common stock, upon 3 days' notice, any or all of the proposed notes, in whole or in part, without penalty.

The proposed notes are being issued to finance, in part, Columbia's subsidiary companies' requirements for construction in 1969, currently estimated at $165 million.

Fees and expenses incident to the proposed transactions are estimated at $300. The declaration states that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than February 24, 1969, request 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 declaration 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, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 69-1640; Filed, Feb. 7, 1969; 8:48 a.m.]

[File No. 1-2250]

COMSTOCK-KEYSTONE MINING CO.

Order Suspending Trading

FEBRUARY 4, 1969.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock and all other securities of Comstock-Keystone Mining Company, now known as Memory Magnetics International, being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period February 5, 1969, through February 14, 1969, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 69-1641; Filed, Feb. 7, 1969; 8:48 a.m.]

MOONEY AIRCRAFT, INC.

Order Suspending Trading

FEBRUARY 4, 1969.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Mooney Aircraft, Inc. (a Kansas corporation), being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period February 5, 1969, through February 14, 1969, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 69-1642; Filed, Feb. 7, 1969; 8:48 a.m.]

TELSTAR, INC.

Order Suspending Trading

FEBRUARY 4, 1969.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock and all other securities of Telstar, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period 12 noon e.s.t. February 4, 1969, through February 13, 1969, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 69-1643; Filed, Feb. 7, 1969; 8:48 a.m.]

UNITED AUSTRALIAN OIL, INC.

Order Suspending Trading

FEBRUARY 4, 1969.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of United Australian Oil, Inc., Dallas, Tex., and all other securities of United Australian Oil, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period February 5, 1969, through February 14, 1969, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 69-1644; Filed, Feb. 7, 1969; 8:48 a.m.]

TARIFF COMMISSION

[TEA-I-13]

CANNED SARDINES

Notice of Investigation and Hearing

Investigation instituted. Following receipt on January 28, 1969, of a petition filed by the Maine Sardine Packers Association, Inc., the U.S. Tariff Commission, on the 5th day of February 1969, instituted an investigation under section 301(b)(1) of the Trade Expansion Act of 1962 to determine whether—sardines, in airtight containers, of the kinds provided for in items 112.20-.24; 112.54-.73; and 112.79-.86 of the Tariff Schedules of the United States are, as a result in major part of concessions granted thereon under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten

to cause, serious injury to the domestic industry or industries producing like or directly competitive products.

Public hearing ordered. A public hearing in connection with this investigation will be held beginning at 10 a.m. e.s.t. on April 29, 1969, in the Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, D.C. Appearances at the hearing should be entered in accordance with § 201.13 of the Tariff Commission's rules of practice and procedure.

Inspection of petition. The petition filed in this case is available for inspection by persons concerned at the office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, D.C., and at the New York Office of the Tariff Commission located in Room 437 of the Customhouse.

Issued: February 5, 1969.

By order of the Commission.

[SEAL] DONN N. BENT, *Secretary.*

[F.R. Doc. 69-1651; Filed, Feb. 7, 1969; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

FEBRUARY 5, 1969.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 41558—*Liquefied petroleum gas from Oriva, Wyo.* Filed by Western Trunk Line Committee, agent (No. A-2576), for interested rail carriers. Rates on liquefied petroleum gas, in tank carloads, as described in the application, from Oriva, Wyo., to points in Minnesota, North Dakota, South Dakota, and Wisconsin.

Grounds for relief—Market competition, modified short-line distance formula and grouping.

Tariff—Supplement 24 to Western Trunk Line Committee, agent, tariff ICC A-4674.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 69-1657; Filed, Feb. 7, 1969; 8:49 a.m.]

[Notice 774]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

FEBRUARY 5, 1969.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 340), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 52861 (Sub-No. 15 TA), filed January 27, 1969. Applicant: HAROLD W. STEWART, INC., 2535 Center Street, Cleveland, Ohio 44113. Applicant's representative: James W. Muldoon, 88 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum coke*, from Robinson, Ill., to Pontiac, Mich., for 180 days. Supporting shipper: Union Carbide Corp., Carbide Products Division, 270 Park Avenue, New York, N.Y. 10017. Send protests to: District Supervisor G. J. Baccei, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio 44199.

No. MC 66900 (Sub-No. 34 TA), filed January 29, 1969. Applicant: HOUFF TRANSFER, INCORPORATED, Post Office Box 91, Weyers Cave, Va. 24486. Applicant's representative: Harold G. Hernly, Jr., 711 14th Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nails, wire fencing, chains, staples, barbed wire, pipe, bars, and twine*, from Norfolk and Newport News, Va., to points in Virginia, restricted to traffic having a prior movement by water, for 180 days. Supporting shippers: Fehr Bros. Manufacturers, Inc., 110 Wall Street, New York, N.Y. 10005; The J. E. Fricke Co., 40 North Front Street, Philadelphia, Pa. 19106; Frank W. Winne & Son, Inc., 44 North Front Street, Philadelphia, Pa. 19106. Send protests to: George S. Hales, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 215 Campbell Avenue SW., Roanoke, Va. 24011.

No. MC 83217 (Sub-No. 39 TA), filed January 27, 1969. Applicant: DAKOTA EXPRESS, INC., 1217 West Cherokee, ZIP 57104, Sioux Falls, S. Dak. 57101. Applicant's representative: Henry J. Schuette (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carriers Certificate*, from Madison and Sioux Falls, S. Dak.; and Estherville and Ottumwa, Iowa, to points in Kansas and Missouri, for 150 days. Supporting shipper: John Morrell & Co., Sioux Falls, S. Dak., Claude Stewart, Traffic Manager. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 96500 (Sub-No. 4 TA), filed January 27, 1969. Applicant: HARRY's EXPRESS CO., INC., 545 West 25th Street, New York, N.Y. 10001. Applicant's representative: Martin Werner, 2 West 45th Street, New York, N.Y. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise as is dealt in by an importer of furniture, giftwares, housewares, and notions*, from steamship piers in the New York, N.Y., commercial zone to Rochelle Park, N.J., for 150 days. Supporting shipper: Pier I Imports, Rochelle Park, N.J. Send protests to: Paul W. Assenza, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 105326 (Sub-No. 8 TA), filed January 24, 1969. Applicant: GREAT LAKES TRUCKING COMPANY, a corporation, 29 Washington Street, Monroe, Mich. 48161. Applicant's representative: Eames, Petrillo, Wilcox and Nelson, 900 Guardian Building, Detroit, Mich. 48226. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products and materials and supplies* used in the manufacture of paper and paper products. (1) From Monroe, Mich., to Donora, Pa., and (2) from Donora, Pa., to points in Michigan, Ohio, and Indiana, under a continuing contract with Union Camp Corp. and Cleveland Partition Corp., for 150 days. Supporting shippers: Union Camp Corp., Post Office Box 588, Monroe, Mich. 48161, Cleveland Partition Corp., 1640 West Silver Spring Drive, Milwaukee, Wis. 53209. Send protests to: Gerald J. Davis, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 David Broderick Tower, Detroit, Mich. 48226.

No. MC 105656 (Sub-No. 4 TA), filed January 24, 1969. Applicant: TOM PASQUALE, doing business as PASQUALE TRUCKING COMPANY, 905 Erie Avenue, Logansport, Ind. 46947. Applicant's representative: Tom Pasquale (address same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, from St. Paul, Minn., to Kokomo and Logansport, Ind., and return of *empty malt beverage containers* from Kokomo and Logansport, Ind. to St. Paul, Minn., for 180 days. Supporting shippers: D'Andrea Distributing Co., 113

Fifth Street, Logansport, Ind., Joe Parker Distributing Co., 1432 South Union Street, Kokomo, Ind. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, Room 204, 345 West Wayne Street, Fort Wayne, Ind. 46802.

No. MC 107496 (Sub-No. 702 TA), filed January 28, 1969. Applicant: RUAN TRANSPORT CORPORATION, Post Office Box 855 (50304), Third at Keosauqua Way, Des Moines, Iowa 50309. Applicant's representative: H. L. Fabritz (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *sewage sludge*, in bulk, from Denver, Colo., to Rothschild, Wis., for 120 days. Supporting shipper: Metropolitan Denver Sewage Disposal District No. 1, 3100 East 60th Avenue, Commerce City, Colo. 80022. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 107496 (Sub-No. 703 TA), filed January 28, 1969. Applicant: RUAN TRANSPORT CORPORATION, Post Office Box 855 (50304), Third at Keosauqua Way, Des Moines, Iowa 50309. Applicant's representative: H. L. Fabritz (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, (1) from Borger, Tex., to points in Oklahoma, New Mexico, Colorado, and Kansas, (2) from Conway, Kans., to points in Oklahoma, Missouri, Colorado, and Nebraska; (3) from Greenwood, Nebr., to points in Iowa, Missouri, South Dakota, Kansas, Colorado, and Wyoming; (4) from Whiting, Early, and Garner, Iowa, to points in Nebraska, South Dakota, North Dakota, Minnesota, Wisconsin, and Illinois, for 180 days. Supporting shipper: Cominco American, Inc., 818 West Riverside Avenue, Spokane, Wash. 99201. Send protests to: Ellis L. Annett, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 108207 (Sub-No. 254 TA), filed January 27, 1969. Applicant: FROZEN FOOD EXPRESS, 318 Cadiz Street, 75207, Post Office Box 5888, Dallas, Tex. 75222. Applicant's representative: J. B. Ham (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dental restorative, plastic resin* in liquid and paste, from South El Monte, Calif., to Sherman, Tex., for 180 days. NOTE: Applicant does not intend to tack with existing authority. Commodity requires mechanical refrigeration. Supporting shipper: The Expoxylite Corp., 1428 North Tyler Avenue, Post Office Box 3397, South El Monte, Calif. 91733. Send protests to: E. K. Willis, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 513 Thomas Building, 1314 Wood Street, Dallas, Tex. 75202.

No. MC 111740 (Sub-No. 27 TA), filed January 23, 1969. Applicant: OIL TRANSPORT COMPANY, Post Office Drawer 2679, East Highway 80, Abilene, Tex. 79604. Applicant's representative: Jerry E. Matthews (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, from the plant site of Hill Chemicals, Inc., located at or near Borger, Tex., to points in Colorado, Kansas, Oklahoma, and Texas, for 180 days. Supporting shipper: Cominco American Inc., West 818 Riverside Avenue, Spokane, Wash. 99201. Send protests to: Billy R. Reid, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9A27 Federal Building, 819 Taylor Street, Fort Worth, Tex. 76102.

No. MC 112854 (Sub-No. 25 TA), filed January 27, 1969. Applicant: HOLLEBRAND TRUCKING, INC., Ontario Center Road South, Ontario, N.Y. 14519. Applicant's representative: Raymond A. Richards, 23 West Main Street, Webster, N.Y. 14580. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, in refrigerated equipment, from Tampa, Fla., and Charleston, S.C., to Buffalo, Rochester, Syracuse, and Utica, N.Y., for 180 days. Supporting shippers: Inserra Banana Co., Frank Inserra, Utica, N.Y.; Syracuse Banana Co., Park Street, Syracuse, N.Y.; Frank DiPasquale & Sons, Clinton Street, Buffalo, N.Y. Send protests to: Morris H. Gross, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 104, 301 Erie Boulevard W., Syracuse, N.Y. 13202.

No. MC 113388 (Sub-No. 85 TA), filed January 27, 1969. Applicant: LESTER C. NEWTON TRUCKING CO., Post Office Box 265, Bridgeville, Del. 19933. Applicant's representative: William J. Augello, Jr., Bar Building, 36 West 44th Street, New York, N.Y. 10036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* from Barker, Buffalo, and Medina, N.Y., to points in Connecticut, Massachusetts, Sale, N.H., and Portland, Maine, for 180 days. Supporting shipper: Southland Frozen Foods, Inc., 1 Linden Place, Great Neck, N.Y. 11021, P. M. Persicano, Traffic and Warehousing Manager. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 206 Old Post Office Building, 129 East Main Street, Salisbury, Md. 21801.

No. MC 114897 (Sub-No. 83 TA), filed January 27, 1969. Applicant: WHITFIELD TANK LINES, INC., 300–316 North Clark Road, Post Office Drawer 9897, El Paso, Tex. 79989. Applicant's representative: J. P. Rose (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank vehicles, from the plantsite of the Hill Chemical, Inc., at or near Borger, Tex., to points in Colorado, Kansas, and Oklahoma, for 180 days. Supporting shipper: A. E. Macdonald, Manager, Distribution and Traffic, Cominco American Inc., 818 West Riverside Avenue, Spokane, Wash. 99201. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 918 Tyler Street, Amarillo, Tex. 79101.

No. MC 116254 (Sub-No. 91 TA), filed January 24, 1969. Applicant: CHEMHAULERS, INC., Post Office Drawer M, Martin Avenue, Sheffield, Ala. 35660. Applicant's representative: Mr. L. Winston Biggs (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum Sulfate*, from points in Robertson County, Tenn., to points in Alabama, Kentucky, and Indiana, for 150 days. Supporting shipper: Midland Chemical Co., Inc., Post Office Box 30, Springfield, Tenn. 37172, Attention: Mr. David L. Barning, President. Send protests to: B. R. McKenzie, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 814, 2121 Building, Birmingham, Ala. 35203.

No. MC 118159 (Sub-No. 61 TA), filed January 23, 1969. Applicant: EVERETT LOWRANCE, 4916 Jefferson Highway, New Orleans, La. 70121. Applicant's representative: David D. Brunson, Post Office Box 671, Oklahoma City, Okla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses* as described in *Descriptions of Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsite of the Sunflower Packing Co. at Wichita, Kans., to points in Louisiana, Florida, Texas, Tennessee, Kentucky, North Carolina, South Carolina, Alabama, New Jersey, New York, Pennsylvania, and Georgia, for 180 days. Supporting shipper: Sunflower Packing Co., Inc., 1410 East 21st Street, Post Office Box 8183, Munger Station, Wichita, Kans. 67208. Send protests to: W. R. Atkins, District Supervisor, Interstate Commerce Commission, Bureau of Operations, T–4009 Federal Building, 701 Loyola Avenue, New Orleans, La. 70113.

No. MC 119295 (Sub-No. 6 TA), filed January 27, 1969. Applicant: RAY E. CAGLE and FORREST L. CAGLE, doing business as CAGLE BROS. TRUCKING SERVICE, Post Office Box 14187, Maryvale Station, 59th Street and Buckeye Road, Phoenix, Ariz. 85031. Applicant's representative: P. H. Dawson, 4453 East Piccadilly Road, Phoenix, Ariz. 85018. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer*, in bulk, in pneumatic air-type vehicles, from Glendale, Ariz., to points in Imperial and Riverside Counties, Calif., for 180 days. Supporting shipper: Wilber Ellis Co., 5420 West Bethany Home Road, Post Office Box 695, Glendale, Ariz. 85301. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, 3427 Federal Building, Phoenix, Ariz. 85025.

No. MC 119680 (Sub-No. 28 TA), filed January 23, 1969. Applicant: DRUM TRANSPORT INC., Box 2056, East Peoria, Ill. 61611. Applicant's representative: B. N. Drum (same address as

above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic liquors*, in bulk, in tank vehicles, from Pekin, Ill., to points in New Jersey and New York, for 180 days. Supporting shipper: The American Distilling Co., Aldo L. Monti, General Traffic Manager. Send protests to: Raymond E. Mauk, District Supervisor, Interstate Commerce Commission, Bureau of Operations, U.S. Courthouse, Federal Office Building, Room 1086, 219 South Dearborn Street, Chicago, Ill. 60604.

No. MC 119988 (Sub-No. 21 TA), filed January 27, 1969. Applicant: GREAT WESTERN TRUCKING CO., INC., 811½ North Timberland Drive, Post Office Box 1384, Lufkin, Tex. 75901. Applicant's representative: Bennie W. Haskins (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paperboard* on cylinders, from Evadale, Tex., to Yuma, Ariz., for 150 days. NOTE: Applicant does not intend to tack authority with presently authorized routes. Supporting shipper: Arical Paper Products Co., Post Office Box 4207, Yuma, Ariz. 85364. Send protests to: District Supervisor, John C. Redus, Bureau of Operations, Interstate Commerce Commission, Post Office Box 61212, Houston, Tex. 77061.

No. MC 124221 (Sub-No. 22 TA), filed January 29, 1969. Applicant: HOWARD BAER, 821 East Dunne Street, Post Office Box 127, Morton, Ill. 61550. Applicant's representative: Robert W. Loser, 409 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ice cream, ice cream products, sherbets, ice milk, water ices, vegetable fat frozen desserts, frozen novelties, and dairy products*, from the plantsite and warehouse facilities of The Kroger Co. at Hazelwood, Mo., to Kroger warehouses and/or stores located at Little Rock, Newport, and Searcy, Ark., and Memphis, Tenn., under a continuing contract or contracts with The Kroger Co., for 180 days. Supporting shipper: The Kroger Co., 6040 North Lindbergh Boulevard, Hazelwood, Mo. 63042. Send protests to: District Supervisor Raymond E. Mauk, Interstate Commerce Commission, Bureau of Operations, U.S. Courthouse, Federal Office Building, Room 1086, 219 South Dearborn Street, Chicago, Ill. 60604.

No. MC 129046 (Sub-No. 6 TA), filed January 24, 1969. Applicant: BURKS-PELZ TRANSFER, INC., 1751 Ohio Street, Post Office Box 6014, Evansville, Ind. 47712. Applicant's representative: Lewis J. Amato, Central Building, 1033 State Street, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, dairy products and articles distributed by meat packinghouses* (as defined in Modification of Permits-Packing House Products 46 M.C.C. 23), from Evansville, Ind., to points in Kentucky on and east of U.S. Highway 231 extending from the Indiana-Kentucky State line near Owensboro, Ky., to Bowling Green, Ky., and on and east of U.S. Highway 31W extending from Bowling Green to the Kentucky-Tennessee State line, also from Evansville, Ind., to points in Indiana beginning at the Illinois-Indiana State line on and south of U.S. Highway 50 to U.S. Highway 31, to the Indiana-Kentucky State line, for 180 days. Supporting shipper: Swift & Co., St. Louis, Mo. Send protests to: James W. Habermehl, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 802 Century Building, 36 South Pennsylvania Street, Indianapolis, Ind. 46204.

No. MC 133423 (Sub-No. 1 TA), filed January 27, 1969. Applicant: S & Y, INC., Post Office Box 2, Stanton, Tenn. 38069. Applicant's representative: John Paul Jones, 189 Jefferson Avenue, Memphis, Tenn. 38103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Heaters, air conditioners, air handlers, and cooling towers* for the account of American Air Filter Co., Brownsville, Tenn., from Brownsville, Tenn., to Memphis, Tenn., on traffic having a subsequent out-of-State movement, for 180 days. Supporting shipper: American Air Filter Co., Inc., 215 Central Avenue, Louisville, Ky. 40208; Kenneth L. Gibson, TAG Traffic Supervisor. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 390 Federal Office Building, 167 North Main Street, Memphis, Tenn. 38103.

No. MC 133426 TA, filed January 27, 1969. Applicant: B & T TRUCKING & LEASING, INC., 8240 Beachwood Road, Baltimore, Md. 21222. Applicant's representative: Charles McD. Gillan, Jr., 113 Montrose Avenue, Baltimore, Md. 21228. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bins or boxes*, wooden, set up, from Baltimore and Sparrows Point, Md., to points in New Jersey, and *damaged or rejected shipments*, on return; and (2) *pallets*, wooden, set up; *reels*, shipping, wooden, or wood and steel combined, set up or knocked down and skids, wooden, set up, from Baltimore and Sparrows Point, Md., to Camden, Edison, Hightstown, Jersey City, Linden, North Bergen, Paterson, Perth Amboy, Teterboro, Trenton, and Washington, N.J.; Albany, Brooklyn, Buffalo, Fairport, Maspeth, and Rochester, N.Y.; Allentown, Chester, Harrisburg, Johnstown, Letterkenny, Monessen, Philadelphia, Pittsburgh, Primos, Sunbury, Williamsport, and York, Pa., and Norfolk, Va., for 180 days. Supporting shipper: A. P. Caltrider, President, The Nelson Co., The Quadrangle, Village of Cross Keys, Baltimore, Md. 21210. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1125 Federal Building, Baltimore, Md. 21201.

No. MC 133427 TA, filed January 27, 1969. Applicant: HAUPERT REFRIGERATED LINES, INC., Woodbury Building, Marshalltown, Iowa 50158. Applicant's representative: Wendell E. Haupert (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Carrollton, Marshall, Macon, Moberly, and Milan, Mo., to points in Indiana, Michigan, and Ohio, for 180 days. Supporting shipper: Banquet Canning Co., Division of F. M. Stamper Co., 515 Olive Street, St. Louis, Mo. 63101. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary*.

[F.R. Doc. 69-1658; Filed, Feb. 7, 1969; 8:49 a.m.]

[Notice 290]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 5, 1969.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-70951. By order of January 29, 1969, the Motor Carrier Board approved the transfer to Bill Wockner Trucking, Inc., Seattle, Wash., of certificate in No. MC-125994, issued September 17, 1964, to Leroy J. Johnson, Marysville, Wash., authorizing the transportation of: Cottonseed meal, alfalfa meal, and copra meal, from points in California to points in Washington. James T. Johnson, 1610 IBM Building, Seattle, Wash. 98101, attorney for applicants.

No. MC-FC-71036. By order of January 29, 1969, the Motor Carrier Board approved the transfer to M. S. & M. Trucking, Inc., Mission, Kans., of the operating rights in certificates Nos. MC-124777 and MC-124777 (Sub-No. 1) issued July 25, 1963, and November 3, 1965, respectively, to Wilson E. Cantwell, Independence, Mo., authorizing the transportation of: Lime and limestone products, between specified points in Missouri, and Kansas. D. S. Hults, Box 225, Lawrence, Kans. 66044, attorney for applicants.

No. MC-FC-71068. By order of February 4, 1969, the Motor Carrier Board approved the Transfer to Bilyeu Transport, Inc., Springfield, Mo., of the entire operating rights set forth in certificate

Nos. MC-123393 (Sub-No. 9), MC-123393 (Sub-No. 13), MC-123393 (Sub-No. 14), MC-123393 (Sub-No. 15), MC-123393 (Sub-No. 30), MC-123393 (Sub-No. 51), MC-123393 (Sub-No. 54), MC-123393 (Sub-No. 66), MC-123393 (Sub-No. 76), MC-123393 (Sub-No. 100), MC-123393 (Sub-No. 148), MC-123393 (Sub-No. 164), and MC-123393 (Sub-No. 171), issued by the Commission January 15, 1962, December 24, 1963, December 24, 1963, December 24, 1963, August 12, 1965, January 16 1967, November 12, 1965, July 11, 1967, March 30, 1967, January 24, 1967, July 27, 1967, May 3, 1967, and March 27, 1968, in the name of the transferor herein, and the transfer of a portion of the operating rights set forth in Nos. MC-123393 (Sub-No. 16), MC-123393 (Sub-No. 49), MC-123393 (Sub-No. 136), MC-123393 (Sub-No. 147), MC-123393 (Sub-No. 174), and MC-123393 (Sub-No. 188), issued December 24, 1963, February 8, 1966, January 2, 1968, January 25, 1967, April 16, 1968, and May 17, 1968, in the name of the transferor herein, authorizing the transportation of various specified commodities from, to, or between specified points in the United States except those in Idaho, Alaska and Hawaii, Montana, Nevada, New Mexico, Oregon, Utah, and Washington. David D. Brunson, Post Office Box 671, Oklahoma City, Okla. 73102, attorney for applicants.

No. MC-FC-71081. By order of January 29, 1969, the Motor Carrier Board approved the transfer to Red & White Market & Transfer, Inc., Hastings, Nebr., of permit Nos. MC-32367 and MC-32367 (Sub-No. 11), both issued April 9, 1961, to Ted Ochsner and H. V. Spielman, doing business as Red & White Transfer, Hastings, Nebr., authorizing the transportation of: Agricultural machinery, equipment and land rollers, farm implements, and parts thereof, farm machinery and parts, farm tools, wagons and parts, farm truck bodies, lumber, sheet metal and hardware, aluminum sheet, nuts, bolts, rivets, sheet metal (formed or unformed), rejected shipments of farm truck bodies, farm truck body parts, machinery, parts, supplies, and material used in the manufacture of farm machinery, from, to, or between points in Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming. Duane W. Acklie and Richard A. Peterson, 521 South 14th Street, Post Office Box 806, Lincoln, Nebr. 68501, attorneys for applicants.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 69-1659; Filed, Feb. 7, 1969; 8:49 a.m.]

[Notice 290A]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 5, 1969.

Application filed for temporary authority under section 210(a)(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-71127. By application filed January 31, 1969, Pratt's Dray & Storage, Inc., 220 West Illinois Street, Spearfish, S. Dak., seeks temporary authority to lease the operating rights of Robert H. Fulker, doing business as Fulker Truck Lines, Aberdeen, S. Dak., under section 210a(b). The transfer to Pratt's Dray & Storage, Inc., of the operating rights of Robert H. Fulker, doing business as Fulker Truck Lines, is presently pending.

By the Commission.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 69-1660; Filed, Feb. 7, 1969; 8:49 a.m.]

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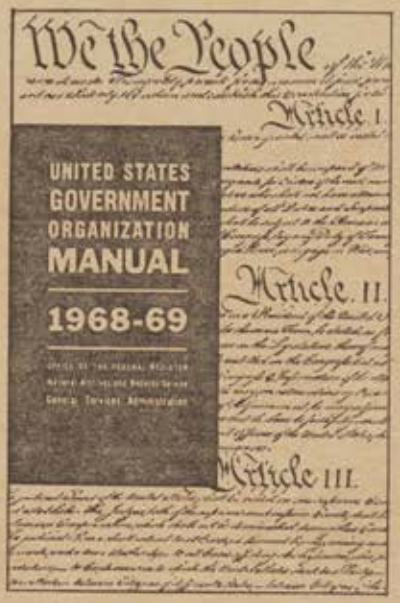

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