

PART I

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GUIDE TO RECORD RETENTION REQUIREMENTS

[Updated to January 1, 1963]

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Rules and Regulations

Title 7—AGRICULTURE

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

PART 42—STANDARDS FOR CONDITION OF FOOD CONTAINERS

A notice of proposed rule making covering issuance of United States Standards for Condition of Food Containers was published in the FEDERAL REGISTER of March 2, 1963 (28 F.R. 2034) and afforded interested parties 90 days to submit written data, views, and arguments in connection therewith.

After consideration of all relevant matters and suggestions and based upon currently available technical information, the following tentative United States Standards of Condition for Food Containers are hereby promulgated under the authority contained in the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087, as amended; 7 U.S.C. 1621 et seq.).

Statement of consideration leading to the tentative standard. The condition of containers in which food products are packed greatly affects the marketability and consumer acceptance of the product. There is a need for a uniform yardstick to measure the acceptability of a lot whenever condition of the exterior of filled food containers are requested as a part of a sales transaction.

These tentative standards satisfy this need and provide a convenient reference that may be used voluntarily by government agencies and other applicants for USDA inspection and grading services.

The tentative U.S. Standards provide:

(1) Uniform acceptance and rejection criteria for containers;

(2) Known sampling risks to the vendor and buyer;

(3) Uniform inspection and acceptance procedure within the Agricultural Marketing Service;

(4) Uniform guidelines to interested parties;

(5) Various acceptable quality levels that may be adopted by Government procurement agencies and other interested persons.

The tentative standards, as hereinafter set forth, recognize comments, views, and suggestions submitted in response to the March 2 proposal and contain the following significant changes from the notice of proposed rule making:

(1) Inspection would be limited to visual examination of the exterior of filled food containers. Thus, internal defects are not covered by the sampling plans and acceptance criteria. This also precludes its application to determine compliance with definitive test requirements of component parts, such as amount of tin plate, bursting strength of fiber, etc.

(2) Refinements have been made in the definition of terms and words.

(3) Three AQL's (0.065, 0.10, and 10.0) have been added to those contained in the original proposal.

(4) The schedule of defects has been augmented to obtain more comprehensive coverage of the many types of food containers.

(5) Editorial changes have been made to clarify the standards and promote ease of reference.

These standards are issued in tentative form to afford interested parties ample time to utilize and study them and offer their further comments.

The tentative standards are as follows:

Subpart A—Definitions

- Sec.
42.101 Meaning of words.
42.102 Definitions, general.

Subpart B—Condition Inspection Procedures

- 42.103 Purpose and scope.
42.104 Sampling plans and defects.
42.105 Basis for selection of sample.
42.106 Classifying and recording defects.
42.107 Lot acceptance criteria.
42.108 Tables I and I-A—Sampling plans for condition of container inspection.
42.109 Table II—Defects of containers.

Subpart C—Miscellaneous

- 42.110 Operating Characteristic (OC) curves.

AUTHORITY: §§ 42.101 to 42.110 issued under sec. 203, 205, 60 Stat. 1087, as amended, 1090, as amended; 7 U.S.C. 1622, 1624.

Subpart A—Definitions

§ 42.101 Meaning of words.

Words used in this part in the singular form shall be considered to import the plural, or vice versa, as the case may demand.

§ 42.102 Definitions, general.

For the purpose of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Acceptable Quality Level (AQL). The AQL is expressed in terms of percent defective or defects per 100 units. Lots having a quality level equal to a specified AQL will be accepted approximately 95 percent of the time when using the sampling plans prescribed for that AQL. (See operating characteristic (OC) curves in Subpart C, § 42.110.)

Acceptance Number (Ac). The number in a sampling plan that indicates the maximum number of defects permitted in a sample in order to consider a lot as meeting a specific requirement.

Administrator. The Administrator of the Agricultural Marketing Service of the Department or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

Condition. The degree of acceptability of the container with respect to freedom from defects which affect the merchantability, including appearance as well as usability of the container for its intended purpose.

Defect classifications. The terms used to denote the severity of a defect. The terms are as follows:

(1) **Critical defect.**—A critical defect is a defect that seriously affects, or is likely to seriously affect, the usability of the container for its intended purpose. (For a special provision relating to critical defects see § 42.107(a)(2).)

(2) **Major defect.**—A major defect is a defect, other than critical, that materially affects, or is likely to materially affect, the usability of the container for its intended purpose.

(3) **Minor defect.**—A minor defect is a defect that materially affects the appearance of the container, but is not likely to affect the usability of the container for its intended purpose.

Department. Means the United States Department of Agriculture.

Double sampling. A sampling inspection scheme which involves use of two independently drawn but related samples, a first sample and a second sample which is added to the first to form a total sample size. A double sampling plan consists of first and total sample sizes with associated acceptance and rejection criteria. The first sample must be inspected first and, if possible, a decision as to acceptance or rejection of the lot made before an additional sample is inspected.

Lot. An identifiable group of containers whose units are of the same size, type and style, containing a product manufactured, under essentially the same conditions.

Operating characteristic curve (OC curve). A curve that gives the probability of acceptance as a function of a specific lot quality level.

Primary container. The immediate component in which the product is packed and which serves to protect, preserve and maintain the quality and market shelf life of the product. It may be metal, glass, fibre, wood, textile, plastic, paper or any other suitable type of material and may be supplemented by liners, overwraps, or other protective materials.

Random sampling. A process of selecting a sample from a lot whereby each unit in the lot has an equal chance of being chosen. Ordinary haphazard or seemingly purposeless choice is generally insufficient to guarantee randomness when carried out by human beings. Devices such as tables of random sampling numbers are used to remove subjective biases inherent in personal choice.

Rejection number (Re). The number in a sampling plan that indicates the minimum number of defective items in a sample that will cause a lot to fail a specific requirement.

Sample. Any number of sample units which are to be used for inspection.

Sample size (n). The number of sample units which are to be included in the sample.

Sample unit. The individual container including any component parts.

Sampling. The act of drawing or selecting containers from a given lot.

Sampling plan. Any plan stating the sample size or sizes, acceptance number or numbers, and rejection number or numbers. The rejection number is not always stated in a sampling plan where it is obvious once the acceptance number is given.

Screening inspection. The complete inspection of a group of containers, and the rejection of all items or portions found defective. It is also known as total inspection or 100 percent inspection.

Shipping case. The container in which the product or primary container is placed to protect, preserve, and maintain the quality of the product in transit or storage.

Single sampling. A sampling inspection scheme where the decision to accept or reject an inspection lot with respect to a specified requirement is made after the inspection of a single sample. A single sampling plan consists of a single sample size with associated acceptance and rejection criteria.

Total defects. The sum of critical, major and minor defects.

Subpart B—Condition Inspection Procedures

§ 42.103 Purpose and scope.

This subpart outlines the procedure to be used to establish the condition of containers in lots of packaged foods. The subpart may be used to determine the acceptability of a lot based on specified acceptance levels included in the plan outlined in § 42.105 or any alternative plan which is approved by the Administrator. The subpart will be applied when a Government agency or private user of the service specifically requests that filled containers or shipping cases be examined for condition.

§ 42.104 Sampling plans and defects.

(a) **Tables I and I-A—Sampling Plans.** Tables I and I-A specify the minimum number of containers to examine for condition in relation to lot size ranges. Any other sampling plan in Tables I or I-A with a larger first sample size than that indicated by the lot size range may be used at the discretion of the inspector or when specified. A combination of single and double sampling plans has been used to minimize the required first sample size for each range of lot sizes. Tables I and I-A also provide acceptance (Ac) and rejection (Re) numbers for lot acceptance (or rejection) based on the number and type of defects present in the sample.

(b) **Table II—Defects.** The table enumerates and classifies defects according to the degree to which the individual defect affects the merchantability, including appearance as well as usability, of the container for its intended purpose.

§ 42.105 Basis for selection of sample.

(a) **Identification of lot:** Selection of proper sample requires sufficient information to identify the lot; such information includes, but is not limited to the following:

- (1) Lot size;
- (2) Type and size of container;
- (3) List of code marks or other identification marks and the number of containers represented by each mark; and
- (4) Original or reoffered lot.

(b) **Acceptable Quality Levels (AQL's):** Unless otherwise specified the AQL's for the respective classes of defects will be as indicated in § 42.107(a) (1).

(c) **Preliminary scanning of lot to determine if any segments or portions are abnormal with respect to wet cases, blown cans, top layer rust, leaking bags, etc.:** If such segments or portions noted are of any consequence, the lot may be rejected for condition of containers without sampling.

(d) **Determination of the number of containers to check for condition:**

(1) Refer to Tables I and I-A (sampling plans) and find where the lot size (number of individual containers) fits into the column headed "Lot Size Ranges".

(2) Select the appropriate sample size for the corresponding lot size range as indicated in the next column headed "Sample Size". These sample sizes are minimum for the corresponding lot size ranges. A larger sample may be used but it must be one of the listed plans in the table. The sample size cannot be an interpolation of one of the plans.

(3) Any lots rejected for unatisfactory condition of container may be subsequently sampled after being reconditioned or reworked. Such lots or resulting portion of a lot may be sampled as a reoffered lot providing the reoffered portion is separately identifiable. When the lot to be inspected is a portion, or the entire amount, of a previously rejected lot, the sampling plan shall be at least two plans higher than the minimum plan indicated for the reoffered lot size. Unless otherwise approved by the Administrator, it is not permissible to reinspect a previously rejected lot until it has been reconditioned or reworked.

(e) **Select samples from the lot presented in accordance with either of the following two procedures as may be applicable.** A lot offered for inspection will be accepted or rejected in its entirety regardless of the method used to select the sample.

(1) **Proportional random sampling.** When the number of codes or other identifying marks within the lot and the approximate number of cases or containers per code are known, select sample units at random within each mark and in a number proportionate to the number of containers represented by such mark.

(2) **Simple random sampling.** When there are no code or other identifying marks, or when the number of codes or identifying marks within the lot and/or approximate number of cases or containers per mark are not known, select sample units at random from the entire lot.

(f) If the lot is cased, predetermine the number of containers to draw from each case as well as the position within each case. Do not restrict the sampling to the top or bottom layers or to the corners. The best sample is one selected from all the various positions in the shipping case. It is desirable but not mandatory to limit the number of sample units to a single container from any one case. Multiple sample units may be taken from a single case but not in excess of the following plan:

(1) When containers are packed twelve or less to a case, draw a maximum of six sample units from any one case; and

(2) When containers are packed more than twelve to a case, draw a maximum of twelve sample units from any one case.

§ 42.106 Classifying and recording defects.

(a) **Examine each sample unit for the applicable type of defects listed in Table II, scoring each unrelated defect separately and each related defect according to whichever type is the most serious.**

(1) The lot acceptance portion of this procedure is based on "the number of defects per 100 containers", rather than "percent defective containers". It is necessary to determine if the defects on any one container are "related" defects or "unrelated" defects. A container having more than one class of unrelated defects is scored for each such type of defect. A container with related defects is scored once for the most serious of the related defects, and is also scored for each unrelated defect.

(2) **Related defects** are defects on a single container that are related to a single cause. If the initial incident causing one of the defects had not occurred, none of the other related defects on the container would be present. As an example of related defects, a can may be a leaker and also seriously rusted because of the packing medium rusting the tin plate. In this case, the container is scored only once for these two defects since the rust condition can be attributed to the leak. Score the container according to whichever condition is the most serious. In this example, score as a "leaker" and not as "seriously rusted".

(3) **Unrelated defects** are defects on a single container that result from separate causes. If the incident that caused one of the defects had not occurred, the other unrelated defects on the container would still be present. As an example of unrelated defects, a can may be seriously rusted, may have a bad dent along the seam, and the label may also be detached from the can because of improper gluing. In this case it is unlikely that any of the three defects exist because of a common cause. Therefore, they are considered unrelated defects and should be scored as three defects.

(b) **Record on a worksheet the number, type, and class (minor, major, or critical) of defects on each sample unit.**

(c) **Add the number of defects in each class. Then add the number of minor, major, and critical defects to obtain the total defects.**

§ 42.107 Lot acceptance criteria.

(a) The acceptability of the lot is determined by relating the number and class of defects enumerated on the worksheet to the acceptance and rejection numbers shown in Tables I or I-A for the respective sample size and Acceptable Quality Level (AQL).

(1) Unless otherwise specified, use the following AQL's for the respective class of defects:

Defect class:	AQL
Critical	0.15
Major	1.0
Total	6.5

(2) Every container in a lot may be inspected when there is evidence that defective containers are so prevalent or serious as to present a hazard by their use. Any lot may be rejected if a sample

drawn therefrom contains critical defects of such nature that they indicate that the product would or could be unsafe for use.

(b) Refer to the appropriate sample size and AQL and compare the number of defects found in the sample with the acceptance (Ac) and rejection (Re) numbers in the sampling plan.

(1) Accept the lot after examining the first sample when all of the following conditions are met:

(i) The number of critical defects does not exceed the applicable acceptance number (Ac) for critical defects, and

(ii) The number of major defects does not exceed the applicable acceptance number (Ac) for major defects, and

(iii) The total number of critical, major and minor defects does not exceed the applicable acceptance number (Ac) for total defects.

(2) Reject the lot after examining the first sample when any one or more of the following conditions occur:

(i) The number of critical defects equals or exceeds the applicable rejection number (Re) for critical defects, or

(ii) The number of major defects equals or exceeds the applicable rejection number (Re) for major defects, or

(iii) The total number of critical, major and minor defects equals or exceeds the applicable rejection number (Re) for total defects.

(3) If a double sampling plan is being used, select and examine the prescribed second sample when the lot can neither be accepted nor rejected on the first sample. Accept the lot if the accumulated defects of the first and second samples meet conditions of subparagraph (1) of this paragraph, otherwise reject the lot.

§ 42.108 Tables I and I-A—Sampling plans for condition of container inspection.

TABLE I—SAMPLING PLANS FOR CONDITION OF CONTAINER INSPECTION

Code	Lot size ranges— No. of containers in lot	Sample size	AQL		Sample size	AQL		Sample size	Acceptable quality levels																	
			0.065			Ac	Re		0.10		Ac	Re	0.15		1.0		1.5		2.5		4.0		6.5		10.0	
			Ac	Re					Ac	Re			Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re	Ac	Re
CA	300 or less.....	1st..... 2d.....	18 18	* *	-----	* *	-----	-----	* *	* *	* *	0 0	2 2	0 0	3 3	1 1	3 3	1 1	4 4	2 2	5 5	-----	-----			
CB	301-800.....	Total... 1st..... 2d.....	36 36 60	* * *	-----	* * *	-----	-----	* * *	* * 0	* 3	1 0	2 4	2 0	3 4	4 0	5 5	6 2	7 7	3 3	9 9	-----	-----			
		Total... 1st..... 2d.....	96 48 96	* * *	-----	* * *	-----	-----	* * *	2 0	3 3	3 0	4 4	4 0	5 5	7 7	8 8	10 10	11 11	15 15	16 16	-----	-----			
CC	801-2400.....	1st..... 2d.....	48 48	* *	-----	* *	-----	-----	* *	* 0	* 3	0 0	4 4	0 0	5 5	1 1	7 7	2 2	8 8	4 4	10 10	-----	-----			
CD	2401-6000.....	Total... 1st..... 2d.....	144 315 0	* 0 1	-----	* 1st..... 200	* 0 1	-----	* 1st..... 84 2d..... 48	* * *	3 1	4 4	4 1	5 5	7 2	8 7	10 4	11 9	15 6	16 11	21 9	22 15	-----	-----		
		Total... 1st..... 2d.....	132 126 0	* 1 1	-----	* 1st..... 200	* 0 1	-----	* 1st..... 126 2d..... 162	* 0 2	3 2	4 6	4 3	5 7	6 4	7 10	9 8	10 14	13 12	14 20	18 18	19 27	-----	-----		
CE	6001-12000.....	1st..... 2d.....	315 408 360	0 0 2	1st..... 270 216	0 0 2	1st..... 174 2d..... 162	0 0 2	2 6 3	7 4 10	8 8 14	12 12 20	18 18 27	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----		
CF	12001-36000.....	Total... 1st..... 2d.....	768 408 360	1 0 2	Total... 486 360 576	1 0 3	Total... 336 252 288	1 0 3	2 2 7	6 7 3	8 9 5	14 15 12	20 21 10	21 30 18	21 30 17	26 31 26	26 37	-----	-----	-----	-----	-----	-----			
		Total... 1st..... 2d.....	936 360 576	2 0 3	Total... 540 360 156	2 0 3	Total... 516 360 156	2 0 3	3 5 9	10 9 7	11 11 10	13 15 15	14 17 23	15 17 27	16 23 35	17 27 41	18 35 41	19 49	-----	-----	-----	-----				
CG	36001-72000.....	Total... 1st..... 2d.....	768 408 360	1 0 2	Total... 936 360 576	2 0 3	Total... 540 360 156	2 0 3	3 5 9	10 9 7	11 11 10	13 15 15	14 17 23	15 17 27	16 23 35	17 27 41	18 35 41	19 49	-----	-----	-----	-----				
		Total... 1st..... 2d.....	936 360 576	2 0 3	Total... 540 360 156	2 0 3	Total... 516 360 156	2 0 3	3 5 9	10 9 7	11 11 10	13 15 15	14 17 23	15 17 27	16 23 35	17 27 41	18 35 41	19 49	-----	-----	-----	-----				
CH	72001-120000.....	1st..... 2d.....	408 360	0 2	1st..... 360 576	0 3	1st..... 360 156	0 3	5 9	7 11	10 15	15 17	23 27	35 41	49	-----	-----	-----	-----	-----	-----	-----	-----			
CI	120001-210000.....	Total... 1st..... 2d.....	768 576 912	1 0 3	Total... 936 456 408	2 0 3	Total... 540 360 156	2 0 3	3 4 5	10 8 13	11 12 19	13 12 21	14 19 28	15 21 32	16 28 41	17 32 41	18 41 57	19 58	-----	-----	-----	-----				
		Total... 1st..... 2d.....	1488 576 912	2 0 3	Total... 864 576 240	2 0 3	Total... 516 360 156	2 0 3	3 4 8	10 9 13	11 17	12 25	13 26	14 34	15 42	16 49	17 70	18 71	-----	-----	-----	-----				
CJ	210001-300000.....	Total... 1st..... 2d.....	1488 576 912	2 0 3	Total... 864 576 240	2 0 3	Total... 516 360 156	2 0 3	3 4 8	10 9 13	11 17	12 25	13 26	14 34	15 42	16 49	17 70	18 71	-----	-----	-----	-----				
		Total... 1st..... 2d.....	1488 1250 or 1250 or 2000	2 2 3 3 4	Total... 816 800	2 2 3 4 5	Total... 516 360 156	2 0 3	3 4 8	10 9 13	11 17	12 25	13 26	14 34	15 42	16 49	17 70	18 71	-----	-----	-----	-----				
CK	Over 300000.....	1st..... or 1st..... or 1st.....	1250 1250 2000	2 2 3 3 4	1st..... 800	2 2 3 4 5	1st..... 360 156	0 3	3 4 8	10 9 13	11 17	12 25	13 26	14 34	15 42	16 49	17 70	18 71	-----	-----	-----	-----				

Ac=Acceptance number. Re=Rejection number.
*Reject on one or more defects.

**Use single sampling plan of n=800.
***Use single sampling plan of n=1250.

RULES AND REGULATIONS

TABLE I-A—SAMPLING PLANS OF SELECTED AQL'S FOR CONDITION OF CONTAINER INSPECTION

Code	Lot size ranges—Number of containers in lot	Sample size	Acceptable quality levels					
			0.15		1.0		6.5	
			Ac	Re	Ac	Re	Ac	Re
CA	300 or less	1st	18	*	*	*	1	4
		2d	18	*	*	*	1	4
		Total	36	*	*	*	5	6
CB	301-800	1st	36	*	*	0	3	7
		2d	60	*	*	0	3	7
		Total	96	*	*	2	3	11
CC	801-2400	1st	48	*	*	0	3	8
		2d	96	*	*	0	3	8
		Total	144	*	*	3	4	15
CD	2401-6000	1st	84	*	*	1	4	11
		2d	48	*	*	1	4	11
		Total	132	*	*	3	4	15
CE	6001-12000	1st	126	0	1	3	4	13
		2d	174	0	2	2	6	12
		Total	336	1	2	6	7	30
CG	36001-72000	1st	252	0	3	2	7	17
		2d	288	0	3	2	7	17
		Total	540	2	3	10	11	45
CH	72001-120000	1st	360	0	3	5	9	27
		2d	156	0	3	5	9	27
		Total	516	2	3	9	10	43
CI	120001-210000	1st	456	0	4	5	10	32
		2d	408	0	4	5	10	32
		Total	864	3	4	14	15	69
CJ	210001-300000	1st	576	1	4	8	12	42
		2d	240	1	4	8	12	42
		Total	816	3	4	13	14	66
CK	Over 300000	1st	800	3	4	13	14	64
		or	1250	4	5	19	20	**
		1st	1250	4	5	19	20	**
		or	2000	6	7	***	***	**

Ac=Acceptance number. Re=Rejection number.

*Reject on one or more defects.

**Use single sampling plan of n=800.

***Use single sampling plan of n=1250.

§ 42.109 Table II—Defects of containers.¹

Examination	Defect No.	Type of defect	Minor	Major	Critical
DEFECTS OF ALL TYPES OF CONTAINERS					
General	101	Type or size of container or component parts not as specified	None permitted		
	102	Any component part missing or malfunctioning	X		
	103	Closure incomplete, not located correctly or not sealed, crimped or fitted properly	X		
Label, marking or code	104	Dirty, smeared with product, or stained	X		
	201	Missing (when required)	X		
	202	Loose or improperly applied	X		
	203	Torn or mutilated	X		
	204	Text illegible or incomplete	X		
	205	Incorrect	X		
	206	In wrong location	X		

See footnotes at end of table.

ADDITIONAL DEFECTS OF METAL CONTAINERS²

Examination	Defect No.	Type of defect	Minor	Major	Critical
Finish.....	301	Missing or incomplete.....		X	
	302	Blistering, flaking, sagging, or wrinkled.....	X		
	303	Deep scratch or scoring.....		X	
	304	Fine cracks.....	X		
	305	Rust: ³			
Workmanship.....		a. Surface rust (no pitting).....	X		
		b. Pitted rust.....		X	
	401	Dents:			
		a. Affecting appearance but not usability.....	X		
		b. Materially affecting usability.....		X	
	402	Buckles on end extending into seam.....		X	
	403	Collapsed.....		X	
	404	Severe panel.....	X		
	405	Solder missing.....		X	
	406	Springer or flipper.....		X	
(Frozen products only).....	407	Cable cut exposing seam.....		X	
	408	False seam.....		X	
	409	Swell, leaker or blown.....			X
	410	Bulging ends ($\frac{3}{16}$ " to $\frac{1}{4}$ " beyond lip).....	X		
	411	Bulging ends (more than $\frac{1}{4}$ " beyond lip).....		X	

ADDITIONAL DEFECTS OF GLASS CONTAINERS²

Workmanship.....	501	Chipped.....	X		
	502	Stone (unmelted material) in glass.....	X		
	503	Bead (bubble in glass):			
		a. $\frac{1}{4}$ " or less in diameter.....	X		
		b. Exceeding $\frac{1}{8}$ " in diameter.....		X	
	504	Checked.....		X	
	505	Thin spot.....		X	
	506	Broken or leaking.....			X
	507	Cap (nonheat processed):			
		a. Cross threaded.....	X		
		b. Loose but not leaking.....	X		
		c. Rust.....	X		
	508	Cap (heat process):			
		a. Cross threaded or loose.....			X
		b. Surface rust.....	X		
		c. Pitted rust.....		X	
	509	Sealing tape or cello band (when required):			
		a. Crooked.....	X		
		b. Not covering juncture of cap and glass.....	X		
		c. Ends overlap by less than $\frac{1}{2}$ ".....	X		
		d. Missing or loose.....		X	
		e. Deteriorating.....		X	

ADDITIONAL DEFECTS OF RIGID AND SEMI-RIGID CONTAINERS—EXCLUDING GLASS AND METAL² (FIBER, CORRUGATED FIBER, CHIPBOARD, WOOD, ETC.)

Workmanship.....	601	Wet or damp (excluding ice-packs).....		X	
	602	Moldy.....			X
	603	Crushed or torn:			
		a. Affecting appearance but not usability.....	X		
		b. Materially affecting usability.....		X	
	604	Separation of lamination:			
		a. Affecting appearance but not usability.....	X		
		b. Materially affecting usability.....		X	
	605	Overwrap loose.....	X		
	606	Overwrap not sealed.....	X		
	607	Overwrap missing (when required).....		X	
	608	Sifting or leaking.....		X	
	609	Staples or nails protruding.....		X	
	610	Sealing tape or strapping improperly applied.....	X		
	611	Sealing tape or strapping missing (when required).....		X	

ADDITIONAL DEFECTS OF FLEXIBLE CONTAINERS² (PLASTIC, CELLO, PAPER, TEXTILE, ETC.)

Workmanship.....	701	Torn.....		X	
	702	Sifting or leaking.....		X	
	703	Moldy.....			X
	704	Unmelted gels in plastic.....	X		
	705	Individual packages sticking together.....		X	
	706	Not fully covering product.....		X	
	707	Wet or damp (excluding ice-packs):			
		a. Affecting appearance but not usability.....	X		
		b. Materially affecting usability.....		X	
	708	Sealing tape or strapping improperly applied.....	X		
	709	Sealing tape or strapping missing (when required).....		X	
	710	Tape over bottom and top closure (when required):			
		a. Not covering stitching.....		X	
		b. Torn (exposing stitching).....		X	
		c. Wrinkled (exposing stitching).....		X	
		d. Not adhering to bag (exposing stitching).....		X	
		e. Not adhering to bag (stitching covered).....	X		
		f. Improper placement.....	X		

¹ Defects not specifically mentioned will be classified according to their effect upon the merchantability including appearance as well as usability of the container for its intended purpose. (See definitions of minor, major, or critical defects.)

² The 100 and 200 series of defects also apply to this type of container.

³ Surface rust that can be removed with a soft cloth is not scored as a defect.

Subpart C—Miscellaneous

§ 42.110 Operating Characteristic (OC) curves.

(a) Table III in this section contains the Operating Characteristic (OC) curve for each of the sampling plans given in Table I. The OC curves and the corresponding sampling plans are listed by AQL.

(b) The curves show the ability of the various sampling plans to distinguish between good and bad lots. This can be illustrated by examining OC curve 4 for an AQL of 0.15 defects per hundred units. If the quality of the lots submitted for inspection is considerably worse than the AQL of 0.15 defects per hundred units, a small percentage of the lots will be accepted. For example, OC curve 4 shows that when the quality of lots submitted for inspection is 0.6 defects per hundred units, only 30 percent of the lots are expected to be accepted. Conversely, when the quality of the lots submitted for inspection are better than the AQL of 0.15 defects per hundred units, a large percentage of the lots are expected to be accepted. For example, OC curve 4 shows that when the quality of lots submitted for inspection is 0.10 defects per hundred units, about 99 percent of the lots are expected to be accepted.

(c) The sampling plans that correspond to OC curve 4 can be found in Table III for an AQL of 0.15 defects per hundred units. An examination of this table reveals that there are one single and two double sampling plans that have OC curves comparable to OC curve 4. The first plan listed is a single plan requiring the inspection of 800 individual containers. Under this plan, the lot is accepted as meeting the requirements for an AQL of 0.15 if there are 3 or less defects in the sample or rejected if there are 4 or more defects in the sample.

(d) If more than one AQL has been specified, different acceptance and rejection criteria are to be used for each AQL. The criteria for each AQL must be obtained from Table I for the given lot size.

(e) The next plan that is listed in Table III in the column headed 4 for an AQL of 0.15 is a double sampling plan that requires the initial inspection of 456 individual containers. The lot will be accepted as meeting the requirements of an AQL of 0.15 if there are no defects in the sample, and rejected if there are 4 or more defects in the sample. In the event that the number of defects is between the acceptance (0) and rejection (4) numbers, additional containers must be inspected. In this case, the table indicates that a total of 864 containers must be inspected before a decision can be made to either accept or reject the lot. This will require the inspection of 408 more containers (864—456=408).

If there are 3 or less defects in the total sample, the lot will be accepted. If there are 4 or more defects in the total sample, the lot will be rejected. The other double sampling plans operate in a similar manner with the only differences being the sample sizes and acceptance and rejection numbers.

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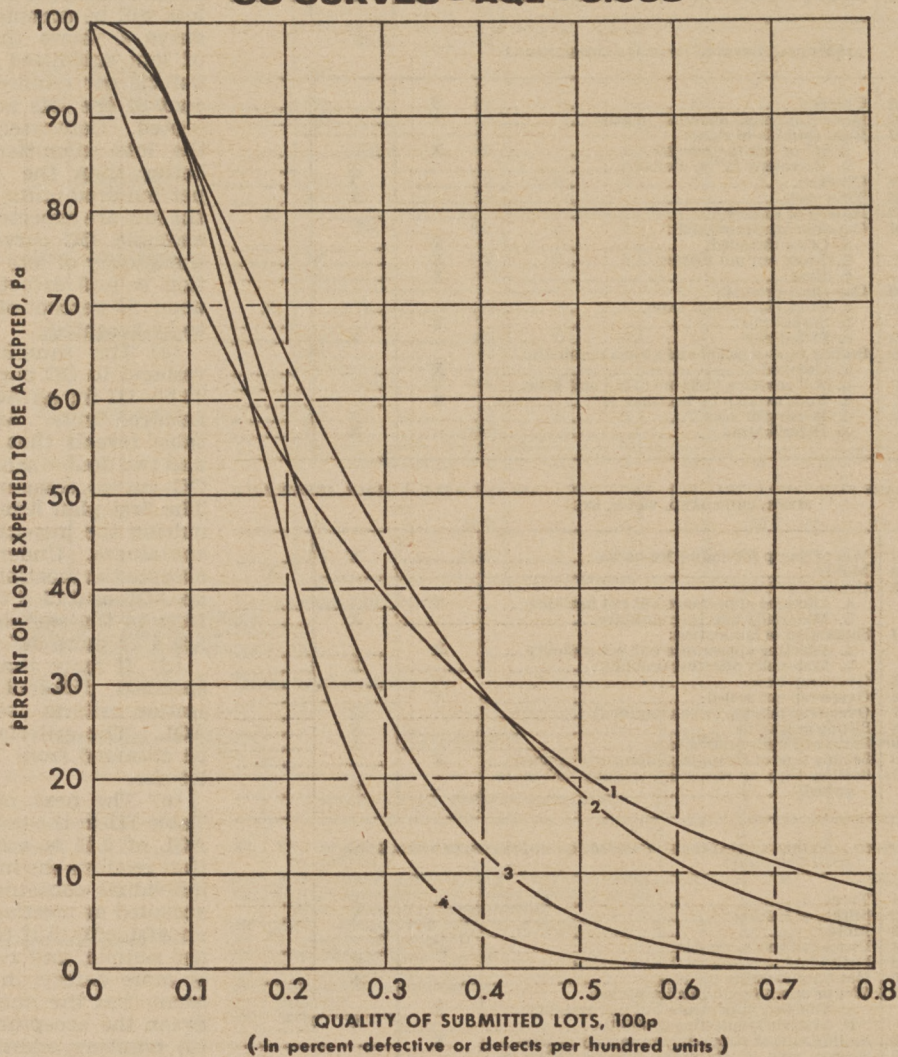
TABLE III—SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL=0.065
PERCENT DEFECTIVE (OR AQL=0.065 DEFECTS PER HUNDRED UNITS)

[Sampling plans—AQL=0.065]

Comparable sampling plans	Identification number of OC curve											
	1			2			3			4		
	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re
Single.....	315	0	1	624	1	2	1250	2	3	2000	3	4
Double.....				408	0	2	576	0	3			
				768	1	2	1488	2	3			
Double.....							800	0	3			
							1304	2	3			

n_c —Cumulative sample size.
Ac—Acceptance number
Re—Rejection number.

OC CURVES - AQL = 0.065



**SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL=0.10 PERCENT DEFECTIVE
(OR AQL=0.10 DEFECTS PER HUNDRED UNITS)**

[Sampling plans—AQL=0.10]

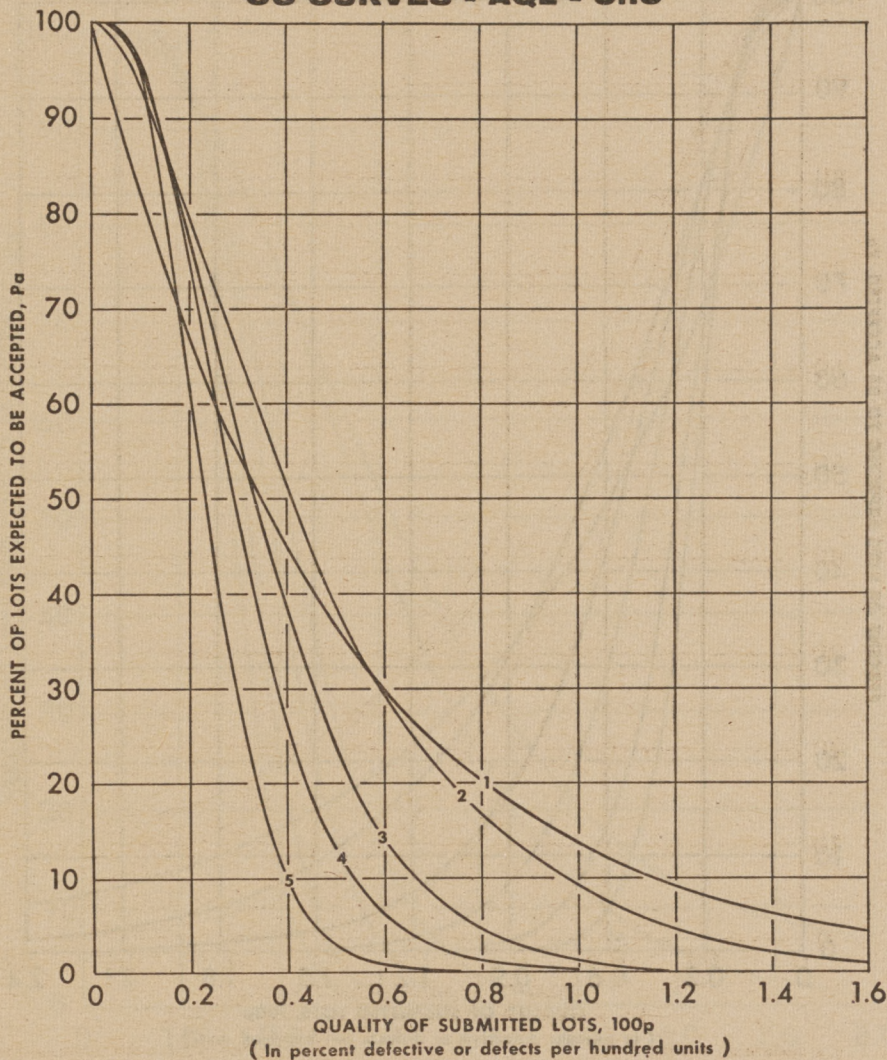
Comparable sampling plans	Identification number of OC curve														
	1			2			3			4			5		
	n_e	Ac	Re	n_e	Ac	Re	n_e	Ac	Re	n_e	Ac	Re	n_e	Ac	Re
Single.....	200	0	1	408	1	2	800	2	3	1250	3	4	2000	4	5
Double.....	270	0	2	486	0	2	360	0	3	-----	-----	-----	-----	-----	-----
Double.....	-----	-----	-----	-----	1	2	936	2	3	-----	-----	-----	-----	-----	-----
Double.....	-----	-----	-----	-----	-----	-----	456	0	3	-----	-----	-----	-----	-----	-----
Double.....	-----	-----	-----	-----	-----	-----	864	2	3	-----	-----	-----	-----	-----	-----
Double.....	-----	-----	-----	-----	-----	-----	576	0	3	-----	-----	-----	-----	-----	-----
Double.....	-----	-----	-----	-----	-----	-----	816	2	3	-----	-----	-----	-----	-----	-----

n_e =Cumulative sample size.

Ac=Acceptance number.

Re=Rejection number.

OC CURVES - AQL = 0.10



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SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL=0.15 PERCENT DEFECTIVE
(OR AQL=0.15 DEFECTS PER HUNDRED UNITS)

[Sampling plans—AQL=0.15]

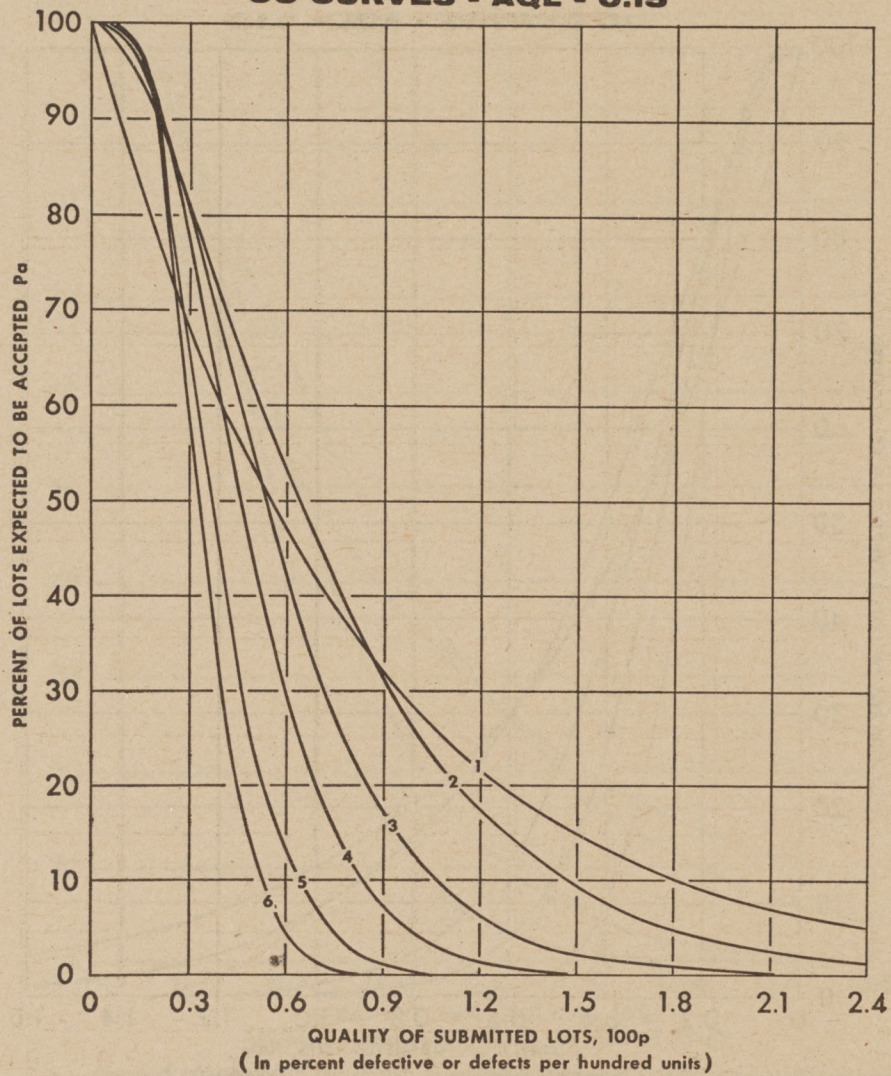
Comparable sampling plans	Identification number of OC curve																	
	1			2			3			4			5			6		
	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re
Single.....	126	0	1	264	1	2	500	2	3	800	3	4	1250	4	5	2000	6	7
Double.....	-----	-----	-----	174	0	2	252	0	3	456	0	4	-----	-----	-----	-----	-----	-----
Double.....	-----	-----	-----	336	1	2	540	2	3	864	3	4	-----	-----	-----	-----	-----	-----
Double.....	-----	-----	-----	-----	-----	-----	360	0	3	576	1	4	-----	-----	-----	-----	-----	-----
Double.....	-----	-----	-----	-----	-----	-----	516	2	3	816	3	4	-----	-----	-----	-----	-----	-----

 n_c =Cumulative sample size.

Ac=Acceptance number.

Re=Rejection number.

OC CURVES - AQL = 0.15



SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL=1.0 PERCENT DEFECTIVE (OR AQL=1.0 DEFECTS PER HUNDRED UNITS)

[Sampling plans—AQL=1.0]

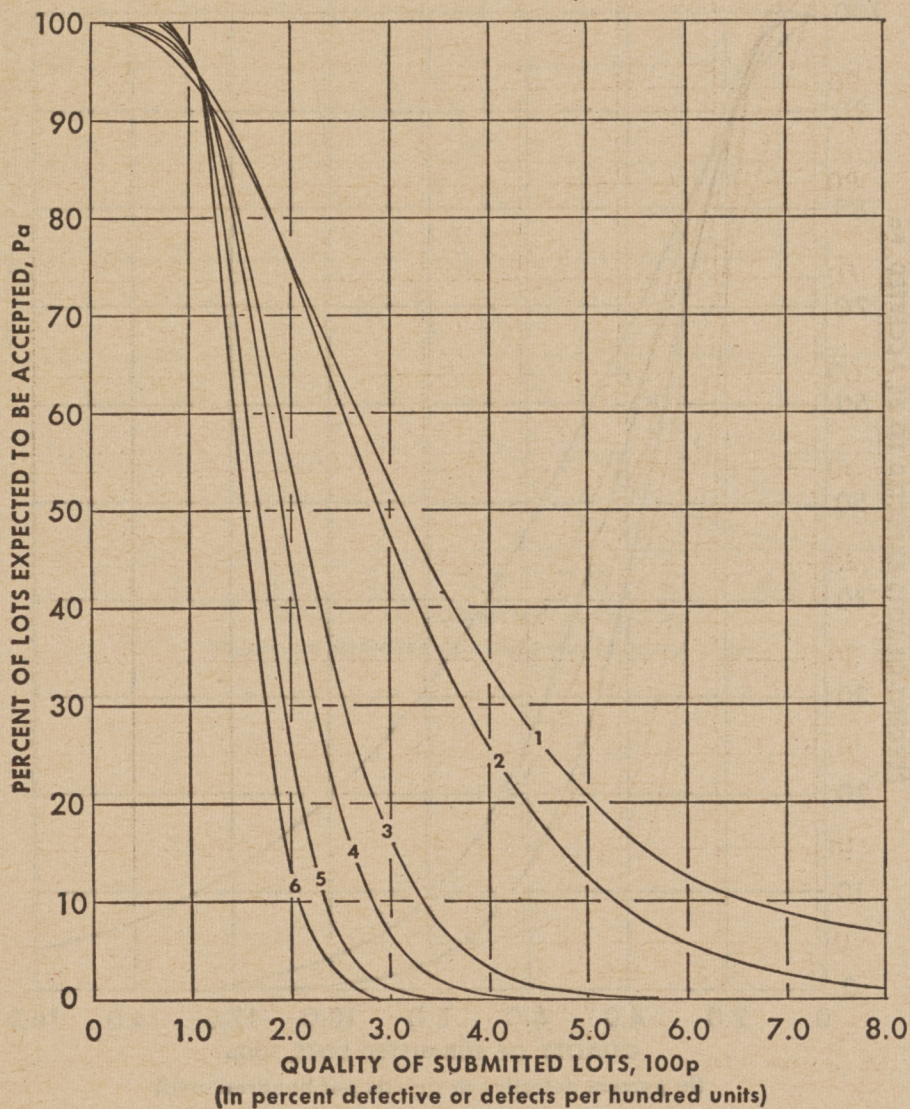
Comparable sampling plans	Identification number of OC curve																	
	1			2			3			4			5			6		
	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re
Single.....	84	2	3	126	3	4	315	6	7	500	9	10	800	13	14	1250	19	20
Double.....	36	0	3	48	0	3	174	2	6	252	2	7	456	5	10	-----	-----	-----
	96	2	3	144	3	4	336	6	7	540	10	11	864	14	15	-----	-----	-----
Double.....	-----	-----	-----	84	1	4	-----	-----	-----	360	5	9	576	8	12	-----	-----	-----
	-----	-----	-----	132	3	4	-----	-----	-----	516	9	10	816	13	14	-----	-----	-----

 n_c =Cumulative sample size.

Ac=Acceptance number.

Re=Rejection number.

OC CURVES - AQL = 1.0



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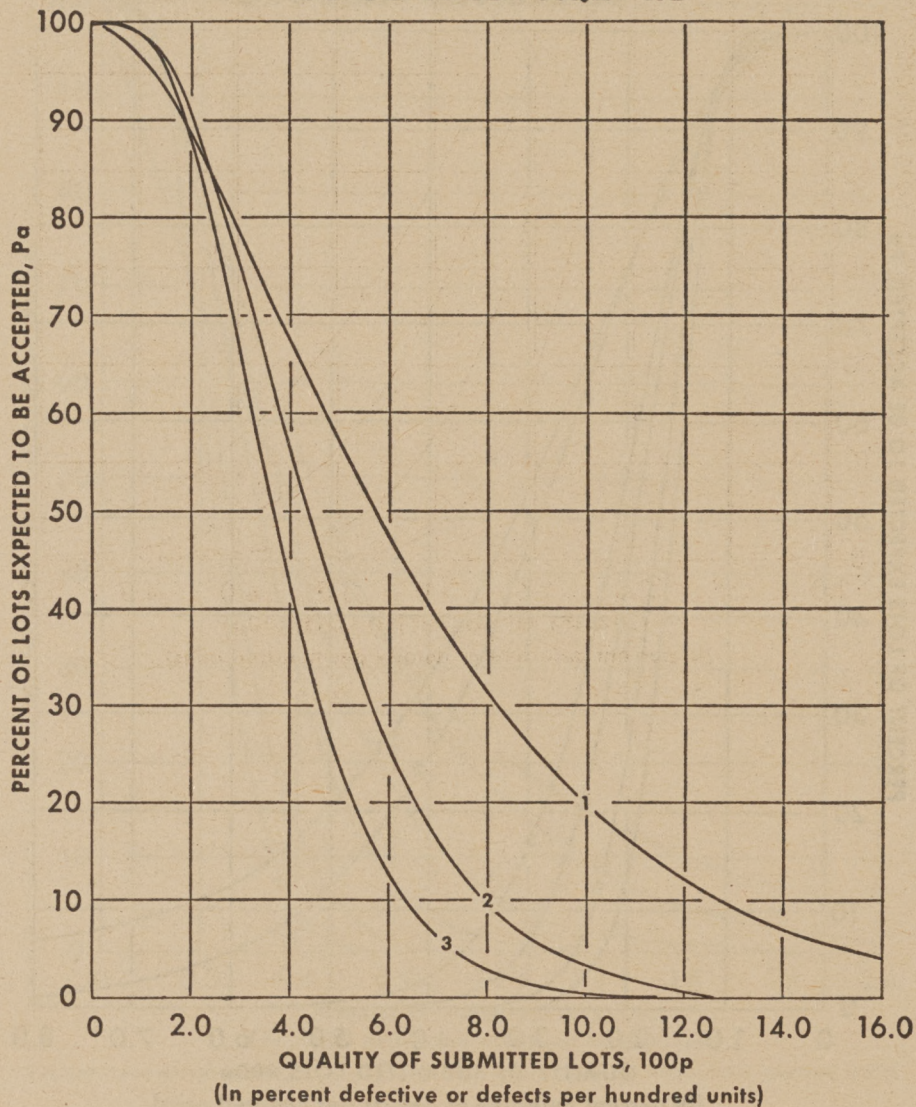
SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL=1.5 PERCENT DEFECTIVE (OR AQL=1.5 DEFECTS PER HUNDRED UNITS)

[Sampling plans—AQL=1.5]

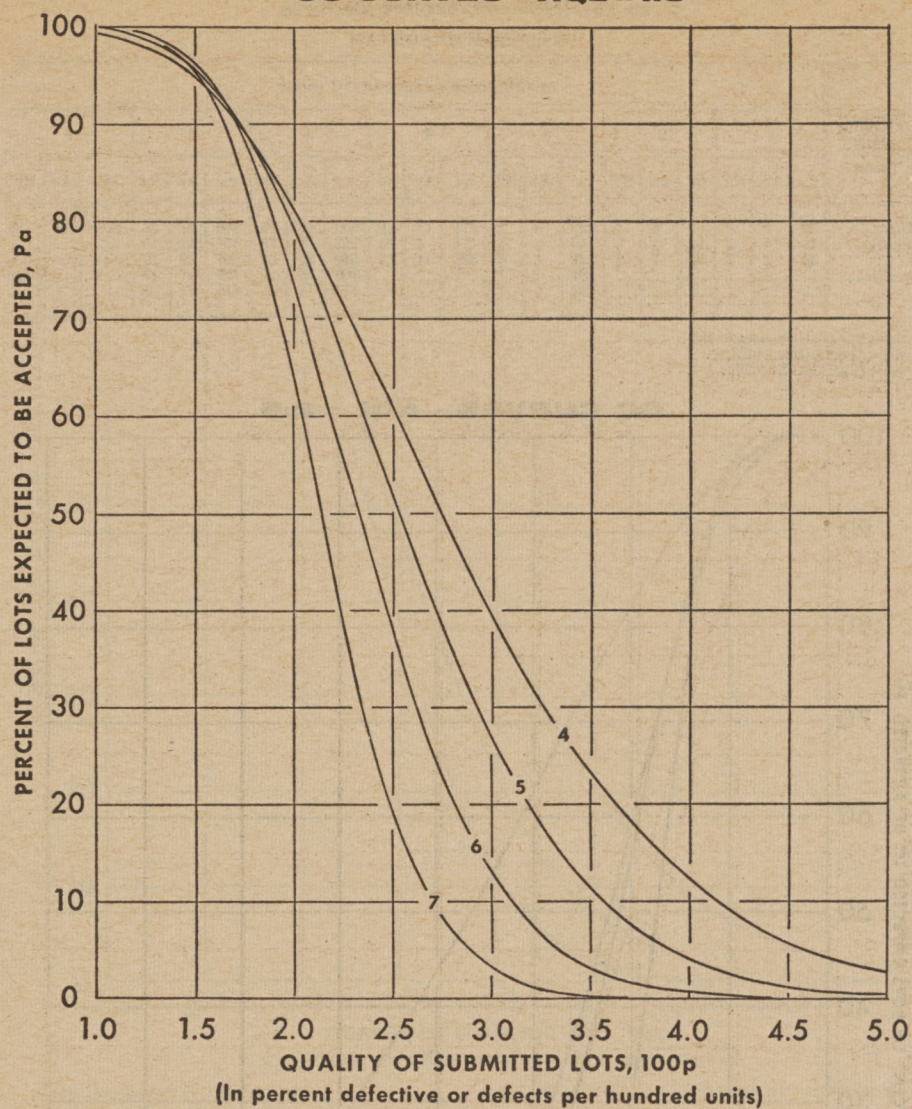
Comparable sampling plans	Identification number of OC curve																				
	1			2			3			4			5			6			7		
	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re
Single.....	29	1	2	84	3	4	126	4	5	315	8	9	500	12	13	800	18	19	1250	26	27
Double.....	18	0	2	36	0	4	48	0	4	174	3	7	252	3	9	456	8	13	-----	-----	-----
	36	1	2	96	3	4	144	4	5	336	8	9	540	13	14	864	19	20	-----	-----	-----
Double.....	-----	-----	-----	-----	-----	-----	84	1	5	-----	-----	-----	360	7	11	576	9	13	-----	-----	-----
	-----	-----	-----	-----	-----	-----	132	4	5	-----	-----	-----	516	12	13	816	18	19	-----	-----	-----

n_c = Cumulative sample size.
 Ac = Acceptance number.
 Re = Rejection number.

OC CURVES - AQL = 1.5



OC CURVES - AQL = 1.5



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SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL=2.5 PERCENT DEFECTIVE
(OR AQL=2.5 DEFECTS PER HUNDRED UNITS)

[Sampling plans—AQL=2.5]

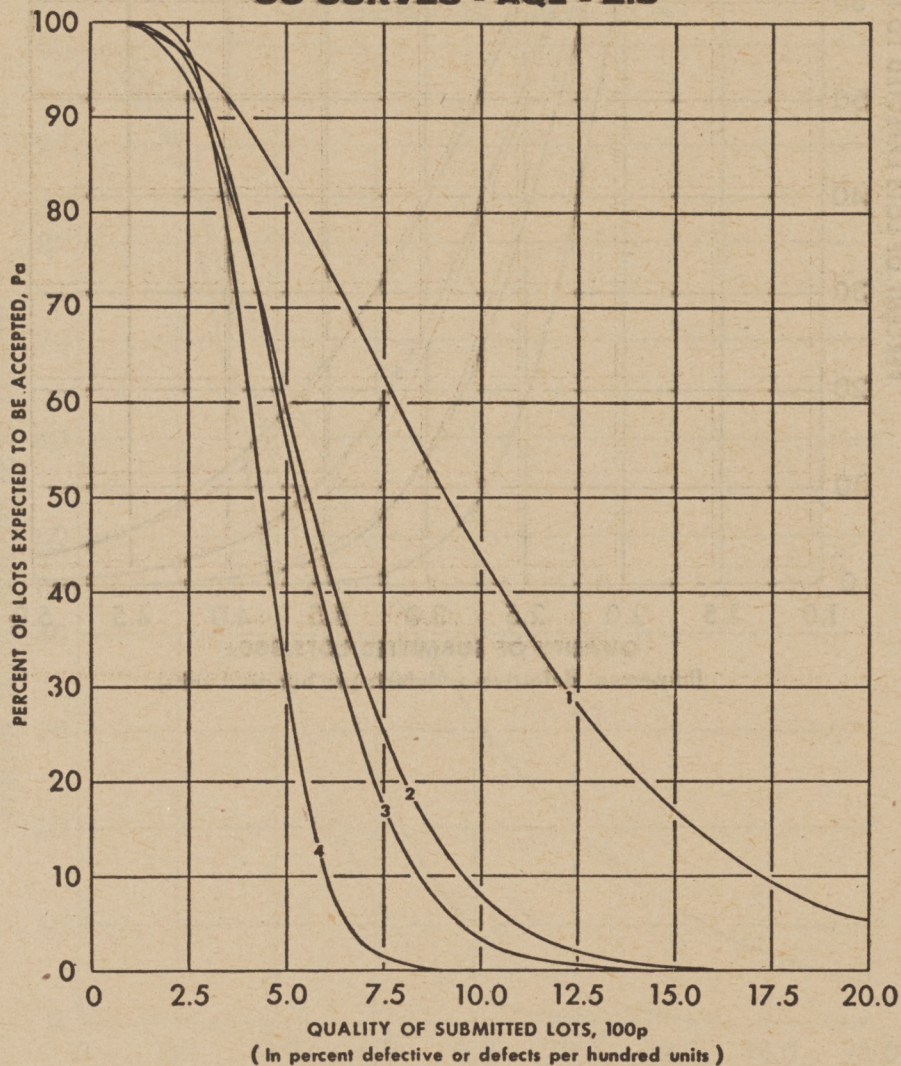
Compa- rable sampling plans	Identification number of OC curve																				
	1			2			3			4			5			6			7		
	n _e	Ac	Re	n _e	Ac	Re	n _e	Ac	Re	n _e	Ac	Re	n _e	Ac	Re	n _e	Ac	Re	n _e	Ac	Re
Single.....	29	2	3	84	4	5	126	6	7	315	13	14	500	18	19	800	27	28	1250	41	42
Double.....	18	0	3	36	0	4	48	0	5	174	4	10	252	5	12	456	12	19	-----	-----	-----
Double.....	36	2	3	96	4	5	144	7	8	336	14	15	540	20	21	864	29	30	-----	-----	-----
Double.....	-----	-----	-----	-----	-----	-----	84	2	7	-----	-----	-----	360	10	15	576	17	25	-----	-----	-----
Double.....	-----	-----	-----	-----	-----	-----	132	6	7	-----	-----	-----	516	19	20	816	27	28	-----	-----	-----

 n_c = Cumulative sample size.

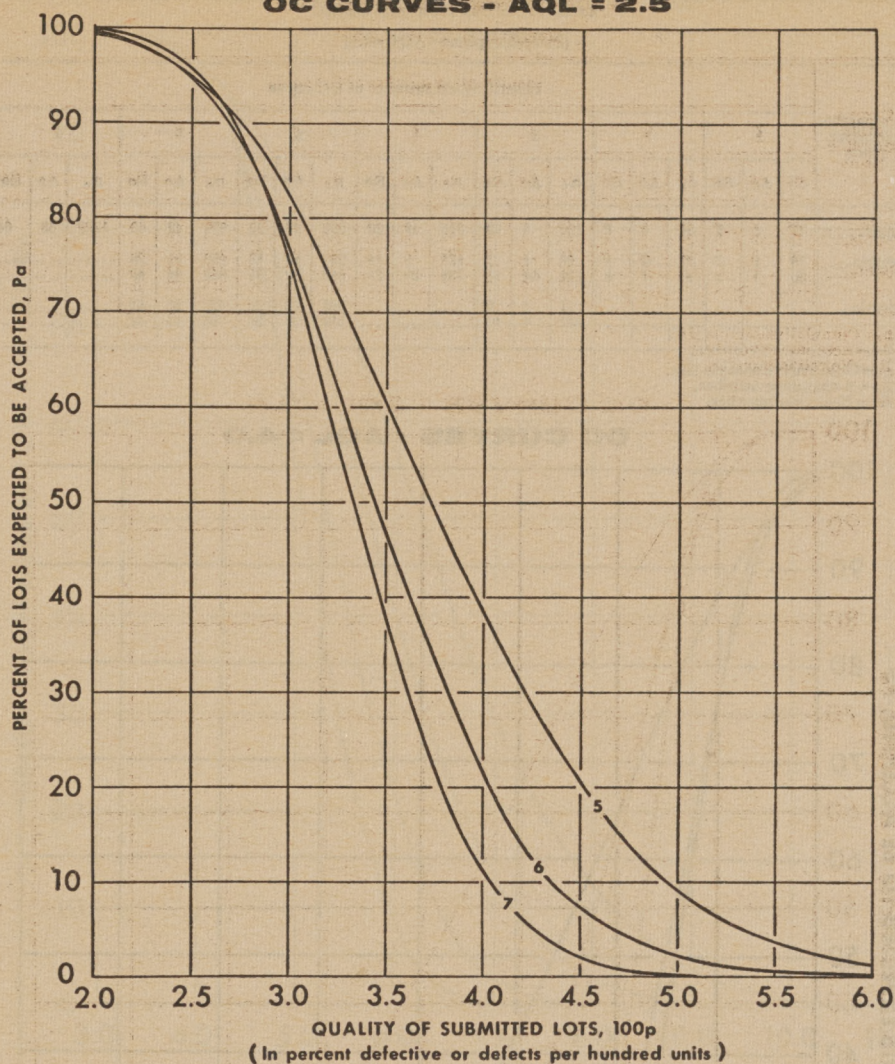
Ac = Acceptance number.

Re = Rejection number.

OC CURVES - AQL = 2.5



OC CURVES - AQL = 2.5



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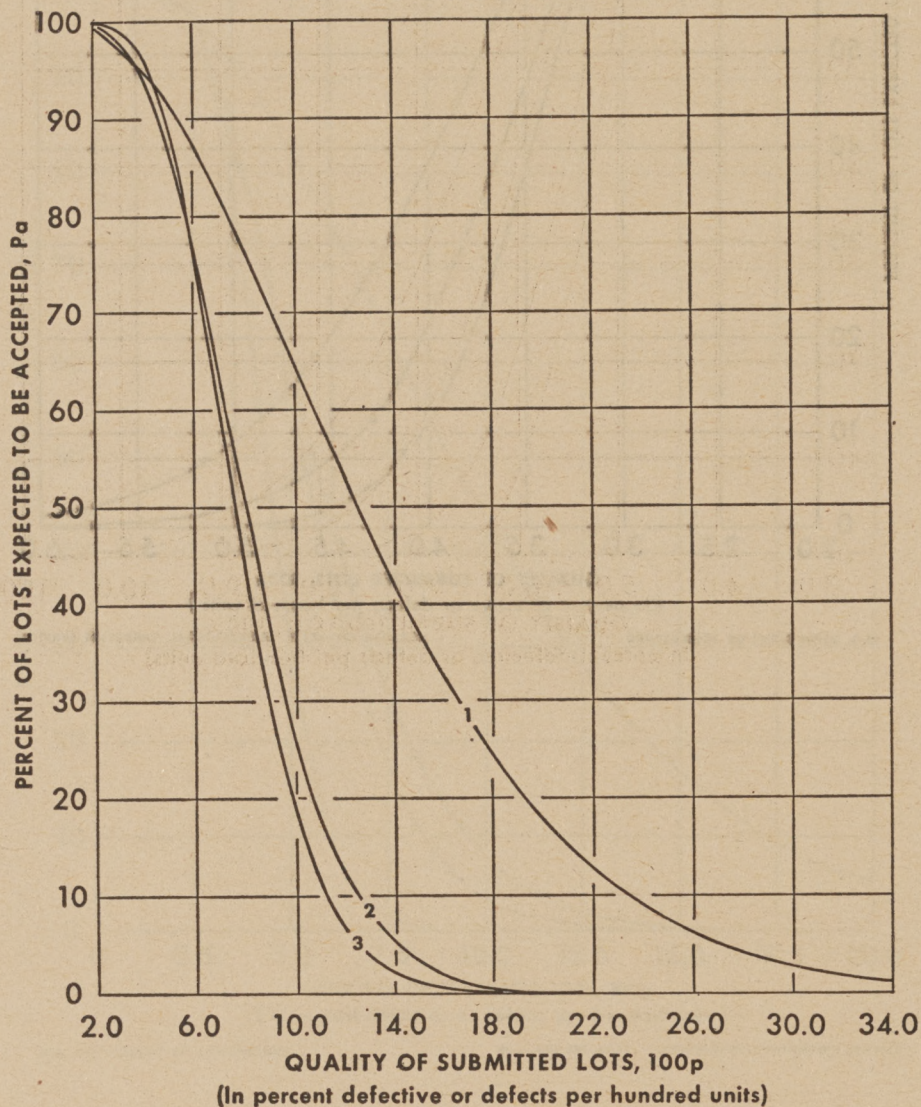
SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL=4.0 PERCENT DEFECTIVE (OR AQL=4.0 DEFECTS PER HUNDRED UNITS)

[Sampling plans—AQL=4.0]

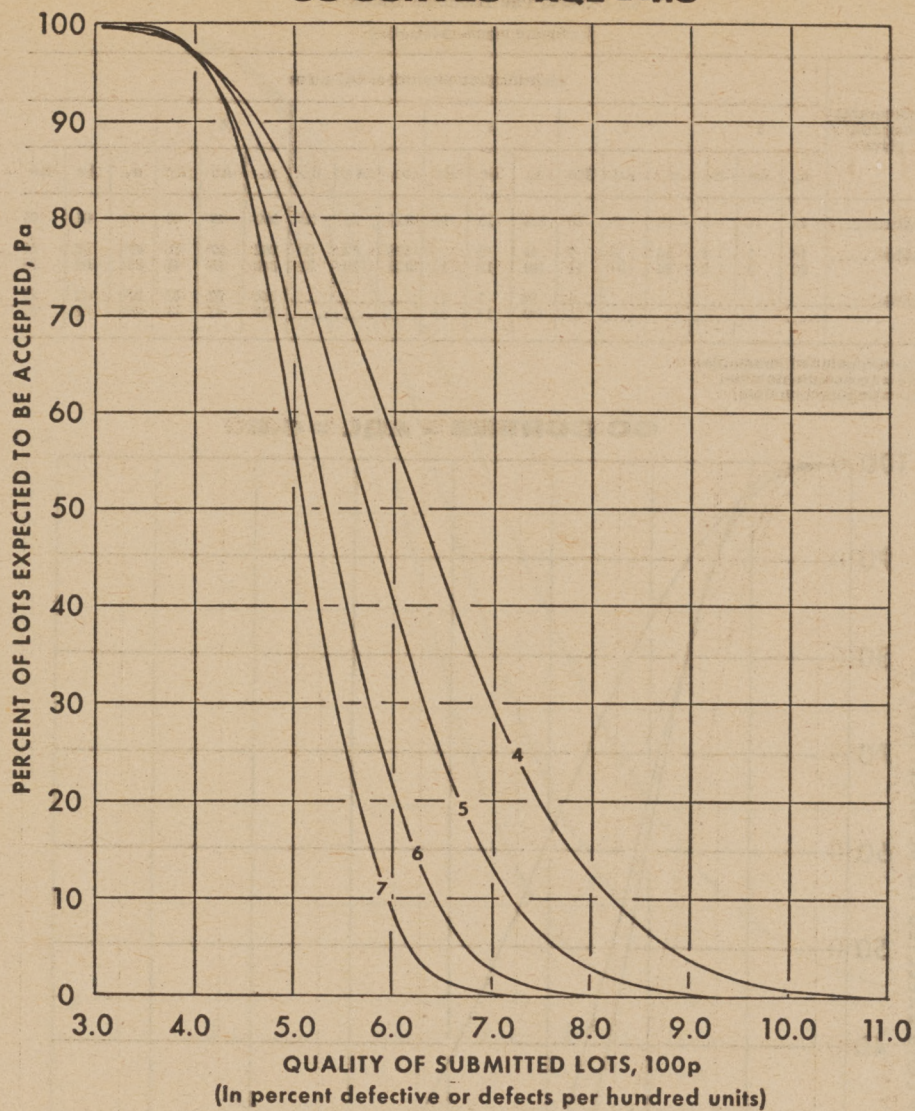
Comparable sampling plans	Identification number of OC curve																				
	1			2			3			4			5			6			7		
	n _c	Ac	Re	n _c	Ac	Re	n _c	Ac	Re	n _c	Ac	Re	n _c	Ac	Re	n _c	Ac	Re	n _c	Ac	Re
Single.....	21	2	3	84	6	7	126	9	10	315	19	20	500	28	29	800	42	43	1250	63	64
Double.....	18 36	1 4	3 5	36 96	0 7	5 8	48 144	1 10	7 11	174 336	8 20	14 21	252 540	10 30	18 31	456 864	21 44	28 45	-----	-----	-----
Double.....	-----	-----	-----	-----	-----	-----	84 132	4 9	9 10	-----	-----	-----	360 516	17 29	23 30	576 816	26 43	34 44	-----	-----	-----

n_c = Cumulative sample size.
Ac = Acceptance number.
Re = Rejection number.

OC CURVES - AQL = 4.0



OC CURVES - AQL = 4.0



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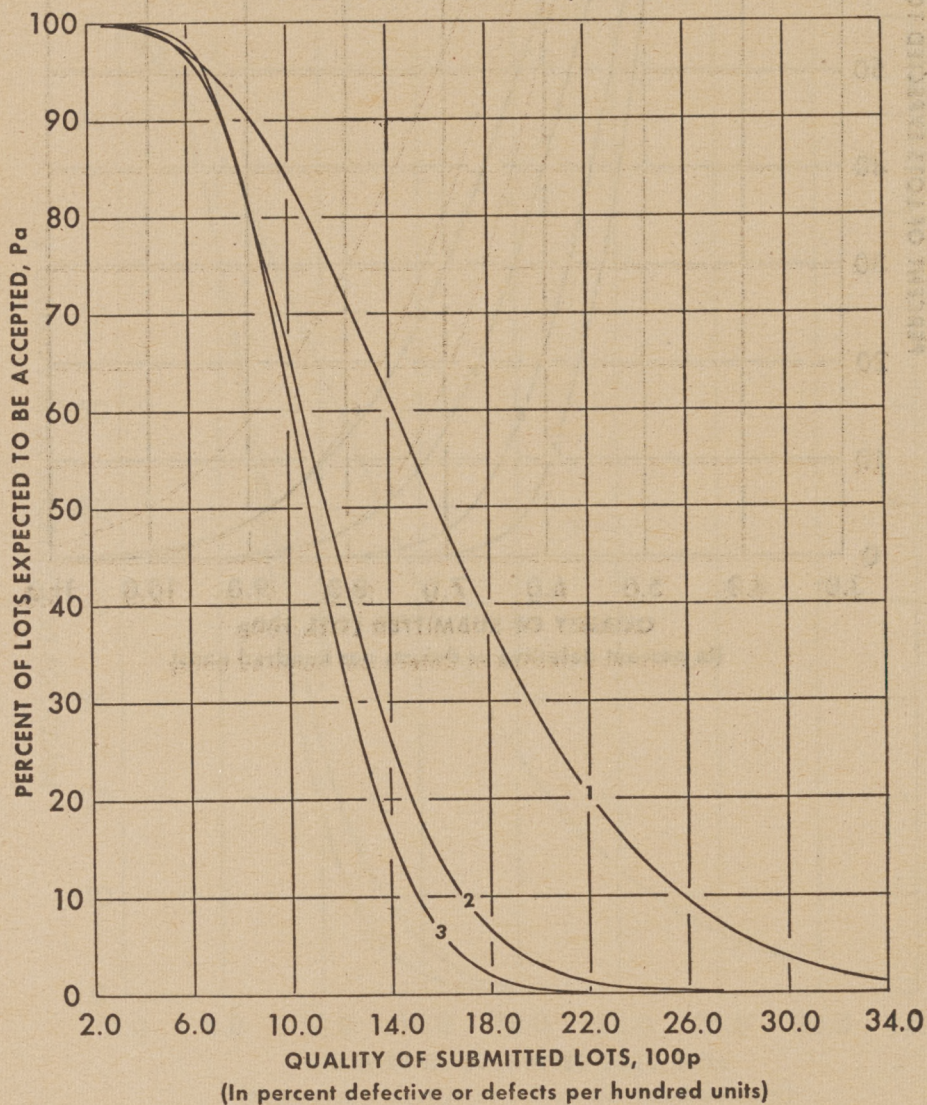
SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL=6.5 PERCENT DEFECTIVE (OR AQL=6.5 DEFECTS PER HUNDRED UNITS)

[Sampling plans—AQL=6.5]

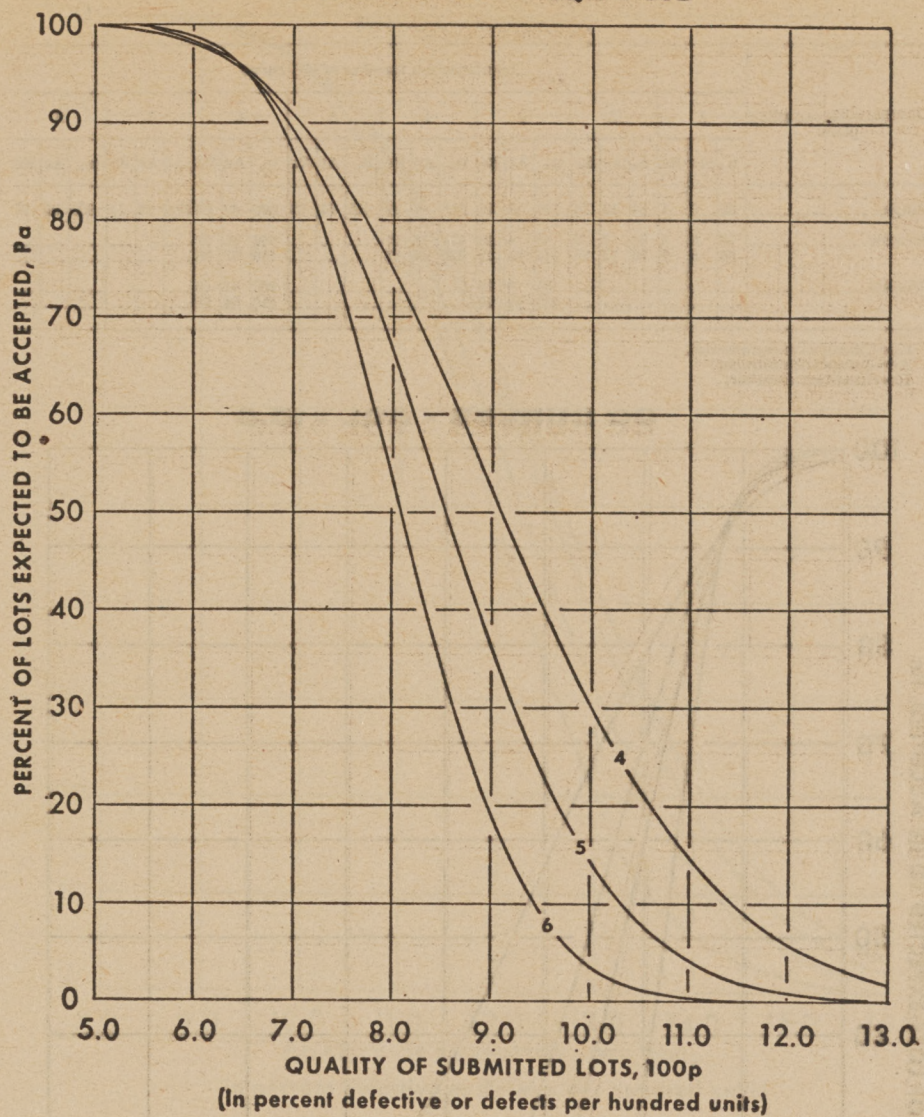
Comparable sampling plans	Identification number of OC curve																	
	1			2			3			4			5			6		
	n_e	Ac	Re	n_e	Ac	Re	n_e	Ac	Re	n_e	Ac	Re	n_e	Ac	Re	n_e	Ac	Re
Single.....	29	4	5	84	9	10	126	13	14	315	28	29	500	42	43	800	64	65
Double.....	18 36	1 5	4 6	36 96	2 10	7 11	48 144	2 15	8 16	174 336	12 30	20 31	252 540	17 45	26 46	456 864	32 69	41 70
Double.....							84 132	7 14	11 15				360 516	27 43	35 44	576 816	42 66	49 67

n_e =Cumulative sample size.
Ac=Acceptance number.
Re=Rejection number.

OC CURVES - AQL = 6.5



OC CURVES - AQL = 6.5



SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL=10.0 PERCENT DEFECTIVE (OR AQL=10.0 DEFECTS PER HUNDRED UNITS)

[Sampling plans—AQL=10.0]

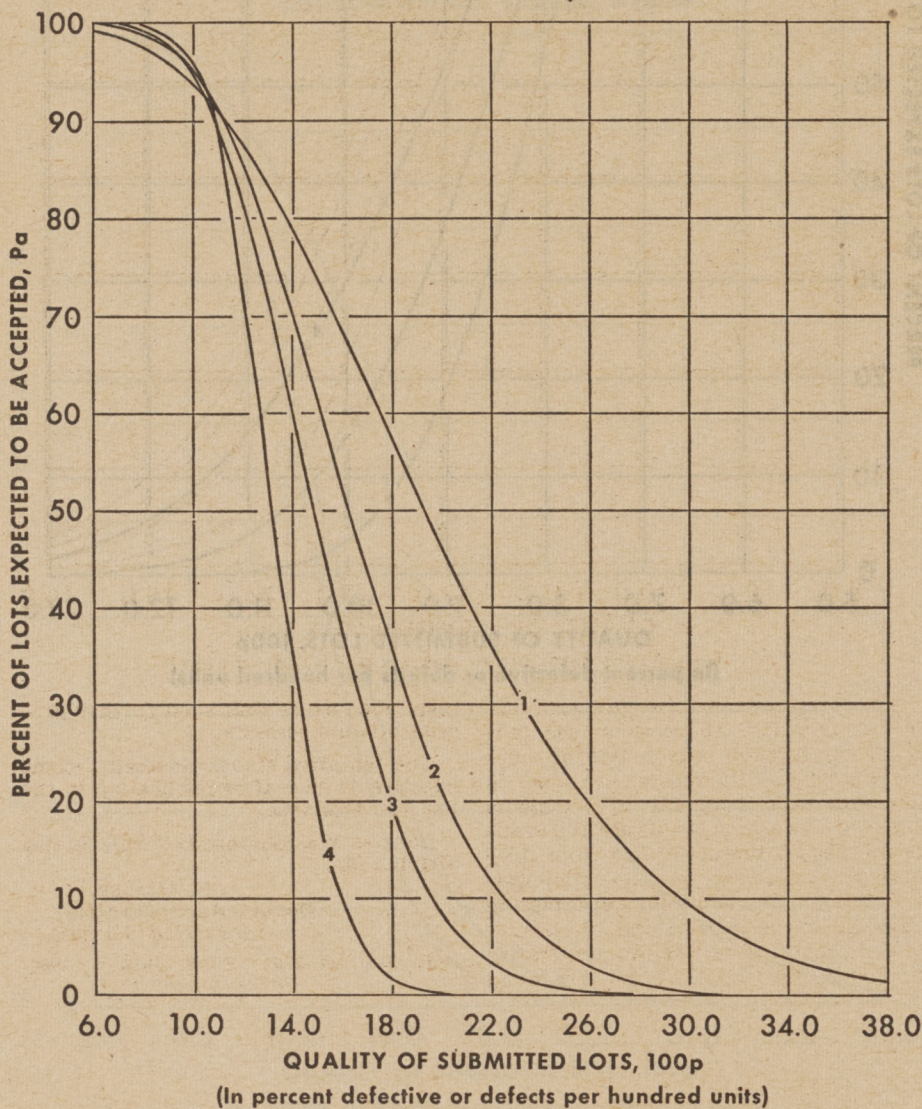
Comparable sampling plans	Identification number of OC curve																							
	1			2			3			4			5			6			7			8		
	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re	n_c	Ac	Re
Single.....	29	5	6	84	13	14	126	18	19	315	41	42	456	57	58	500	62	63	576	70	71	800	95	96
Double.....	18	2	5	36	3	9	48	4	10	174	18	27	-----	-----	-----	252	26	37	-----	-----	-----	-----	-----	-----
	36	6	7	96	15	16	144	21	22	336	44	45	-----	-----	-----	540	67	68	-----	-----	-----	-----	-----	-----
Double.....	-----	-----	-----	-----	-----	-----	84	9	15	-----	-----	-----	-----	-----	-----	360	41	49	-----	-----	-----	-----	-----	-----
	-----	-----	-----	-----	-----	-----	132	19	20	-----	-----	-----	-----	-----	-----	516	64	65	-----	-----	-----	-----	-----	-----

 n_c =Cumulative sample size.

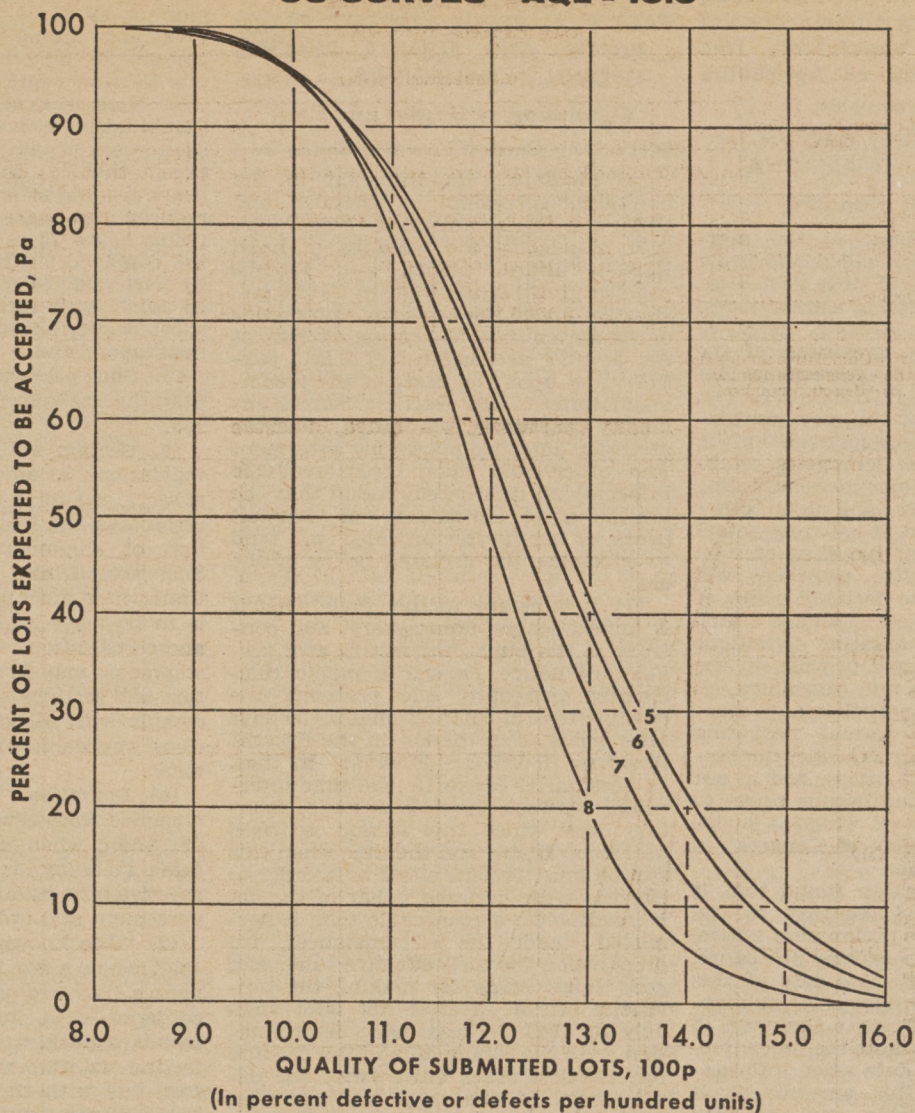
Ac=Acceptance number.

Re=Rejection number.

OC CURVES - AQL = 10.0



OC CURVES - AQL = 10.0



The foregoing tentative standards differ, as indicated above, from the proposal set forth in the notice of rule-making. The differences are due to changes made pursuant to comments received concerning the notice and it appears that further notice and other rule-making procedure on the standards would not make additional information available to the Department. Therefore under section 4 of the Administrative Procedure Act (5 U.S.C. 1003) it is found

upon good cause that such further procedure is unnecessary.

The tentative standards shall become effective 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C. this 3d day of July 1963.

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

[F.R. Doc. 63-7202; Filed, July 8, 1963;
8:52 a.m.]

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

[Lemon Reg. 69, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

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 by tending to establish and maintain such orderly marketing conditions for such lemons as will provide, in the interest of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under 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 hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) 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 restrictions on the handling of lemons grown in California and Arizona.

Order, as amended. The provisions in paragraph (b) (1) (ii) of § 910.369 (Lemon Regulation 69, 28 F.R. 6728) are hereby amended to read as follows:

(ii) District 2: 511,500 cartons.

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

Dated: July 3, 1963.

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

[F.R. Doc. 63-7201; Filed, July 8, 1963; 8:55 a.m.]

[Bartlett Pear Reg. 1]

PART 917—FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

Regulation by Grades and Sizes

§ 917.332 Bartlett Pear Regulation 1.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State 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 of the Bartlett Pear Commodity Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of Bartlett pears, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) in that, as hereinafter set forth, 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; a reasonable time is permitted under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than July 10, 1963. A reasonable determination as to the supply of, and the demand for, Bartlett pears must await the development of the crop and adequate information thereon was not available to the Bartlett Pear Commodity Committee until June 27, 1963; recommendation as to the need for, and the extent of, regulation of shipments of such pears was made at the meeting of said committee on June 27, 1963, after consideration of all available information relative to the supply and demand conditions for such pears, at which time the recommendation and supporting information were submitted to the Department; shipments of the current crop of such pears are expected to begin on or about July 10, 1963; and this section should be applicable to all shipments of such pears in order to effectuate the declared policy of the act; and compliance with the provisions of this section will not require of handlers any preparation therefor which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., July 10, 1963, and ending at 12:01 a.m., P.s.t., January 1, 1964, no shipper shall ship any Bartlett pears unless:

(i) Such pears grade not less than U.S. Combination with at least 75 percent of such pears grading at least U.S. No. 1, except that (a) the percentage of such pears grading at least U.S. No. 1 may be reduced not more than 10 percentage points below 75 percent for pears which are damaged but not seriously damaged by hail, and (b) such pears may fail to be fairly well formed only because of short shape, but shall not be seriously misshapen; and,

(ii) Such pears are of a size not smaller than the size known commercially as size 180.

(2) Section 917.143 of the rules and regulations, as amended (7 CFR 917.100 et seq.), sets forth the requirements with respect to the inspection and certification of shipments of Bartlett pears. Such section also prescribes the conditions which must be met if any shipment is to be made without prior inspection and certification. Notwithstanding that shipments may be made without inspection and certification, each shipper shall comply with all grade and size regulations applicable to the respective shipment.

(c) *Definition.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

(2) "Size known commercially as size 180" means a size Bartlett pear that will pack a standard pear box, packed in accordance with the specifications of a standard pack, with five tiers, each tier having six rows with six pears in each row, and with the twenty-one smallest pears weighing not less than five pounds.

(3) "Standard pear box" means the container so designated in section 828.3 of the Agricultural Code of California.

(4) "U.S. No. 1," "U.S. Combination," "fairly well formed," "seriously misshapen," and "standard pack" shall have the same meaning as when used in the United States Standards for Pears (Summer and Fall), §§ 51.1260-51.1280 of this title.

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

Dated: July 3, 1963.

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

[F.R. Doc. 63-7239; Filed, July 8, 1963; 8:55 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES AND OTHER OPERATIONS

[C.C.C. Grain Price Support Regulations, 1963-Crop Wheat, Supp.]

PART 1421—GRAINS AND RELATED COMMODITIES

Subpart—1963 Crop Wheat Loan and Purchase Agreement Program

The C.C.C. Grain Price Support Regulations Governing Price Support for the 1963 and Subsequent Crops (28 F.R. 2890) issued by the Commodity Credit Corporation which contain regulations of a general nature with respect to price support operations are supplemented for the 1963-crop of wheat as follows:

Sec.	
1421.2101	Purpose.
1421.2102	Availability of price support.
1421.2103	Compliance requirements—Cooperators.
1421.2104	Compliance requirements—participating producers.
1421.2105	Eligible wheat.
1421.2106	Determination of quality.
1421.2107	Sedimentation and protein determinations.
1421.2108	Determination of quantity.
1421.2109	Warehouse receipts.
1421.2110	Warehouse charges.
1421.2111	Maturity of loans.
1421.2112	Settlement.
1421.2113	Support rates.

AUTHORITY: §§ 1421.2101 to 1421.2113 issued under sec. 4, 62 Stat. 1070 as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054; sec. 306, 76 Stat. 614; 15 U.S.C. 714c, 7 U.S.C. 1441, 1421.

§ 1421.2101 Purpose.

This supplement contains additional program provisions which, together with the applicable provisions of the General Regulations Governing Price Support for the 1963 and Subsequent Crops and any amendments thereto, apply to loans and purchase agreements for 1963-crop wheat.

§ 1421.2102 Availability of price support.

Price support loans and purchase agreements will be available from harvest through January 31, 1964.

§ 1421.2103 Compliance requirements—cooperators.

(a) *General.* A producer shall not be eligible for price support on wheat produced in 1963 if the 1963 wheat acreage on the farm on which such wheat is produced is in excess of the wheat acreage allotment: *Provided*, That if the producer has an interest in the 1963 wheat crop produced on any other farm in the same county, he must be entitled to receive a marketing certificate for each such farm in order to be eligible for price support. If the producer is engaged in the production of wheat in more than one county (in the same State or in two or more States) and the State or county committee has determined to apply the requirements of § 728.1157 of this title (26 F.R. 4716) and any amendments thereto to such multiple farm producers, he must be entitled to receive a marketing certificate for each such farm,

wherever situated, in order to be eligible for price support on his 1963-crop of wheat.

(b) *Effect of unknowingly exceeding the acreage allotment.* The acreage of wheat on a farm shall not be deemed to be in excess of the acreage allotment unless the operator knowingly exceeded such allotment. If the acreage allotment is in fact exceeded, such allotment shall be considered as having been knowingly exceeded unless the operator of the farm establishes to the satisfaction of the county committee in accordance with subparagraph (1), (2), or (3) of this paragraph that the farm allotment has not knowingly been exceeded and the determination of the county committee is approved by the State Executive Director.

(1) *Erroneous notice of acreage allotment.* An otherwise eligible producer shall not be ineligible for price support if the farm is not considered overplanted under the provisions of § 728.1184 of this title (26 F.R. 4733) and any amendments thereto, because of reliance on an erroneous notice of allotment.

(2) *Erroneous notice of measured acreage.* An otherwise eligible producer shall not be ineligible for price support if the farm is not considered overplanted under the provisions of § 718.10 of this title (24 F.R. 4228, and any amendments thereto) because of reliance on an erroneous notice of measured acreage.

(3) *Failure to timely measure acreage or notify operator.* The acreage allotment for the farm will not be considered to be knowingly exceeded if (i) through no fault of the farm operator or any producer on the farm the acreage was not measured or the farm operator was not notified of the measured acreage in time to dispose of the excess acreage prior to the final date for the disposition of the excess acreage, (ii) the excess acreage was relatively small, and (iii) the farm operator establishes that because of the relative smallness of the excess and the unavailability to him of any recent measurements of the field acreages on the farm, he had no reason to believe the acreage was in excess of the farm acreage allotment. Nothing in this paragraph shall affect any producer's liability for penalties on excess wheat determined under the wheat marketing quota regulations for 1961 and subsequent crop years (§§ 728.1140 to 728.1186 of this title; 26 F.R. 4716), and any amendments thereto.

(c) *Application for review and request for reconsideration.* Any producer who is dissatisfied with any determination with respect to compliance with his acreage allotment may appeal under the provisions of Part 711 of this title (26 F.R. 10204) and any amendments thereto.

§ 1421.2104 Compliance requirements—participating producers.

A producer on a farm on which the operator has elected to participate in the 1963 Wheat Stabilization Program shall not be eligible for a loan or purchase agreement with respect to wheat produced on such farm unless he is eligible under the 1963 Wheat Stabilization Program Regulations (27 F.R. 12430 and

amendments thereto) to receive a price support payment on wheat produced on such farm.

§ 1421.2105 Eligible wheat.

The wheat must meet the requirements of this section in addition to other eligibility requirements of the program in order to be eligible for a loan or purchase agreement.

(a) *Production.* The wheat must have been produced in the commercial wheat-producing areas designated in § 278.1204, of this title, 26 F.R. 4141, May 13, 1961, in the United States in 1963 by an eligible producer, except that wheat produced on any farm which receives an increased allotment under the provisions of 7 U.S.C. 1334(i) applicable in Modoc and Siskiyou Counties in California, shall not be eligible for price support.

(b) *Grade requirements.* Wheat when placed under loan, and wheat under purchase agreement which is in approved warehouse-storage prior to notification by the producer of his intention to sell to CCC, must meet the requirements set forth below.

(1) The wheat must be (i) wheat of any class grading No. 3 or better; (ii) wheat of any class grading No. 4 or 5 on the factor of "test weight" and/or because of containing "Durum" and/or "Red Durum" but otherwise grading No. 3 or better; or (iii) wheat of the class Mixed wheat, consisting of mixtures of grades of eligible wheat as specified in subdivision (i) or (ii) of this subparagraph provided such mixtures are the natural products of the field. In addition, wheat may have the special grade designations "Garlicky" and/or "Smutty".

(2) Wheat must not grade Tough, Weevily, Ergoty, or Treated except (i) wheat represented by a warehouse receipt which shows the wheat grades "Tough" or "Weevily" will be eligible if the warehouse receipt is accompanied by a supplemental certificate which indicates the warehouseman will deliver wheat of an eligible grade and quality which does not contain such designation(s). The grade, grading factors, quality factors, and the quantity shown on such supplemental certificate must be as specified in § 1421.2109.

(c) *Moisture requirement.* In addition to the grade requirements prescribed above, the ASC State committee may establish a lower moisture requirement as a condition of eligibility for a farm-storage loan where it determines this is necessary for the safe storage of the wheat.

(d) *Poisonous substances.* The wheat must not contain mercurial compounds or other substances poisonous to man or animals.

(e) *Sanitation requirements.* The wheat must not contain one or more rodent pellets, or comparable amounts of other filth, per pint of wheat (liquid measure), or 1 percent or more by weight of kernels visibly damaged by weevils or other insects.

(f) *Purchase agreements—predelivery inspection.* Except as otherwise provided in § 1421.23(b)(3), wheat under purchase agreement stored in other than approved warehouse storage must meet

the grade and quality requirements of paragraphs (b) (1) and (2), (c), (d), and (e) of this section on the basis of predelivery inspection.

§ 1421.2106 Determination of quality.

(a) *Regular grading factors.* The class, subclass, grade, grading factors and all other quality factors shall be based on Official Grain Standards of the United States for Wheat, whether or not such determinations are made on the basis of an official inspection. See § 1421.2107 for sedimentation and protein determinations.

(b) *Sanitation.* Determinations with respect to sanitation requirements specified in § 1421.2105(e) shall be made in accordance with instructions issued by CCC.

(c) *Smut.* In the States of California, Idaho, New Mexico, Nevada, Oregon, Utah, Washington, and the counties in Montana where it is a normal practice to determine smut on a percentage basis, the quantity of smut shall be stated in terms of half percent when smut dockage is present in a quantity equal to less than one percent, and in terms of whole percent when present in a quantity equal to one percent or more. A fraction of a half percent shall be disregarded when smut dockage is present in a quantity equal to less than one percent, and a fraction of a percent shall be disregarded when smut dockage is present in a quantity equal to one percent or more. Elsewhere the smut conditions of the wheat shall be determined on a degree basis. Where applicable the words, "Light Smutty" or "Smutty" shall be added to, and made a part of the grade determination.

(d) *Garlicky.* The garlicky condition of the wheat shall be made a part of the grade designation by addition of the words "Light Garlicky" or the word "Garlicky".

§ 1421.2107 Sedimentation and protein determinations.

Sedimentation and protein tests are required on hard wheat placed under loans and acquired under purchase agreements and shall be made as provided in this section. Both tests shall be made on the same representative sample.

(a) *Farm storage loans and deliveries of purchase agreement wheat to other than approved warehouses.* ASCS State offices will provide sedimentation and protein tests on wheat to be placed under farm storage loans and on purchase agreement wheat delivered to other than approved warehouses.

(b) *Warehouse-storage loans and purchase agreement wheat delivered to or stored in approved warehouses.* Sedimentation and protein tests on wheat to be placed under warehouse storage loans and on wheat delivered to or stored in approved warehouses under purchase agreements shall be made as follows: (1) In the case of sedimentation tests, the sedimentation value shall be determined on the basis of certificates issued by an inspector licensed or authorized by the United States Department of Agriculture under the Agricultural Marketing Act of 1946, as amended, and the regulations thereunder (Part 68 of this

title), and (2) in the case of protein, the tests shall be made by a protein laboratory approved by CCC. The certificates issued under (1) and (2) are referred to herein as official sedimentation and protein certificates, respectively, and the producer will be credited with \$2.50 for obtaining the certificates for each loan or purchase agreement.

§ 1421.2108 Determination of quantity.

(a) *In warehouse.* The quantity of wheat in an approved warehouse on which a warehouse-storage loan shall be made and the quantity delivered to or acquired by CCC in an approved warehouse under a farm-storage loan or purchase agreement shall be the net weight specified on the warehouse receipt, or on the supplemental certificate if applicable.

(b) *On farm.* The quantity of wheat placed under farm storage loan may be determined either by weight or by measurement. The quantity acquired under a farm storage loan or a purchase agreement shall be determined by weight. When the quantity is determined by weight, a bushel shall be 60 pounds of wheat free of dockage. In determining the quantity of sacked wheat by weight, a deduction of $\frac{3}{4}$ of a pound for each sack shall be made.

(c) *Adjustment for test weight.* When the quantity is determined by measurement, a bushel shall be 1.25 cubic feet of wheat testing 60 pounds per bushel. The quantity determined for wheat of a different test weight shall be adjusted by the applicable percentage in the following table:

Test weight (pounds per bushel):	Percent
65 or over.....	108
64.0 to 64.9.....	107
63.0 to 63.9.....	105
62.0 to 62.9.....	103
61.0 to 61.9.....	102
60.0 to 60.9.....	100
59.0 to 59.9.....	98
58.0 to 58.9.....	97
57.0 to 57.9.....	95
56.0 to 56.9.....	93
55.0 to 55.9.....	92
54.0 to 54.9.....	90
53.0 to 53.9.....	88
52.0 to 52.9.....	87
51.0 to 51.9.....	85
50.0 to 50.9.....	83

(d) *Safety margin.* A safety factor as established by the State committee shall be deducted from the net quantity as determined by measurement when wheat is offered for a farm-storage loan.

(e) *Dockage.* The percentage of dockage shall be determined and the weight of such dockage shall be deducted from the gross weight of the wheat in determining the net quantity available for loan or purchase.

(f) *Smut.* In the States of California, Idaho, New Mexico, Nevada, Oregon, Utah, Washington, and the counties in Montana where it is a normal practice to determine smut on a percentage basis, the quantity of smut determined in pounds by applying the percentage factor to the total quantity shall be deducted from the weight of the wheat after deduction of dockage.

§ 1421.2109 Warehouse receipts.

Warehouse receipts tendered to CCC in connection with a loan or purchase

agreement must meet the requirements of this section.

(a) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and quality of wheat.

(b) *Entries (all wheat).* Each warehouse receipt, or the warehouseman's supplemental certificate (in duplicate) properly identified with the warehouse receipt, must show: (1) Gross weight and net bushels, (2) class and subclass, (3) grade (including special grades), (4) test weight, (5) dockage, (6) any other grading factor(s) when such factor(s) and not test weight determine the grade and (7) whether the wheat arrived by rail, truck or barge. If the warehouse receipt indicates the wheat is ineligible because of grading "Tough" or "Weevily" the warehouse receipt must be accompanied by a supplemental certificate as provided in § 1421.2105(b)(2) in order for the wheat to be eligible for price support. The grade, grading factors and the quantity to be delivered must be shown on the supplemental certificate as follows: (i) When the warehouse receipt indicates "Weevily" and the wheat has been conditioned to remove the "Weevily" designation, the supplemental certificate must show grade and grading factors as good as or better than those on the warehouse receipt and the same quantity as on the warehouse receipt.

(ii) When the warehouse receipt indicates "Tough" and the wheat has been dried or processed, the supplemental certificate must show the grade, grading factors and quantity after drying or processing. (iii) Such supplemental certificate must state that no lien for processing will be claimed by the warehouseman from Commodity Credit Corporation or any subsequent holder of the warehouse receipt. (iv) In the case of conditions (i) and (ii) above, the grade and grading factors and the quantity shown on the supplemental certificate shall supersede the entries for such items on the warehouse receipts.

(c) *Sedimentation and protein entries and certificates for hard wheat.* In the case of hard wheat, entries for sedimentation value and protein content must be shown on the warehouse receipt or the supplemental certificate or both. Warehouse receipts must be accompanied by both official sedimentation certificates and official protein certificates or copies thereof.

(d) *Liens.* The warehouse receipts may be subject to liens for warehouse charges only to the extent indicated in § 1421.2110(a). Warehouse receipts shall not be subject to liens for charges in connection with the making of sedimentation or protein tests.

(e) *Freight bill requirements.* Warehouse receipts representing wheat which has been shipped by rail or water from a country shipping point to a designated terminal point, or shipped by rail or water from a country shipping point to a storage point and stored in-transit to a designated terminal point, must be accompanied by registered freight bills or by a certificate containing similar information. These registered freight bills or certificates must be representative as to origin and date of movement of the wheat and must reflect the total freight

rate from origin to designated terminal point including penalty for out-of-line haul, if any. The form of the certificates will be prescribed by the ASCS commodity office and shall be signed by the warehouseman and may be made a part of the supplemental certificate.

§ 1421.2110 Warehouse charges.

(a) *Handling and storage liens.* Warehouse receipts and the wheat represented thereby stored in approved warehouses operating under the Uniform Grain Storage Agreement may be subject to liens for warehouse handling and storage charges at not to exceed the Uniform Grain Storage Agreement rates from the date the wheat is deposited in the warehouse for storage. Warehouse receipts and the wheat represented thereby stored in approved warehouses operated by Eastern common carriers may be subject to liens for warehouse elevation (receiving and delivering) and storage charges from the date of deposit at rates approved by the Interstate Commerce Commission. In no event shall a warehouseman be entitled to satisfy the lien by sale of the wheat when CCC is holder of the warehouse receipt.

(b) *Deduction of storage charges—UGSA warehouses.* The table shown below provides the deduction for storage charges to be made from the amount of the loan or purchase price in the case of wheat stored in an approved warehouse operated under the Uniform Grain Storage Agreement. Such deduction shall be based on entries shown on the warehouse receipts. If written evidence is submitted with the warehouse receipt that all warehouse charges except receiving and loading out charges have been prepaid through the applicable loan maturity date, no storage deductions shall be made. If such written evidence is not submitted, the date to be used for computing the storage deduction on wheat stored in warehouses operating under the Uniform Grain Storage Agreement shall be the latest of the following: (1) The date of deposit, (2) the date storage charges start, or (3) the day following the date through which storage charges have been paid. If the foregoing dates are not shown, the date of the warehouse receipt shall be used.

SCHEDULE OF DEDUCTIONS FOR STORAGE CHARGES BY MATURITY DATES

Maturity date of Feb. 29, 1964	Deduction (cents per bushel)	Maturity date of March 31, 1964
(1)		(1)
Prior to Apr. 26, 1963...	12	Prior to May 27, 1963.
Apr. 26-May 22, 1963...	11	May 27-June 22, 1963.
May 23-June 18, 1963...	10	June 23-July 19, 1963.
June 19-July 15, 1963...	9	July 20-Aug. 15, 1963.
July 16-Aug. 11, 1963...	8	Aug. 16-Sept. 11, 1963.
Aug. 12-Sept. 7, 1963...	7	Sept. 12-Oct. 8, 1963.
Sept. 8-Oct. 4, 1963...	6	Oct. 9-Nov. 4, 1963.
Oct. 5-Oct. 31, 1963...	5	Nov. 5-Dec. 1, 1963.
Nov. 1-Nov. 27, 1963...	4	Dec. 2-Dec. 28, 1963.
Nov. 28-Dec. 24, 1963...	3	Dec. 29, 1963-Jan. 24, 1964.
Dec. 25, 1963-Jan. 20, 1964.	2	Jan. 25-Feb. 20, 1964.
Jan. 21-Feb. 29, 1964...	1	Feb. 21-Mar. 31, 1964.

¹ Dates storage charges start, all dates inclusive.

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(c) *Deduction of storage charges—Eastern common carriers.* In the case of wheat stored in an approved warehouse operated by an Eastern common carrier, there shall be deducted in computing the loan or purchase price the amount of the approved tariff rate for storage (not including elevation), which will accumulate from the date of deposit through the applicable maturity date unless written evidence is submitted with the warehouse receipt that such charges have been prepaid. The county office shall request the ASCS commodity office to determine the amount of such charges. Where the producer presents evidence showing the elevation charges have been prepaid, the amount of the storage charges to be deducted shall be reduced by the amount of the elevation charges prepaid by the producer.

§ 1421.2111 Maturity of loans.

Loans mature on demand but not later than February 29, 1964, on wheat stored in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia, and mature not later than March 31, 1964, on wheat stored in all other States.

§ 1421.2112 Settlement.

Notwithstanding the provisions of § 1421.25, the following shall apply:

(a) *Deliveries of farm-storage loan hard wheat.* In the case of hard wheat under farm-storage loan delivered to CCC, the same sedimentation value and protein content used in making the loan shall be used in settlement.

(b) *Sanitation requirements—all wheat.* If the wheat delivered is of a quality which does not meet the sanitation requirements of section 1421.2105, the wheat shall be sold for uses other than for human consumption. The settlement value shall be the same as the sales price, except that if CCC is unable to sell the wheat for the use specified above, the settlement value shall be the market value determined by CCC, as of the date of delivery.

§ 1421.2113 Support rates.

The support rate for the quality of wheat placed under a loan or acquired under a loan or a purchase agreement shall be the applicable basic support rate adjusted in accordance with the provisions of this section, and in the case of settlement of loans and purchase agreements as further provided in §§ 1421.25 and 1421.2112.

(a) *Support rates at designated terminal markets.* (1) The support rates established for designated terminal markets apply to wheat shipped on a domestic interstate freight rate basis. The support rate at the designated terminal market for any wheat shipped at other than the domestic interstate freight rate shall be reduced by the difference between the rate of freight paid and the domestic interstate freight rate.

(2) The support rates established for designated terminal markets also apply

to wheat which has been shipped by rail or water from a country shipping point to one of the designated terminal markets, as evidenced by paid freight bills duly registered for transit privileges. In the event the amount of paid-in freight is insufficient to guarantee the minimum proportional domestic interstate freight rate, if any, from the terminal market to a recognized market determined by the appropriate ASCS commodity office, there shall be deducted from the applicable terminal support rate the difference between the amount of freight actually paid in and the amount required to be paid in to guarantee outbound movement at the minimum proportional domestic interstate freight rate. If the wheat is stored at any designated terminal market and neither registered freight bills nor registered freight certificates are presented, the support rate shall be equal to the terminal rate minus the actual amount of paid-in freight required to guarantee the proportional outbound rate from the terminal market to a recognized market determined by the appropriate ASCS commodity office.

(3) The support rate for wheat received by truck and stored at any designated terminal market shall be determined by deducting from the terminal rate 3.25 cents per bushel plus the actual amount of paid-in freight required to guarantee the proportional outbound rate from the terminal market to a recognized market determined by the appropriate ASCS commodity office.

(4) Notwithstanding the foregoing provisions, the support rate for wheat shipped by rail or water and stored at any of the following terminal markets shall be equal to the applicable terminal rate, less the transportation cost, if any, as determined by the appropriate ASCS commodity office, for moving the wheat to a tidewater facility located within the same switching limits:

Long Beach, Los Angeles, Oakland, San Francisco, Stockton, and Wilmington, California.

Baton Rouge and New Orleans, Louisiana;¹ Baltimore, Maryland; Duluth, Minnesota

Astoria and Portland, Oregon; Albany and New York, New York; Philadelphia, Pennsylvania

Beaumont, Galveston, Houston, Corpus Christi and Port Arthur, Texas

Norfolk, Virginia; Kalama, Longview, Seattle, Tacoma and

Vancouver, Washington; Superior, Wisconsin

(5) Notwithstanding the foregoing provisions of this paragraph, the support rate for wheat received by truck and stored at any of the terminal markets listed in subparagraph (4) of this paragraph shall be determined by making a deduction of 3.25 cents per bushel from the terminal rate, plus the transportation cost, if any, as determined by the appropriate ASCS commodity office, for moving the wheat to a tidewater loading facility located within the same switching limits.

¹ For use in determining the support rate for wheat grown only in the commercial wheat-producing areas.

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

(c) *Support rates in approved warehouse storage determined by the ASCS commodity office.* In the States of Delaware, Kentucky, Maryland, New Jersey, North Carolina, Tennessee, Virginia, and West Virginia, the ASCS commodity office shall, upon request of the county committee, determine the support rate for wheat stored in approved warehouses (except those situated at designated terminal markets) which was shipped by rail in the movement of natural market direction as approved by CCC, by adding to the county rate for the county from which the wheat was shipped an amount per bushel equal to the receiving and loading-out charges computed in accordance with the applicable rates of the Uniform Grain Storage Agreement in effect at the time the loan is made and an amount equal to the transit value of the freight paid from the points of origin to markets designated by CCC. The warehouse receipts must be accompanied by the original paid freight bills or a certificate signed by the warehouseman as set forth in § 1421-2109(e). If the wheat is stored in approved warehouses located at transit points, taking a penalty by reason of backhaul, or out-of-line of normal market movements, such penalty or other costs by reason of such movement, as determined by CCC shall be deducted from the support rates as determined in this paragraph.

(d) *Basic support rates (Terminals).* Basic support rates for loan and settlement purposes for grade No. 1 wheat stored in approved warehouses at the terminal markets listed below are as follows:

Terminal market	Rate per bushel
Astoria, Oregon	\$2.00
Portland, Oregon	2.00
Kalama, Washington	2.00
Longview, Washington	2.00
Seattle, Washington	2.00

Terminal market	Rate per bushel
Tacoma, Washington	\$2.00
Vancouver, Washington	2.00
Long Beach, California	2.08
Los Angeles, California	2.08
Oakland, California	2.08
San Francisco, California	2.08
Stockton, California	2.08
Wilmington, California	2.08
Louisville, Kentucky	2.09
Memphis, Tennessee	2.09
Atchison, Kansas	2.07
Council Bluffs, Iowa	2.07
Kansas City, Kansas	2.07
Kansas City, Missouri	2.07
St. Joseph, Missouri	2.07
Omaha, Nebraska	2.07
Sioux City, Iowa	2.07
Cairo, Illinois	2.10
Chicago, Illinois	2.10
East St. Louis, Illinois	2.10
Milwaukee, Wisconsin	2.10
St. Louis, Missouri	2.10
Duluth, Minnesota	2.16
Minneapolis, Minnesota	2.16
St. Paul, Minnesota	2.16
Superior, Wisconsin	2.16
Albany, New York	2.22
Baltimore, Maryland	2.22
Norfolk, Virginia	2.22
Philadelphia, Pennsylvania	2.22
New York, New York	2.22
Corpus Christi, Texas	2.27
Galveston, Texas	2.27
Houston, Texas	2.27
Beaumont, Texas	2.27
Port Arthur, Texas	2.27
New Orleans, Louisiana	2.27
Baton Rouge, Louisiana	2.27

(e) *Basic support rates (counties).* (1) Basic county support rates per bushel for loan and settlement purposes for farm-stored and country warehouse-stored wheat are established for wheat grading No. 1 and are as specified below in this paragraph. Farm-storage loans and country warehouse storage loans, except as otherwise provided in paragraphs (b) and (c) of this section will be based on the support rate established for the county in which the wheat is stored.

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

County	Rate per bushel
All counties	\$1.93

ARIZONA			
County	Rate per bushel	County	Rate per bushel
Apache	\$1.49	Mohave	\$1.56
Cochise	1.79	Navajo	1.49
Cocconino	1.49	Pima	1.84
Gila	1.57	Pinal	1.87
Graham	1.72	Santa Cruz	1.81
Greenlee	1.57	Yavapai	1.60
Maricopa	1.87	Yuma	1.89

ARKANSAS			
County	Rate per bushel	County	Rate per bushel
Arkansas	\$1.96	Carroll	\$1.74
Ashley	1.88	Chicot	1.88
Baxter	1.78	Clark	1.85
Benton	1.73	Clay	1.96
Boone	1.76	Cleburne	1.96
Bradley	1.87	Cleveland	1.84
Calhoun	1.86	Columbia	1.89

ARKANSAS—Continued

County	Rate per bushel	County	Rate per bushel
Conway	\$1.93	Miller	\$1.89
Craighead	1.96	Mississippi	1.96
Crawford	1.74	Monroe	1.96
Crittenden	1.96	Montgomery	1.78
Cross	1.96	Nevada	1.87
Dallas	1.85	Newton	1.76
Desha	1.95	Ouachita	1.87
Drew	1.89	Perry	1.79
Faulkner	1.94	Phillips	1.96
Franklin	1.75	Pike	1.79
Fulton	1.83	Poinsett	1.96
Garland	1.82	Polk	1.78
Grant	1.84	Pope	1.78
Greene	1.96	Prairie	1.96
Hempstead	1.88	Pulaski	1.95
Hot Spring	1.83	Randolph	1.96
Howard	1.80	St. Francis	1.96
Independence	1.89	Saline	1.83
Izard	1.80	Scott	1.78
Jackson	1.96	Searcy	1.76
Jefferson	1.93	Sebastian	1.77
Johnson	1.77	Sevier	1.80
Lafayette	1.89	Sharp	1.83
Lawrence	1.95	Stone	1.81
Lee	1.96	Union	1.89
Lincoln	1.94	Van Buren	1.86
Little River	1.88	Washington	1.74
Logan	1.74	White	1.96
Lonoke	1.96	Woodruff	1.96
Madison	1.74	Yell	1.78
Marion	1.77		

CALIFORNIA

County	Rate per bushel	County	Rate per bushel
Alameda	\$1.95	Placer	\$1.94
Alpine	1.84	Plumas	1.84
Amador	1.95	Riverside	1.90
Butte	1.92	Sacramento	1.95
Calaveras	1.95	San Benito	1.93
Colusa	1.94	San Bernardino	1.93
Contra Costa	1.95	San Diego	1.89
El Dorado	1.92	San Joaquin	1.97
Fresno	1.90	San Luis	
Glenn	1.93	Obispo	1.89
Humboldt	1.78	San Mateo	1.95
Imperial	1.91	Santa Barbara	1.88
Inyo	1.74	Santa Clara	1.94
Kern	1.87	Santa Cruz	1.92
Kings	1.90	Shasta	1.82
Lake	1.90	Sierra	1.76
Lassen	1.77	Siskiyou	1.82
Los Angeles	1.94	Solano	1.94
Madera	1.92	Sonoma	1.94
Marin	1.95	Stanislaus	1.96
Mariposa	1.92	Sutter	1.93
Mendocino	1.86	Tehama	1.87
Merced	1.93	Tulare	1.90
Modoc	1.81	Tuolumne	1.96
Mono	1.70	Ventura	1.93
Monterey	1.91	Yola	1.95
Napa	1.94	Yuba	1.93
Orange	1.91		

COLORADO

County	Rate per bushel	County	Rate per bushel
Adams	\$1.69	Jackson	\$1.57
Alamosa	1.58	Jefferson	1.69
Arapahoe	1.69	Kiowa	1.71
Archuleta	1.52	Kit Carson	1.71
Baca	1.71	La Plata	1.52
Bent	1.70	Larimer	1.69
Boulder	1.69	Las Animas	1.68
Chaffee	1.57	Lincoln	1.69
Cheyenne	1.71	Logan	1.69
Conejos	1.57	Mesa	1.54
Costilla	1.59	Moffat	1.50
Crowley	1.69	Montezuma	1.52
Custer	1.63	Montrose	1.50
Delta	1.50	Morgan	1.69
Denver	1.69	Otero	1.69
Dolores	1.52	Ouray	1.50
Douglas	1.69	Phillips	1.71
Eagle	1.54	Pitkin	1.54
Elbert	1.69	Prowers	1.71
El Paso	1.69	Pueblo	1.69
Fremont	1.64	Rio Blanco	1.52
Garfield	1.54	Rio Grande	1.57
Grand	1.54	Routt	1.50
Huerfano	1.66	Saguache	1.57

COLORADO—Continued

County	Rate per bushel	County	Rate per bushel
San Miguel	\$1.50	Washington	\$1.69
Sedgwick	1.72	Weld	1.69
Summit	1.54	Yuma	1.71

DELAWARE

Kent	\$2.05	Sussex	\$2.04
New Castle	2.05		

GEORGIA

All counties	\$1.96		
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IDAHO

County	Rate per bushel	County	Rate per bushel
Ada	\$1.71	Gem	\$1.71
Adams	1.69	Gooding	1.69
Bannock	1.67	Idaho	1.73
Bear Lake	1.64	Jefferson	1.62
Benewah	1.77	Jerome	1.70
Bingham	1.65	Kootenai	1.76
Blaine	1.67	Latah	1.77
Boise	1.71	Lemhi	1.63
Bonner	1.69	Lewis	1.74
Bonneville	1.64	Lincoln	1.68
Boundary	1.69	Madison	1.61
Butte	1.65	Minidoka	1.70
Camas	1.67	Nez Perce	1.77
Canyon	1.71	Oneida	1.69
Caribou	1.65	Owyhee	1.71
Cassia	1.70	Payette	1.71
Clark	1.60	Power	1.67
Clearwater	1.74	Shoshone	1.65
Custer	1.65	Teton	1.60
Elmore	1.70	Twin Falls	1.72
Franklin	1.68	Valley	1.70
Fremont	1.60	Washington	1.71

ILLINOIS

Adams	\$1.85	Lee	\$1.93
Alexander	1.93	Livingston	1.89
Bond	1.92	Logan	1.90
Boone	1.96	McDonough	1.86
Brown	1.86	McHenry	1.96
Bureau	1.91	McLean	1.88
Calhoun	1.92	Macon	1.92
Carroll	1.91	Macoupin	1.93
Cass	1.88	Madison	1.93
Champaign	1.91	Marion	1.93
Christian	1.93	Marshall	1.90
Clark	1.88	Mason	1.88
Clay	1.88	Massac	1.89
Clinton	1.93	Menard	1.88
Coles	1.90	Mercer	1.86
Cook	1.97	Monroe	1.93
Crawford	1.86	Montgomery	1.93
Cumberland	1.90	Morgan	1.92
De Kalb	1.96	Moultrie	1.92
DeWitt	1.88	Ogle	1.96
Douglas	1.90	Peoria	1.89
DuPage	1.95	Perry	1.93
Edgar	1.88	Platt	1.91
Edwards	1.87	Pike	1.87
Effingham	1.91	Pope	1.83
Fayette	1.93	Pulaski	1.93
Ford	1.88	Putnam	1.93
Franklin	1.93	Randolph	1.93
Fulton	1.88	Richland	1.87
Gallatin	1.87	Rock Island	1.87
Greene	1.93	St. Clair	1.93
Grundy	1.92	Saline	1.86
Hamilton	1.93	Sangamon	1.92
Hancock	1.85	Schuyler	1.87
Hardin	1.80	Scott	1.93
Henderson	1.85	Shelby	1.92
Henry	1.89	Stark	1.91
Iroquois	1.93	Stephenson	1.95
Jackson	1.93	Tazewell	1.88
Jasper	1.87	Union	1.93
Jefferson	1.93	Vermilion	1.92
Jersey	1.93	Wabash	1.85
Jo Daviess	1.88	Warren	1.87
Johnson	1.84	Washington	1.93
Kane	1.96	Wayne	1.87
Kankakee	1.94	White	1.88
Kendall	1.92	Whiteside	1.91
Knox	1.87	Will	1.94
Lake	1.95	Williamson	1.93
LaSalle	1.92	Winnebago	1.96
Lawrence	1.87	Woodford	1.88

INDIANA

County	Rate per bushel	County	Rate per bushel
Adams	\$1.84	Lawrence	\$1.90
Allen	1.84	Madison	1.86
Bartholomew	1.89	Marion	1.86
Benton	1.90	Marshall	1.95
Blackford	1.86	Martin	1.84
Boone	1.85	Miami	1.89
Brown	1.86	Monroe	1.92
Carroll	1.89	Montgomery	1.86
Cass	1.90	Morgan	1.84
Clark	1.93	Newton	1.96
Clay	1.87	Noble	1.85
Clinton	1.87	Ohio	1.86
Crawford	1.90	Orange	1.92
Daviess	1.83	Owen	1.84
Dearborn	1.86	Parke	1.85
Decatur	1.88	Perry	1.86
De Kalb	1.84	Pike	1.84
Delaware	1.84	Porter	1.96
Dubois	1.87	Posey	1.87
Elkhart	1.89	Pulaski	1.96
Fayette	1.86	Putnam	1.85
Floyd	1.93	Randolph	1.85
Fountain	1.85	Ripley	1.87
Franklin	1.86	Rush	1.86
Fulton	1.95	St. Joseph	1.94
Gibson	1.87	Scott	1.90
Grant	1.85	Shelby	1.86
Greene	1.84	Spencer	1.87
Hamilton	1.85	Starke	1.96
Hancock	1.86	Steuben	1.84
Harrison	1.86	Sullivan	1.87
Hendricks	1.86	Switzerland	1.87
Henry	1.86	Tippecanoe	1.88
Howard	1.87	Tipton	1.85
Huntington	1.84	Union	1.86
Jackson	1.90	Vanderburgh	1.90
Jasper	1.95	Vermillion	1.92
Jay	1.84	Vigo	1.92
Jefferson	1.87	Wabash	1.87
Jennings	1.88	Warren	1.90
Johnson	1.86	Warrick	1.86
Knox	1.85	Washington	1.92
Kosciusko	1.89	Wayne	1.85
Lagrange	1.85	Wells	1.84
Lake	1.96	White	1.96
La Porte	1.96	Whitley	1.86

IOWA

Adair	\$1.85	Hancock	\$1.91
Adams	1.87	Hardin	1.90
Allamakee	1.91	Harrison	1.89
Appanoose	1.82	Henry	1.83
Audubon	1.88	Howard	1.92
Benton	1.89	Humboldt	1.90
Black Hawk	1.90	Ida	1.85
Boone	1.88	Iowa	1.87
Bremer	1.90	Jackson	1.85
Buchanan	1.89	Jasper	1.88
Buena Vista	1.89	Jefferson	1.82
Butler	1.90	Johnson	1.88
Calhoun	1.89	Jones	1.88
Carroll	1.87	Keokuk	1.85
Cass	1.87	Kossuth	1.91
Cedar	1.85	Lee	1.85
Cero Gordo	1.92	Linn	1.89
Cherokee	1.88	Louisa	1.84
Chickasaw	1.91	Lucas	1.83
Clarke	1.84	Lyon	1.89
Clay	1.90	Madison	1.84
Clayton	1.89	Mahaska	1.86
Clinton	1.86	Marion	1.85
Crawford	1.88	Marshall	1.89
Dallas	1.84	Mills	1.89
Davis	1.83	Mitchell	1.93
Decatur	1.83	Monona	1.88
Delaware	1.89	Monroe	1.81
Des Moines	1.84	Montgomery	1.89
Dickinson	1.91	Muscatine	1.84
Dubuque	1.88	O'Brien	1.90
Emmet	1.92	Osceola	1.90
Fayette	1.90	Page	1.88
Floyd	1.92	Palo Alto	1.91
Franklin	1.90	Plymouth	1.86
Fremont	1.89	Pocahontas	1.90
Greene	1.88	Polk	1.88
Grundy	1.90	Pottawat-	
Guthrie	1.85	tamie	1.89
Hamilton	1.90	Poweshiek	1.87

IOWA—Continued

County	Rate per bushel	County	Rate per bushel
Ringgold	\$1.84	Wapello	\$1.81
Sac	1.88	Warren	1.86
Scott	1.86	Washington	1.85
Shelby	1.89	Wayne	1.82
Sioux	1.88	Webster	1.90
Story	1.89	Winnebago	1.93
Tama	1.89	Winneshek	1.91
Taylor	1.86	Woodbury	1.88
Union	1.85	Worth	1.93
Van Buren	1.83	Wright	1.90

KANSAS

Allen	\$1.89	Linn	\$1.89
Anderson	1.88	Logan	1.75
Atchison	1.89	Lyon	1.85
Barber	1.78	McPherson	1.80
Barton	1.78	Marion	1.81
Bourbon	1.88	Marshall	1.85
Brown	1.88	Meade	1.75
Butler	1.81	Miami	1.89
Chase	1.83	Mitchell	1.80
Chautauqua	1.83	Montgomery	1.85
Cherokee	1.85	Morris	1.83
Cheyenne	1.74	Morton	1.73
Clark	1.75	Nemaha	1.86
Clay	1.82	Neosho	1.88
Cloud	1.81	Ness	1.78
Coffey	1.86	Norton	1.78
Comanche	1.76	Osage	1.86
Cowley	1.81	Osborne	1.80
Crawford	1.86	Ottawa	1.81
Decatur	1.76	Pawnee	1.78
Dickinson	1.81	Phillips	1.78
Doniphan	1.89	Pottawatomie	1.85
Douglas	1.89	Pratt	1.78
Edwards	1.78	Rawlins	1.75
Elk	1.83	Reno	1.80
Ellis	1.78	Republic	1.81
Ellsworth	1.80	Rice	1.80
Finney	1.75	Riley	1.85
Ford	1.77	Rooks	1.79
Franklin	1.89	Rush	1.78
Geary	1.83	Russell	1.79
Gove	1.76	Saline	1.81
Graham	1.78	Scott	1.75
Grant	1.74	Sedgwick	1.81
Gray	1.76	Seward	1.74
Greeley	1.74	Shawnee	1.87
Greenwood	1.84	Sheridan	1.76
Hamilton	1.74	Sherman	1.74
Harper	1.80	Smith	1.80
Harvey	1.81	Stafford	1.78
Haskell	1.75	Stanton	1.72
Hodgeman	1.78	Stevens	1.73
Jackson	1.87	Sumner	1.81
Jefferson	1.89	Thomas	1.75
Jewell	1.81	Trego	1.78
Johnson	1.89	Wabaunsee	1.85
Kearney	1.74	Wallace	1.74
Kingman	1.80	Washington	1.82
Kiowa	1.78	Wichita	1.74
Labette	1.85	Wilson	1.85
Lane	1.76	Woodson	1.85
Leavenworth	1.89	Wyandotte	1.89
Lincoln	1.80		

KENTUCKY

Adair	\$1.91	Carter	\$1.92
Allen	1.90	Casey	1.92
Anderson	1.92	Christian	1.89
Ballard	1.88	Clark	1.93
Barren	1.90	Clay	1.91
Bath	1.92	Clinton	1.92
Bell	1.91	Crittenden	1.88
Boone	1.91	Cumberland	1.91
Bourbon	1.93	Davless	1.88
Boyd	1.93	Edmonson	1.89
Boyle	1.93	Elliott	1.92
Bracken	1.92	Estill	1.92
Brethitt	1.91	Fayette	1.93
Breckenridge	1.89	Fleming	1.92
Bullitt	1.91	Franklin	1.92
Butler	1.89	Fulton	1.88
Caldwell	1.89	Gallatin	1.91
Calloway	1.88	Garrard	1.93
Campbell	1.91	Grant	1.92
Carlisle	1.88	Graves	1.88
Carroll	1.91	Grayson	1.90

KENTUCKY—Continued

County	Rate per bushel	County	Rate per bushel
Green	\$1.92	Mercer	\$1.93
Greenup	1.93	Metcalfe	1.90
Hancock	1.89	Monroe	1.91
Hardin	1.90	Montgomery	1.92
Harrison	1.92	Morgan	1.91
Hart	1.90	Muhlenberg	1.89
Henderson	1.88	Nelson	1.92
Henry	1.91	Nicholas	1.92
Hickman	1.88	Ohio	1.89
Hopkins	1.89	Oldham	1.91
Jackson	1.91	Owen	1.92
Jefferson	1.91	Owsley	1.91
Jessamine	1.93	Pendleton	1.92
Johnson	1.91	Powell	1.92
Kenton	1.91	Pulaski	1.93
Knox	1.91	Robertson	1.92
Larue	1.91	Rockcastle	1.93
Laurel	1.92	Rowan	1.93
Lawrence	1.92	Russell	1.91
Lee	1.92	Scott	1.92
Lewis	1.93	Shelby	1.91
Lincoln	1.93	Simpson	1.90
Livingston	1.88	Spencer	1.91
Logan	1.89	Taylor	1.92
Lyon	1.89	Todd	1.89
McCracken	1.88	Trigg	1.89
McCreary	1.91	Trimble	1.91
McLean	1.88	Union	1.88
Madison	1.93	Warren	1.89
Magoffin	1.91	Washington	1.93
Marion	1.92	Wayne	1.92
Marshall	1.88	Webster	1.88
Mason	1.92	Whitley	1.91
Meade	1.89	Wolfe	1.91
Menifee	1.91	Woodford	1.93

MARYLAND

Allegany	\$1.96	Howard	\$2.08
Anne Arundel	2.04	Kent	2.05
Baltimore	2.04	Montgomery	2.03
Calvert	2.02	Prince Georges	2.03
Caroline	2.05	Queen Annes	2.05
Carroll	2.04	St. Marys	2.03
Cecil	2.04	Somerset	2.02
Charles	2.02	Talbot	2.05
Dorchester	2.04	Washington	2.00
Frederick	2.03	Wicomico	2.04
Garrett	1.95	Worcester	2.03
Harford	2.05		

MICHIGAN

Alcona	\$1.70	Jackson	\$1.87
Alger	1.81	Kalamazoo	1.86
Allegan	1.83	Kalkaska	1.70
Alpena	1.69	Kent	1.82
Antrim	1.70	Keweenaw	1.83
Arenac	1.75	Lake	1.77
Baraga	1.88	Lapeer	1.82
Barry	1.83	Leelanau	1.70
Bay	1.80	Lenawee	1.84
Benzie	1.80	Livingston	1.77
Berrien	1.92	Luce	1.83
Branch	1.84	Mackinac	1.70
Calhoun	1.87	Macomb	1.84
Cass	1.87	Manistee	1.77
Charlevoix	1.70	Marquette	1.85
Cheboygan	1.68	Mason	1.77
Chippewa	1.70	Mecosta	1.77
Clare	1.80	Menominee	1.81
Clinton	1.82	Midland	1.80
Crawford	1.71	Missaukee	1.76
Delta	1.81	Monroe	1.85
Dickinson	1.81	Montcalm	1.80
Eaton	1.83	Montmorency	1.69
Emmet	1.69	Muskegon	1.80
Genesee	1.82	Newaygo	1.79
Gladwin	1.78	Oakland	1.82
Gogebic	1.90	Oceana	1.77
Grand Traverse	1.74	Ogemaw	1.78
Gratiot	1.82	Ontonagon	1.82
Hillsdale	1.83	Osceola	1.77
Houghton	1.83	Oscoda	1.78
Huron	1.80	Otsego	1.69
Ingham	1.83	Ottawa	1.83
Ionia	1.82	Presque Isle	1.68
Iosco	1.71	Roscommon	1.71
Iron	1.82	Saginaw	1.82
Isabella	1.79	St. Clair	1.83

MICHIGAN—Continued

County	Rate per bushel	County	Rate per bushel
St. Joseph	\$1.86	Van Buren	\$1.85
Sanilac	1.80	Washtenaw	1.83
Schoolcraft	1.81	Wayne	1.83
Shiawassee	1.82	Wexford	1.77
Tuscola	1.80		

MINNESOTA

County	Rate per bushel	County	Rate per bushel
Aitkin	\$2.05	Martin	\$1.97
Anoka	1.97	Meeker	1.97
Becker	1.97	Mille Lacs	2.00
Beltrami	1.99	Morrison	2.02
Benton	1.97	Mower	1.97
Big Stone	1.97	Murray	1.95
Blue Earth	1.97	Nicollett	1.97
Brown	1.97	Nobles	1.92
Carlton	2.05	Norman	1.94
Carver	1.97	Olmsted	1.97
Cass	2.02	Otter Tail	1.98
Chippewa	1.97	Pennington	1.95
Chisago	1.97	Pine	2.04
Clay	1.96	Pipestone	1.94
Clearwater	1.98	Polk	1.95
Cottonwood	1.97	Pope	1.97
Crow Wing	2.03	Ramsey	1.97
Dakota	1.97	Red Lake	1.96
Dodge	1.97	Redwood	1.97
Douglas	1.97	Renville	1.97
Faribault	1.97	Rice	1.97
Fillmore	1.97	Rock	1.90
Freeborn	1.97	Roseau	1.93
Goodhue	1.97	St. Louis	1.98
Grant	1.97	Scott	1.97
Hennepin	1.97	Sherburne	1.97
Houston	1.97	Sibley	1.97
Hubbard	1.99	Stearns	1.97
Isanti	1.97	Steele	1.97
Itasca	2.04	Stevens	1.97
Jackson	1.95	Swift	1.97
Kanabec	2.03	Todd	1.98
Kandiyohi	1.97	Traverse	1.97
Kittson	1.91	Wabasha	1.97
Koochiching	1.97	Wadena	2.00
Lac qui Parle	1.97	Waseca	1.97
Lake of the		Washington	1.97
Woods	1.95	Watsonwan	1.97
Le Sueur	1.97	Wilkin	1.97
Lincoln	1.95	Winona	1.97
Lyon	1.97	Wright	1.97
McLeod	1.97	Yellow Medi-	
Mahnomen	1.96	cine	1.97
Marshall	1.93		

MISSISSIPPI

All counties.....\$1.87

MISSOURI

County	Rate per bushel	County	Rate per bushel
Adair	\$1.85	Daviess	\$1.89
Andrew	1.89	De Kalb	1.89
Atchison	1.88	Dent	1.86
Audrain	1.87	Douglas	1.80
Barry	1.83	Dunklin	1.96
Barton	1.85	Franklin	1.92
Bates	1.89	Gasconade	1.88
Benton	1.86	Gentry	1.89
Bollinger	1.87	Greene	1.83
Boone	1.88	Grundy	1.86
Buchanan	1.89	Harrison	1.86
Butler	1.95	Henry	1.89
Caldwell	1.88	Hickory	1.85
Callaway	1.87	Holt	1.89
Camden	1.84	Howard	1.86
Cape Girar-		Howell	1.79
deau	1.92	Iron	1.88
Carroll	1.89	Jackson	1.89
Carter	1.84	Jasper	1.85
Cass	1.89	Jefferson	1.93
Cedar	1.89	Johnson	1.88
Chariton	1.89	Knox	1.85
Christian	1.83	Laclede	1.83
Clark	1.86	Lafayette	1.88
Clay	1.89	Lawrence	1.83
Clinton	1.89	Lewis	1.86
Cole	1.85	Lincoln	1.92
Cooper	1.87	Linn	1.85
Crawford	1.89	Livingston	1.88
Dade	1.85	McDonald	1.83
Dallas	1.82	Macon	1.85

MISSOURI—Continued

County	Rate per bushel	County	Rate per bushel
Madison	\$1.88	Ray	\$1.89
Maries	1.88	Reynolds	1.84
Marion	1.87	Ripley	1.91
Mercer	1.84	St. Charles	1.93
Miller	1.84	St. Clair	1.89
Mississippi	1.95	Ste. Gene-	
Moniteau	1.84	vieve	1.90
Monroe	1.88	St. Francois	1.89
Montgomery	1.89	St. Louis	1.93
Morgan	1.84	Saline	1.87
New Madrid	1.96	Schuyler	1.85
Newton	1.83	Scotland	1.85
Nodaway	1.87	Scott	1.94
Oregon	1.83	Shannon	1.81
Osage	1.87	Shelby	1.86
Ozark	1.77	Stoddard	1.94
Pemiscot	1.96	Stone	1.82
Perry	1.88	Sullivan	1.84
Pettis	1.89	Taney	1.81
Phelps	1.87	Texas	1.80
Pike	1.88	Vernon	1.89
Platte	1.89	Warren	1.92
Polk	1.85	Washington	1.90
Pulaski	1.85	Wayne	1.85
Putnam	1.84	Webster	1.81
Ralls	1.87	Worth	1.87
Randolph	1.89	Wright	1.80

MONTANA

County	Rate per bushel	County	Rate per bushel
Beaverhead	\$1.56	Madison	\$1.64
Big Horn	1.56	Meagher	1.62
Blaine	1.62	Mineral	1.65
Broadwater	1.62	Missoula	1.65
Carbon	1.62	Musselshell	1.62
Carter	1.71	Park	1.62
Cascade	1.62	Petroleum	1.62
Chouteau	1.62	Phillips	1.63
Custer	1.69	Pondera	1.62
Daniels	1.66	Powder River	1.67
Dawson	1.70	Powell	1.64
Deer Lodge	1.64	Prairie	1.69
Fallon	1.71	Ravalli	1.62
Fergus	1.62	Richland	1.70
Flathead	1.62	Roosevelt	1.71
Gallatin	1.64	Rosebud	1.64
Garfield	1.68	Sanders	1.65
Glacier	1.62	Sheridan	1.69
Golden Valley	1.62	Silver Bow	1.64
Granite	1.62	Stillwater	1.62
Hill	1.62	Sweet Grass	1.62
Jefferson	1.64	Teton	1.62
Judith Basin	1.62	Toole	1.62
Lake	1.62	Treasure	1.63
Lewis and		Valley	1.66
Clark	1.62	Wheatland	1.62
Liberty	1.62	Wibaux	1.72
Lincoln	1.62	Yellowstone	1.62
McCone	1.69		

NEBRASKA

County	Rate per bushel	County	Rate per bushel
Adams	\$1.83	Dundy	\$1.74
Antelope	1.84	Fillmore	1.85
Arthur	1.74	Franklin	1.81
Banner	1.69	Frontier	1.78
Blaine	1.78	Furnas	1.79
Boone	1.85	Gage	1.87
Box Butte	1.73	Garden	1.73
Boyd	1.81	Garfield	1.82
Brown	1.78	Gosper	1.80
Buffalo	1.83	Grant	1.74
Burt	1.89	Greeley	1.84
Butler	1.89	Hall	1.84
Cass	1.89	Hamilton	1.85
Cedar	1.83	Harlan	1.80
Chase	1.74	Hayes	1.75
Cherry	1.76	Hitchcock	1.76
Cheyenne	1.70	Holt	1.82
Clay	1.83	Hooker	1.76
Colfax	1.89	Howard	1.84
Cuming	1.88	Jefferson	1.85
Custer	1.80	Johnson	1.87
Dakota	1.86	Kearney	1.81
Dawes	1.70	Keith	1.74
Dawson	1.81	Keya Paha	1.78
Deuel	1.72	Kimball	1.69
Dixon	1.85	Knox	1.82
Dodge	1.89	Lancaster	1.89
Douglas	1.89	Lincoln	1.77

NEBRASKA—Continued

County	Rate per bushel	County	Rate per bushel
Logan	\$1.78	Saline	\$1.87
Loup	1.81	Sarpy	1.89
McPherson	1.78	Saunders	1.89
Madison	1.85	Scotts Bluff	1.70
Merrick	1.85	Seward	1.88
Morrill	1.72	Sheridan	1.72
Nance	1.86	Sherman	1.83
Nemaha	1.87	Sioux	1.69
Nuckolls	1.83	Stanton	1.86
Otoe	1.89	Thayer	1.85
Pawnee	1.86	Thomas	1.78
Perkins	1.74	Thurston	1.87
Phelps	1.81	Valley	1.82
Pierce	1.85	Washington	1.89
Platte	1.87	Wayne	1.84
Polk	1.87	Webster	1.82
Red Willow	1.78	Wheeler	1.85
Richardson	1.86	York	1.86
Rock	1.79		

NEW JERSEY

County	Rate per bushel	County	Rate per bushel
Bergen	\$2.04	Middlesex	\$2.04
Burlington	2.04	Monmouth	2.03
Camden	2.05	Morris	2.03
Cape May	2.01	Ocean	2.03
Cumberland	2.04	Passaic	2.04
Essex	2.04	Salem	2.05
Gloucester	2.05	Somerset	2.03
Hunterdon	2.02	Sussex	2.03
Mercer	2.04	Warren	2.01

NEW MEXICO

County	Rate per bushel	County	Rate per bushel
Bernalillo	\$1.67	Mora	\$1.67
Catron	1.58	Otero	1.70
Chaves	1.74	Quay	1.77
Colfax	1.66	Rio Arriba	1.52
Curry	1.77	Roosevelt	1.75
De Baca	1.72	Sandoval	1.67
Dona Ana	1.67	San Juan	1.52
Eddy	1.72	San Miguel	1.67
Grant	1.52	Sante Fe	1.64
Guadalupe	1.72	Sierra	1.67
Harding	1.70	Socorro	1.67
Hidalgo	1.64	Taos	1.57
Lea	1.76	Torrance	1.68
Lincoln	1.70	Union	1.72
Luna	1.67	Valencia	1.62
McKinley	1.52		

NEW YORK

County	Rate per bushel	County	Rate per bushel
Albany	\$2.06	Oneida	\$2.01
Allegany	1.98	Onondaga	1.99
Broome	1.99	Ontario	1.99
Cattaraugus	1.95	Orange	2.02
Cayuga	1.99	Orleans	1.98
Chautauqua	1.91	Oswego	1.99
Chemung	1.99	Otsego	2.01
Chenango	1.99	Putnam	2.02
Clinton	1.96	Rensselaer	2.05
Columbia	2.04	Rockland	2.01
Cortland	1.99	St. Lawrence	1.95
Delaware	2.00	Saratoga	2.04
Dutchess	2.02	Schenectady	2.05
Erie	1.97	Schoharie	2.03
Essex	1.99	Schuyler	1.99
Franklin	1.93	Seneca	1.99
Fulton	2.00	Steuben	1.99
Genesee	1.99	Suffolk	1.98
Greene	2.03	Sullivan	1.97
Herkimer	2.02	Tioga	1.99
Jefferson	1.96	Tompkins	1.99
Lewis	1.97	Ulster	2.02
Livingston	1.99	Warren	2.02
Madison	1.99	Washington	2.03
Monroe	1.99	Wayne	1.99
Montgomery	2.05	Westchester	2.03
Nassau	2.00	Wyoming	1.99
Niagara	1.99	Yates	1.99

NORTH CAROLINA

All counties	\$1.98
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NORTH DAKOTA

County	Rate per bushel	County	Rate per bushel
Adams	\$1.77	Billings	\$1.78
Barnes	1.91	Bottineau	1.78
Benson	1.83	Bowman	1.76

NORTH DAKOTA—Continued

County	Rate per bushel	County	Rate per bushel
Burke	\$1.77	Mountrail	\$1.77
Burleigh	1.83	Nelson	1.89
Cass	1.93	Oliver	1.79
Cavaller	1.85	Pembina	1.89
Dickey	1.92	Pierce	1.82
Divide	1.75	Ramsey	1.85
Dunn	1.76	Ransom	1.93
Eddy	1.86	Renville	1.77
Emmons	1.85	Richland	1.96
Foster	1.88	Rolette	1.81
Golden Valley	1.73	Sargent	1.95
Grand Forks	1.92	Sheridan	1.83
Grant	1.77	Sioux	1.79
Griggs	1.90	Slope	1.77
Hettinger	1.77	Stark	1.77
Kidder	1.85	Steele	1.91
La Moure	1.90	Stutsman	1.88
Logan	1.87	Towner	1.82
McHenry	1.80	Trail	1.92
McIntosh	1.87	Walsh	1.90
McKenzie	1.73	Ward	1.78
McLean	1.80	Wells	1.85
Mercer	1.78	Williams	1.76
Morton	1.79		

OHIO

County	Rate per bushel	County	Rate per bushel
Adams	\$1.83	Licking	\$1.85
Allen	1.84	Logan	1.83
Ashland	1.86	Lorain	1.86
Ashtabula	1.89	Lucas	1.84
Athens	1.85	Madison	1.84
Auglaize	1.84	Mahoning	1.88
Belmont	1.86	Marion	1.85
Brown	1.83	Medina	1.86
Butler	1.83	Meigs	1.83
Carroll	1.86	Mercer	1.84
Champaign	1.83	Miami	1.84
Clark	1.83	Monroe	1.86
Clermont	1.83	Montgomery	1.83
Clinton	1.83	Morgan	1.86
Columbiana	1.87	Morrow	1.85
Coshocton	1.86	Muskingum	1.86
Crawford	1.85	Noble	1.86
Cuyahoga	1.86	Ottawa	1.85
Darke	1.86	Paulding	1.84
Defiance	1.83	Perry	1.85
Delaware	1.85	Pickaway	1.84
Erie	1.85	Pike	1.83
Fairfield	1.85	Portage	1.86
Fayette	1.83	Preble	1.83
Franklin	1.85	Putnam	1.84
Fulton	1.83	Richland	1.86
Gallia	1.83	Ross	1.84
Geauga	1.89	Sandusky	1.85
Greene	1.83	Scioto	1.83
Guernsey	1.86	Seneca	1.85
Hamilton	1.83	Shelby	1.84
Hancock	1.85	Stark	1.86
Hardin	1.85	Summit	1.86
Harrison	1.86	Trumbull	1.89
Henry	1.83	Tuscarawas	1.86
Highland	1.83	Union	1.85
Hocking	1.85	Van Wert	1.84
Holmes	1.86	Vinton	1.85
Huron	1.85	Warren	1.83
Jackson	1.83	Washington	1.86
Jefferson	1.87	Wayne	1.86
Knox	1.85	Williams	1.84
Lake	1.87	Wood	1.85
Lawrence	1.83	Wyandot	1.85

OKLAHOMA

County	Rate per bushel	County	Rate per bushel
Adair	\$1.79	Cotton	\$1.79
Alfalfa	1.78	Craig	1.84
Atoka	1.79	Creek	1.79
Beaver	1.76	Custer	1.79
Beckham	1.79	Delaware	1.83
Blaine	1.79	Dewey	1.78
Bryan	1.79	Ellis	1.77
Caddo	1.79	Garfield	1.79
Canadian	1.79	Garvin	1.79
Carter	1.79	Grady	1.79
Cherokee	1.80	Grant	1.78
Choctaw	1.79	Greer	1.79
Cimarron	1.74	Harmon	1.79
Cleveland	1.79	Harper	1.75
Coal	1.79	Haskell	1.79
Comanche	1.79	Hughes	1.79

OKLAHOMA—Continued

County	Rate per bushel	County	Rate per bushel
Jackson	\$1.79	Okmulgee	\$1.79
Jefferson	1.79	Osage	1.80
Johnston	1.79	Ottawa	1.84
Kay	1.79	Pawnee	1.79
Kingfisher	1.79	Payne	1.79
Kiowa	1.79	Pittsburg	1.79
Latimer	1.79	Pontotoc	1.79
Le Flore	1.79	Pottawatomie	1.79
Lincoln	1.79	Pushmataha	1.79
Logan	1.79	Roger Mills	1.78
Love	1.79	Rogers	1.82
McClain	1.79	Seminole	1.79
McCurtain	1.79	Sequoyah	1.79
McIntosh	1.79	Stephen	1.79
Major	1.79	Texas	1.76
Marshall	1.79	Tillman	1.79
Mayes	1.82	Tulsa	1.81
Murray	1.79	Wagoner	1.81
Muskogee	1.79	Washington	1.84
Noble	1.78	Washita	1.79
Nowata	1.84	Woods	1.77
Okfuskee	1.79	Woodward	1.77
Oklahoma	1.79		

OREGON

County	Rate per bushel	County	Rate per bushel
Baker	\$1.76	Lake	\$1.81
Benton	1.80	Lane	1.77
Clackamas	1.84	Lincoln	1.74
Clatsop	1.80	Linn	1.80
Columbia	1.82	Malheur	1.71
Coos	1.70	Marion	1.83
Crook	1.83	Morrow	1.84
Curry	1.68	Multnomah	1.87
Deschutes	1.83	Polk	1.82
Douglas	1.72	Sherman	1.86
Gilliam	1.85	Tillamook	1.86
Grant	1.83	Umatilla	1.83
Harney	1.68	Union	1.78
Hood River	1.85	Wallowa	1.75
Jackson	1.68	Wasco	1.89
Jefferson	1.86	Washington	1.86
Josephine	1.65	Wheeler	1.83
Klamath	1.82	Yamhill	1.84

PENNSYLVANIA

County	Rate per bushel	County	Rate per bushel
Adams	\$2.02	Lackawanna	\$1.98
Allegheny	1.90	Lancaster	2.02
Armstrong	1.92	Lawrence	1.90
Beaver	1.90	Lebanon	2.00
Bedford	1.95	Lehigh	2.02
Berks	2.02	Luzerne	1.98
Blair	1.94	Lycoming	1.96
Bradford	1.98	McKean	1.94
Bucks	2.04	Mercer	1.89
Butler	1.91	Mifflin	1.97
Cambria	1.93	Monroe	2.00
Carbon	2.00	Montgomery	2.04
Centre	1.95	Montour	1.97
Chester	2.03	Northampton	2.02
Clarion	1.91	Northumberland	
Clearfield	1.93	land	1.97
Clinton	1.95	Perry	1.99
Columbia	1.99	Pike	1.96
Crawford	1.89	Potter	1.93
Cumberland	2.00	Schuylkill	1.99
Dauphin	1.99	Snyder	1.97
Delaware	2.04	Somerset	1.94
Elk	1.94	Sullivan	1.99
Erie	1.89	Susquehanna	1.98
Fayette	1.93	Tioga	1.98
Forest	1.90	Union	1.97
Franklin	2.00	Venango	1.89
Fulton	1.98	Warren	1.89
Greene	1.91	Washington	1.90
Huntingdon	1.96	Wayne	1.97
Indiana	1.93	Westmoreland	1.92
Jefferson	1.93	Wyoming	1.99
Juniata	1.97	York	2.02

SOUTH CAROLINA

All counties	\$1.96
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SOUTH DAKOTA

County	Rate per bushel	County	Rate per bushel
Aurora	\$1.84	Bon Homme	\$1.84
Beadle	1.90	Brookings	1.92
Bennett	1.74	Brown	1.91

SOUTH DAKOTA—Continued

County	Rate per bushel	County	Rate per bushel
Brule	\$1.85	Kingsbury	\$1.92
Buffalo	1.85	Lake	1.92
Butte	1.79	Lawrence	1.79
Campbell	1.86	Lincoln	1.88
Charles Mix	1.82	Lyman	1.85
Clark	1.92	McCook	1.88
Clay	1.88	McPherson	1.88
Codington	1.94	Marshall	1.94
Corson	1.79	Meade	1.78
Custer	1.71	Mellette	1.77
Davison	1.86	Miner	1.90
Day	1.93	Minnehaha	1.89
Deuel	1.92	Moody	1.92
Dewey	1.79	Pennington	1.79
Douglas	1.83	Perkins	1.77
Edmunds	1.89	Potter	1.87
Fall River	1.68	Roberts	1.96
Faulk	1.89	Sanborn	1.89
Grant	1.96	Shannon	1.72
Gregory	1.80	Spink	1.91
Haakon	1.82	Stanley	1.86
Hamlin	1.93	Sully	1.86
Hand	1.89	Todd	1.77
Hanson	1.87	Tripp	1.78
Harding	1.77	Turner	1.88
Hughes	1.87	Union	1.88
Hutchinson	1.84	Walworth	1.87
Hyde	1.87	Washabaugh	1.81
Jackson	1.81	Yankton	1.86
Jerauld	1.89	Ziebach	1.76
Jones	1.83		

TENNESSEE

Anderson	\$1.96	Lauderdale	\$1.88
Bedford	1.93	Lawrence	1.92
Benton	1.90	Lewis	1.92
Bledsoe	1.94	Lincoln	1.94
Blount	1.97	Loudon	1.96
Bradley	1.96	McMinn	1.96
Campbell	1.96	McNairy	1.89
Cannon	1.92	Macon	1.81
Carroll	1.89	Madison	1.88
Carter	1.99	Marion	1.94
Cheatham	1.91	Marshall	1.93
Chester	1.89	Maury	1.92
Claiborne	1.98	Meigs	1.95
Clay	1.92	Monroe	1.97
Cocke	1.97	Montgomery	1.90
Coffey	1.93	Moore	1.93
Crockett	1.88	Morgan	1.95
Cumberland	1.94	Obion	1.88
Davidson	1.91	Overton	1.93
Decatur	1.90	Perry	1.91
DeKalb	1.92	Pickett	1.93
Dickson	1.91	Polk	1.97
Dyer	1.88	Putnam	1.93
Fayette	1.88	Rhea	1.95
Fentress	1.94	Roane	1.95
Franklin	1.94	Robertson	1.90
Gibson	1.88	Rutherford	1.92
Giles	1.93	Scott	1.95
Grainger	1.97	Sequatchie	1.94
Greene	1.98	Sevier	1.97
Grundy	1.93	Shelby	1.88
Hamblen	1.98	Smith	1.92
Hamilton	1.95	Stewart	1.90
Hancock	1.99	Sullivan	2.00
Hardeman	1.89	Sumner	1.90
Hardin	1.90	Tipton	1.88
Hawkins	2.00	Trousdale	1.91
Haywood	1.88	Unicoi	1.98
Henderson	1.90	Union	1.97
Henry	1.89	Van Buren	1.93
Hickman	1.91	Warren	1.93
Houston	1.90	Washington	1.99
Humphreys	1.90	Wayne	1.91
Jackson	1.92	Weakley	1.88
Jefferson	1.97	White	1.93
Johnson	1.99	Williamson	1.92
Knox	1.97	Wilson	1.91
Lake	1.88		

TEXAS

Andrews	\$1.78	Bandera	\$1.88
Archer	1.79	Bastrop	1.92
Armstrong	1.79	Baylor	1.79
Atascosa	1.90	Bee	1.90
Bailey	1.79	Bell	1.92

TEXAS—Continued

County	Rate per bushel	County	Rate per bushel
Bexar	\$1.92	Karnes	\$1.90
Blanco	1.91	Kaufman	1.89
Borden	1.79	Kendall	1.88
Bosque	1.90	Kent	1.79
Bowie	1.83	Kerr	1.87
Briscoe	1.79	Kimble	1.86
Brown	1.88	King	1.79
Burleson	1.95	Kinney	1.80
Burnet	1.88	Knox	1.79
Caldwell	1.92	Lamar	1.83
Calhoun	1.92	Lamb	1.79
Callahan	1.79	Lampasas	1.88
Carson	1.79	Limestone	1.92
Castro	1.79	Lipscomb	1.77
Chambers	1.98	Live Oak	1.90
Cherokee	1.93	Llano	1.88
Childress	1.79	Loving	1.72
Clay	1.81	Lubbock	1.79
Cochran	1.79	Lynn	1.79
Coke	1.79	McCulloch	1.87
Coleman	1.85	McLennan	1.92
Collin	1.88	Martin	1.78
Collingsworth	1.79	Mason	1.88
Comal	1.92	Maverick	1.77
Comanche	1.82	Medina	1.90
Concho	1.85	Menard	1.85
Cooke	1.83	Midland	1.77
Coryell	1.88	Milam	1.94
Cottle	1.79	Mills	1.88
Crosby	1.79	Mitchell	1.79
Culberson	1.71	Montague	1.83
Dallam	1.76	Moore	1.77
Dallas	1.88	Motley	1.79
Dawson	1.79	Navarro	1.91
Deaf Smith	1.79	Nolan	1.79
Delta	1.86	Ochiltree	1.77
Denton	1.88	Oldham	1.79
DeWitt	1.92	Palo Pinto	1.83
Dickens	1.79	Parker	1.86
Dimmit	1.81	Parmer	1.79
Donley	1.79	Pecos	1.71
Eastland	1.80	Potter	1.79
Edwards	1.79	Presidio	1.69
Ellis	1.90	Randall	1.79
El Paso	1.69	Real	1.85
Erath	1.84	Reeves	1.72
Falls	1.92	Refugio	1.90
Fannin	1.83	Roberts	1.77
Fisher	1.79	Robertson	1.92
Floyd	1.79	Rockwall	1.88
Foard	1.79	Runnels	1.83
Gaines	1.79	San Saba	1.88
Galveston	2.09	Schleicher	1.77
Garza	1.79	Scurry	1.79
Gillespie	1.87	Shackelford	1.79
Glasscock	1.79	Sherman	1.76
Goliad	1.91	Somervell	1.88
Gray	1.78	Stephens	1.83
Grayson	1.83	Sterling	1.79
Guadalupe	1.92	Stonewall	1.79
Hale	1.79	Sutton	1.75
Hall	1.79	Swisher	1.79
Hamilton	1.84	Tarrant	1.89
Hansford	1.76	Taylor	1.81
Hardeman	1.79	Terry	1.79
Harris	2.08	Throckmorton	1.81
Hartley	1.77	Tom Green	1.79
Haskell	1.79	Travis	1.92
Hays	1.92	Uvalde	1.85
Hemphill	1.77	Van Zandt	1.88
Hill	1.91	Victoria	1.92
Hockley	1.79	Waller	2.05
Hood	1.87	Ward	1.74
Howard	1.79	Wharton	2.03
Hudspeth	1.70	Wheeler	1.78
Hunt	1.87	Wichita	1.79
Hutchinson	1.77	Wilbarger	1.79
Irion	1.76	Williamson	1.92
Jack	1.83	Wilson	1.90
Jackson	1.95	Wise	1.85
Jeff Davis	1.70	Yoakum	1.79
Johnson	1.90	Young	1.83
Jones	1.79	Zavala	1.81

UTAH

Beaver	\$1.70	Carbon	\$1.54
Box Elder	1.69	Daggett	1.56
Cache	1.69	Davis	1.70

UTAH—Continued

County	Rate per bushel	County	Rate per bushel
Duchesne	\$1.58	San Juan	\$1.52
Emery	1.54	San Pete	1.51
Garfield	1.52	Sevier	1.51
Grand	1.54	Summit	1.70
Iron	1.69	Tooele	1.70
Juab	1.70	Uintah	1.55
Kane	1.52	Utah	1.70
Millard	1.66	Wasatch	1.58
Morgan	1.70	Washington	1.69
Piute	1.52	Wayne	1.52
Rich	1.56	Weber	1.70
Salt Lake	1.70		

VIRGINIA

Accomack	\$1.99	Lancaster	\$1.99
Albemarle	1.98	Lee	1.97
Alleghany	1.96	Loudoun	1.98
Amelia	1.99	Louisa	1.98
Amherst	1.98	Lunenburg	1.99
Appomattox	1.99	Madison	1.98
Arlington	1.98	Mathews	1.99
Augusta	1.98	Mecklenburg	1.98
Bath	1.96	Middlesex	1.99
Bedford	1.98	Montgomery	1.96
Bland	1.96	Nansemond	1.98
Botetourt	1.97	Nelson	1.98
Brunswick	1.98	New Kent	1.99
Buchanan	1.96	Norfolk	1.98
Buckingham	1.99	Northampton	1.99
Campbell	1.98	Northumber-	
Caroline	1.99	land	1.99
Carroll	1.97	Nottaway	1.99
Charles City	1.99	Orange	1.98
Charlotte	1.99	Page	1.98
Chesterfield	1.99	Patrick	1.97
Clarke	1.98	Pittsylvania	1.98
Craig	1.96	Powhatan	1.99
Culpeper	1.98	Prince Edward	1.99
Cumberland	1.99	Prince George	1.99
Dickenson	1.96	Prince William	1.98
Dinwiddie	1.99	Princess	
Elizabeth City	1.99	Anne	1.98
Essex	1.99	Pulaski	1.97
Fairfax	1.98	Rappahannock	1.98
Fauquier	1.98	Richmond	1.99
Floyd	1.97	Roanoke	1.97
Fluvanna	1.98	Rockbridge	1.98
Franklin	1.97	Rockingham	1.98
Frederick	1.98	Russell	1.97
Giles	1.96	Scott	1.97
Gloucester	1.99	Shenandoah	1.98
Goochland	1.99	Smyth	1.97
Grayson	1.97	Southampton	1.98
Greene	1.98	Spotsylvania	1.99
Greensville	1.98	Stafford	1.99
Halifax	1.98	Surry	1.98
Hanover	1.99	Sussex	1.98
Henrico	1.99	Tazewell	1.96
Henry	1.97	Warren	1.98
Highland	1.96	Warwick	1.99
Isle of Wight	1.98	Washington	1.97
James City	1.99	Westmoreland	1.99
King and		Wise	1.97
Queen	1.99	Wythe	1.97
King George	1.99	York	1.99
King William	1.99		

WASHINGTON

Adams	\$1.81	Lewis	\$1.80
Asotin	1.77	Lincoln	1.80
Benton	1.84	Mason	1.79
Chelan	1.82	Okanogan	1.80
Clallam	1.71	Pacific	1.79
Clark	1.86	Pend Oreille	1.65
Columbia	1.82	Pierce	1.85
Cowlitz	1.84	San Juan	1.82
Douglas	1.81	Skagit	1.82
Ferry	1.60	Skamania	1.85
Franklin	1.83	Snohomish	1.83
Garfield	1.80	Spokane	1.77
Grant	1.82	Stevens	1.73
Grays Harbor	1.79	Thurston	1.81
Island	1.82	Wahkiakum	1.84
Jefferson	1.73	Walla Walla	1.83
King	1.86	Whatcom	1.81
Kitsap	1.77	Whitman	1.78
Kittitas	1.87	Yakima	1.83
Klickitat	1.85		

WEST VIRGINIA

County	Rate per bushel	County	Rate per bushel
Barbour	\$1.93	Mineral	\$1.95
Berkeley	1.97	Mingo	1.92
Boone	1.92	Monongalia	1.91
Braxton	1.92	Monroe	1.95
Brooke	1.90	Morgan	1.96
Cabell	1.90	Nicholas	1.94
Calhoun	1.91	Ohio	1.90
Clay	1.92	Pendleton	1.96
Doddridge	1.90	Pleasants	1.89
Fayette	1.94	Pocahontas	1.96
Gilmer	1.91	Preston	1.93
Grant	1.95	Putnam	1.90
Greenbrier	1.96	Raleigh	1.93
Hampshire	1.96	Randolph	1.95
Hancock	1.90	Ritchie	1.90
Hardy	1.96	Roane	1.90
Harrison	1.92	Summers	1.96
Jackson	1.89	Taylor	1.93
Jefferson	1.98	Tucker	1.95
Kanawha	1.91	Tyler	1.89
Lewis	1.92	Upshur	1.93
Lincoln	1.91	Wayne	1.91
Logan	1.92	Webster	1.94
McDowell	1.94	Wetzel	1.90
Marion	1.91	Wirt	1.90
Marshall	1.90	Wood	1.89
Mason	1.90	Wyoming	1.93
Mercer	1.95		

WISCONSIN

County	Rate per bushel	County	Rate per bushel
Adams	\$1.90	Marathon	\$1.93
Ashland	2.01	Marquette	1.85
Barron	1.97	Menomonie	1.87
Bayfield	1.95	Milwaukee	1.96
Brown	1.89	Monroe	1.90
Buffalo	1.94	Oconto	1.87
Burnett	2.03	Oneida	1.88
Calumet	1.91	Outagamie	1.90
Chippewa	1.97	Ozaukee	1.94
Clark	1.96	Pepin	1.96
Columbia	1.92	Pierce	1.97
Crawford	1.89	Polk	1.97
Dane	1.93	Portage	1.93
Dodge	1.93	Price	1.98
Door	1.84	Racine	1.96
Douglas	2.01	Richland	1.90
Dunn	1.97	Rock	1.95
Eau Claire	1.96	Rusk	2.00
Florence	1.84	St. Croix	1.97
Fond du Lac	1.92	Sauk	1.92
Forest	1.94	Sawyer	1.97
Grant	1.88	Shawano	1.88
Green	1.94	Sheboygan	1.93
Green Lake	1.91	Taylor	1.98
Iowa	1.91	Trempealeau	1.92
Iron	1.95	Vernon	1.90
Jackson	1.92	Vilas	1.85
Jefferson	1.94	Walworth	1.96
Juneau	1.89	Washburn	1.95
Kenosha	1.96	Washington	1.94
Kewaunee	1.86	Waukesha	1.95
LaCrosse	1.91	Waupaca	1.88
LaFayette	1.91	Waushara	1.89
Langlade	1.86	Winnebago	1.91
Lincoln	1.86	Wood	1.96
Manitowoc	1.91		

WYOMING

County	Rate per bushel	County	Rate per bushel
Albany	\$1.63	Natrona	\$1.55
Big Horn	1.52	Niobrara	1.65
Campbell	1.60	Park	1.52
Carbon	1.57	Platte	1.69
Converse	1.61	Sheridan	1.58
Crook	1.62	Sublette	1.56
Fremont	1.52	Sweetwater	1.56
Goshen	1.69	Teton	1.60
Hot Springs	1.52	Uinta	1.56
Johnson	1.58	Washakie	1.52
Laramie	1.69	Weston	1.64
Lincoln	1.56		

(f) Discounts and premiums. The basic support rates shall be adjusted by the following applicable premiums and discounts:

	Cents per bushel
(1) Class premiums and discounts:	
(i) Premiums:	
Hard Amber Durum ¹	+25
Amber Durum ¹	+10
(ii) Discounts:	
Red Durum	-20
Mixed Wheats (do not apply more than 1 of the Mixed Wheat discounts):	
Mixed Wheat (including Mixed Wheat containing less than 5 percent of wheats of the classes Durum and/or Red Durum)	-2
Mixed Wheat (containing from 5 percent to 10 percent of Wheat of the classes Durum and/or Red Durum)	-6
Mixed Wheat (containing more than 10 percent of Wheats of the classes Durum and/or Red Durum)	-15

	Cents per bushel
(2) Grade premiums and discount:	
(i) Premium:	
No. 1 Heavy (Hard Red Spring)	+1
(ii) Discounts:	
No. 2	-1
No. 3	-3
No. 4 on basis of test weight	-6
No. 5 on basis of test weight	-9
No. 4 or 5 because of containing Durum and/or Red Durum ^{2,3}	-6
Smut—degree basis:	
Light smutty	-2
Smutty	-6
Smut—percentage basis:	
One-half of 1 percent	-1
1 percent or over	-3
Garlic—degree basis:	
Light garlicky	-6
Garlicky	-15
(3) Variety discount:	-20
The following varieties listed by class will be subject to discount. This discount is in addition to any other applicable discount:	

Hard Red Winter	Hard Red Spring	Durum	White	Soft Red Winter
Blue Jacket Cache ³ Chiefkan Cimarron Early Blackhull Kanking Kharkof MC 22 New Chief Pawnee Sel. 33 Purkof Red Chief Red Hull Red Jacket Stafford Wasatch ⁴ Yogo	C.T. 231 Gasser Henry Kinney Premier Progress Russell ⁴ Spinkcota Sturgeon	Golden Ball Peliss Pentad	Fifty Fold Florence Greenson Rex Sonora	Kanqueen Kawvale Nured Seabreeze

¹ Except in Oregon, Washington, and Wisconsin.

² Except in Wisconsin.

³ Except in Idaho and Utah.

⁴ Except in Colorado, Idaho, and Utah.

(4) Sedimentation value and protein premiums and discounts for Hard Red Winter, Hard Red Spring and Hard White Wheat of the Varieties Beart, Bluestem and Burt. (Not applicable to varieties listed in subparagraph (3) of this paragraph.)

Sedimentation value	Cents per bushel	Protein content (percent)	Cents per bushel
21 and below	-9	9.4 and below	-4
22-23	-8	9.5-9.9	-3
24-25	-7	10.0-10.4	-2
26-27	-6	10.5-10.9	-1
28-29	-5	11.0-11.9	0
30-31	-4	12.0-12.4	+1
32-33	-3	12.5-12.9	+2
34-35	-2	13.0-13.4	+3
36-37	-1	13.5-13.9	+4
38-42	0	14.0-14.4	+5
43-44	+1	14.5-14.9	+6
45-46	+2	15.0-15.4	+7
47-48	+3	15.5-15.9	+8
49-50	+4	16.0-16.4	+9
51-52	+5	16.5-16.9	+10
53-54	+6	17.0-17.4	+11
55-56	+7	17.5 and above	+12
57-58	+8		
59-60	+9		
61-62	+10		
63-64	+11		
65 and above	+12		

Effective date: Upon publication in the FEDERAL REGISTER.

¹ Not applicable to any of the undesirable varieties listed in the variety discount schedule.

Signed at Washington, D.C., on July 1, 1963.

H. D. GODFREY,
Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 63-7133; Filed, July 8, 1963; 8:45 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Health, Education, and Welfare

Effective upon publication in the FEDERAL REGISTER, subparagraph (2) of paragraph (d) of § 6.314 is revoked and subparagraph (4) is added to paragraph (d) as set out below.

² These discounts are in addition to any other applicable numerical grade discount.

³ Not applicable to any of the mixed wheats or Red Durum. For discounts applicable to mixed wheat containing Durum and/or Red Durum, see 1(ii), above.

§ 6.314 Department of Health, Education, and Welfare.

* * * * *

(d) Office of Education. ***

(4) One Assistant to the Commissioner (Public Affairs).

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

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] MARY V. WENZEL,
Executive Assistant to
the Commissioners.

[F.R. Doc. 63-7197; Filed, July 8, 1963;
8:54 a.m.]

**PART 6—EXCEPTIONS FROM THE
COMPETITIVE SERVICE**

Housing and Home Finance Agency

Effective July 8, 1963, in § 6.342, subparagraphs (3), (17), (18), and (19) of paragraph (b) are revoked, subparagraph (23) of paragraph (b) is amended, and subparagraph (31) is added to paragraph (b) as set out below.

§ 6.342 Housing and Home Finance Agency.

* * * * *

(b) Federal Housing Administration.

(23) One Assistant Commissioner for Multifamily Housing. ***

(31) One Associate Deputy Commissioner for Management.

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

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] MARY V. WENZEL,
Executive Assistant to
the Commissioners.

[F.R. Doc. 63-7198; Filed, July 8, 1963;
8:54 a.m.]

**Title 9—ANIMALS AND
ANIMAL PRODUCTS**

**Chapter I—Agricultural Research
Service, Department of Agriculture**

**SUBCHAPTER C—INTERSTATE TRANSPORTATION
OF ANIMALS AND POULTRY**

PART 74—SCABIES IN SHEEP

**Designation of Free; Infected and
Eradication Areas**

Pursuant to the provisions of sections 1 through 4 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, and sections 4 through 7 of the Act of May 29, 1884, as amended (21 U.S.C. 111-113, 115, 117, 120, 121, 123-126), §§ 74.2 and 74.3 of Part 74, Subchapter C, Chapter I, Title 9, Code of Federal Regulations, as amended, are hereby amended to read, respectively, as follows:

§ 74.2 Designation of free and infected areas.

(a) Notice is hereby given that sheep in the following States, Territories, and

District, or parts thereof as specified, are not known to be infected with scabies, and such States, Territories, District, and parts thereof, are hereby designated as free areas:

(1) Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin, and Wyoming;

(2) The following counties in Nebraska: Arthur, Banner, Blaine, Box Butte, Brown, Chase, Cherry, Cheyenne, Dawes, Deuel, Dundy, Garden, Grant, Hooker, Keith, Keya Paha, Kimball, Loup, Morrill, Perkins, Rock, Sheridan, Sioux, Scotts Bluff, and Thomas;

(3) The following counties in Hawaii: Honolulu, Kauai, and Maui;

(4) St. John and St. Thomas Islands of the Virgin Islands of the United States;

(5) The following counties in Missouri: Jackson, Lafayette, Saline, Cooper, Moniteau, Cole, Osage, Gasconade, Franklin, St. Louis, and all counties in the State of Missouri lying south thereof;

(6) The following counties in Illinois: Madison, Bond, Clinton, Marion, Clay, Richland, Lawrence, and all counties in the State of Illinois lying south thereof.

(b) Notice is hereby given also that sheep scabies exists in all States and Territories and parts of States not designated as free areas in paragraph (a) of this section, and they are hereby designated as infected areas.

§ 74.3 Designation of eradication areas.

(a) Notice is hereby given that sheep in the following States, Territory, or parts thereof as specified, are being handled systematically to eradicate scabies in sheep, and such States, Territory, and parts thereof, are hereby designated as eradication areas:

(1) Kentucky, Tennessee, and Virginia;

(2) All counties in Nebraska except Arthur, Banner, Blaine, Box Butte, Brown, Chase, Cherry, Cheyenne, Dawes, Deuel, Dundy, Garden, Grant, Hooker, Keith, Keya Paha, Kimball, Loup, Morrill, Perkins, Rock, Sheridan, Sioux, Scotts Bluff, and Thomas;

(3) All counties in Hawaii except Honolulu, Kauai, and Maui;

(4) The following counties in West Virginia: Berkeley, Fayette, Grant, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Mineral, Monroe, Morgan, Nicholas, Pendleton, Pocahontas, Raleigh, Randolph, Summers, Tucker, Upshur, and Webster;

(5) St. Croix Island of the Virgin Islands of the United States;

(6) All counties in Missouri except Jackson, Lafayette, Saline, Cooper, Moniteau, Cole, Osage, Gasconade, Franklin, St. Louis, and all counties in the State of Missouri lying south thereof;

(7) All counties in Illinois except Madison, Bond, Clinton, Marion, Clay, Richland, Lawrence, and all counties in the State of Illinois lying south thereof.

(Secs. 4-7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended, secs. 1-4, 33 Stat. 1264, as amended, 1265, as amended; 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126; 19 F.R. 74, as amended)

Effective date. The foregoing amendments shall become effective upon issuance.

The amendments add Bolivar and Washington Counties in the State of Mississippi to the list of free areas and delete such counties from the list of infected and eradication areas as sheep scabies is no longer known to exist therein. The entire State of Mississippi has now been designated as a free area. Hereafter, the restrictions pertaining to the interstate movement of sheep from or into infected and eradication areas as contained in 9 CFR Part 74, as amended, will not apply to Mississippi. However, the restrictions in said Part 74 pertaining to the interstate movement of sheep from or into free areas will apply to this State.

The amendments relieve certain restrictions presently imposed and must be made effective immediately to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and contrary to the public interest, and the amendments may be made effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 3d day of July 1963.

B. T. SHAW,
Administrator,
Agricultural Research Service.

[F.R. Doc. 63-7203; Filed, July 8, 1963;
8:55 a.m.]

**Title 14—AERONAUTICS AND
SPACE**

Chapter I—Federal Aviation Agency

SUBCHAPTER E—AIRSPACE [NEW]

[Airspace Docket No. 62—SW-49]

**PART 71—DESIGNATION OF FEDERAL
AIRWAYS, CONTROLLED AIRSPACE
AND REPORTING POINTS [NEW]**

**Alteration of Federal Airway and
Associated Control Areas**

On January 30, 1963, a notice of proposed rule making was published in the FEDERAL REGISTER (28 F.R. 870) stating that the Federal Aviation Agency proposed to revoke the segment of VOR Federal airway No. 192 between Zuni, N. Mex., and Socorro, N. Mex.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted. The Air Transport Association of America con-

curred in the proposed action and no other comments were received.

The substance of the proposed amendment having been published, therefore, and for the reasons stated in the notice, the following action is taken:

In § 71.123 (27 F.R. 220-6, November 10, 1962) V-192 "From Zuni, N. Mex., via Socorro, N. Mex.;" is deleted and "From Socorro, N. Mex., via" is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

This amendment shall become effective 0001, e.s.t., August 22, 1963.

Issued in Washington, D.C., on July 1, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-7155; Filed, July 8, 1963;
8:45 a.m.]

[Airspace Docket No. 62-AL-19]

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

Alteration of Control Zone and Transition Area

On March 7, 1963, a notice of proposed rule making was published in the FEDERAL REGISTER (28 F.R. 2238) stating that the Federal Aviation Agency proposed to alter the Annette Island control zone and transition area.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and no adverse comments were received regarding the proposed amendments.

The substance of the proposed amendments having been published, and for the reasons stated in the notice, the following actions are taken:

1. In § 71.171 (27 F.R. 220-91, November 10, 1962), the Annette Island, Alaska, control zone is amended to read:

Annette Island, Alaska.

Within a 5-mile radius of Annette Island Airport (latitude 55°02'30" N., longitude 131°34'05" W.), and within 2 miles each side of the 169° bearing from the Annette Island RR, extending from the 5-mile radius zone to 8 miles S of the RR.

2. In § 71.181 (27 F.R. 220-139, November 10, 1962), the Annette Island, Alaska, transition area is amended to read:

Annette Island, Alaska

That airspace extending upward from 700 feet above the surface within 2 miles each side of the Annette Island ILS localizer NW course, extending from 5 miles NW to 15.5 miles NW of the Annette Island Airport (latitude 55°02'30" N., longitude 131°34'05" W.), and that airspace extending upward from 1,200 feet above the surface within 22 miles SW and 17 miles NE of the 142° and 322° bearings from the Annette RR, extending from 40 miles NW of the RR to a line 3 miles N of and parallel to the United States/Canadian border.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

No. 132—Pt. I—5

These amendments shall become effective 0001, e.s.t., September 19, 1963.

Issued in Washington, D.C., on July 1, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-7157; Filed, July 8, 1963;
8:45 a.m.]

[Airspace Docket No. 62-SW-64]

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

Designation of Transition Area

On March 7, 1963, a notice of proposed rule making was published in the FEDERAL REGISTER (28 F.R. 2239) stating that the Federal Aviation Agency proposed to designate a transition area at Ardmore, Okla.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and no adverse comments were received regarding the proposed amendment.

The substance of the proposed amendment having been published and for the reasons stated in the notice, the following action is taken:

Section 71.181 (27 F.R. 220-139, November 10, 1962) is amended by adding the following:

Ardmore, Okla.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Ardmore Municipal Airport (latitude 34°18'00" N., longitude 97°00'50" W.); within 2 miles each side of the Ardmore VOR 233° and 053° radials, extending from the 7-mile radius area to 8 miles SW of the VOR; within 2 miles each side of the 265° and 085° bearings from the Ardmore RBN, extending from the 7-mile radius area to 8 miles W of the RBN; and that airspace extending upward from 1,200 feet above the surface within a 25-mile radius of the Ardmore Municipal Airport.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

This amendment shall become effective 0001, e.s.t., September 19, 1963.

Issued in Washington, D.C., on July 1, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-7156; Filed, July 8, 1963;
8:45 a.m.]

[Airspace Docket No. 62-WE-80]

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

PART 73—SPECIAL USE AIRSPACE [NEW]

Alteration of Restricted Areas and Controlled Airspace

On March 21, 1963, a notice was published in the FEDERAL REGISTER (28 F.R.

2824) stating that the Federal Aviation Agency was considering an alteration to the Hunter-Liggett, Calif., Restricted Area R-2513 which would reduce the overall size approximately 50 square miles and lower the designated altitudes from "Surface to 40,000 feet MSL" to "Surface to 24,000 feet MSL". Further, it was proposed to delete the reference to R-2513 contained in the description of VOR Federal Airway No. 27 since the proposed reduction to R-2513 would eliminate the encroachment of the restricted area upon the airway. In addition, it was also proposed to designate R-2513 as a joint use area with the Oakland ARTC Center the controlling agency. Such actions are taken herein.

No adverse comments were received regarding the proposed amendments.

Although not stated in the notice, action is being taken herein to include R-2513 in the continental control area.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published and for the reasons stated in the notice, the following actions are taken:

1. In § 73.25 *California* (28 F.R. January 26, 1963), R-2513 Hunter-Liggett, Calif., is amended to read:

R-2513 Hunter-Liggett, Calif.

Boundaries. Beginning at latitude 35°55'20" N., longitude 121°05'45" W.; to latitude 35°57'45" N., longitude 121°09'45" W.; to latitude 35°59'18" N., longitude 121°13'30" W.; to latitude 35°58'54" N., longitude 121°15'20" W.; latitude 36°02'45" N., longitude 121°17'45" W.; to latitude 36°03'43" N., longitude 121°22'38" W.; to latitude 36°02'12" N., longitude 121°24'40" W.; to latitude 35°51'02" N., longitude 121°16'18" W.; to latitude 35°48'17" N., longitude 121°10'53" W.; to the point of beginning.

Designated altitudes. Surface to 24,000—feet MSL.

Time of designation. Continuous.

Controlling agency. Federal Aviation Agency, Oakland ARTC Center.

Using agency. Commanding General, Fort Ord, Calif.

2. Section 71.123 (27 F.R. 220-6, November 10, 1962, 27 F.R. 12438, 28 F.R. 721) is amended as follows: In V-27 "the airspace within R-2513, R-2516, R-2520 and W-289," is deleted and "the airspace within R-2516, R-2520, and W-289," is substituted therefor.

3. Section 71.151 (27 F.R. 220-54) is amended to include R-2513 Hunter-Liggett, Calif.

These amendments shall be effective 0001, e.s.t., August 22, 1963.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on July 1, 1963.

LEE E. WARREN,
Acting Director,
Air Traffic Service.

[F.R. Doc. 63-7187; Filed, July 8, 1963;
8:52 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Regional Administrators of the Commission

Effective upon publication in the FEDERAL REGISTER, paragraph (b) of §200.11 is revised to read as follows:

§ 200.11 Headquarters Office—Regional Office relationship.

(b) *Regional Administrators of the Commission.*

Region 1. New York, New Jersey.—Regional Administrator, 225 Broadway, New York, N.Y. 10007

Region 2. Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine.—Regional Administrator, Federal Building, Post Office Square, Boston, Mass. 02109

Region 3. Tennessee, Virgin Islands, Puerto Rico, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and that part of Louisiana lying east of the Atchafalaya River.—Regional Administrator, Suite 138, 1371 Peachtree Street NE., Atlanta, Ga. 30309

Region 4. Illinois, Indiana, Iowa, Kansas City (Kans.), Kentucky, Michigan, Minnesota, Missouri, Ohio, Wisconsin.—Regional Administrator, Bankers Building (Room 630), 105 West Adams Street, Chicago, Ill. 60603

Region 5. Oklahoma, Arkansas, Texas, that part of Louisiana lying west of the Atchafalaya River, and Kansas (except Kansas City).—Regional Administrator, United States Courthouse (Room 301), 10th and Lamar Streets, Fort Worth, Tex. 76102

Region 6. Wyoming, Colorado, New Mexico, Nebraska, North Dakota, South Dakota, Utah.—Regional Administrator, 802 Midland Savings Building, 444 17th Street, Denver, Colo. 80202

Region 7. California, Nevada, Arizona, Hawaii, Guam.—Regional Administrator, Pacific Building, 821 Market Street, San Francisco, Calif. 94103

Region 8. Washington, Oregon, Idaho, Montana, Alaska.—Regional Administrator, Hoge Building (ninth floor), 705 Second Avenue, Seattle, Wash. 98104

Region 9. Pennsylvania, Maryland, Virginia, West Virginia, Delaware, District of Columbia.—Regional Administrator, Courts Building, 310 Sixth Street NW., Washington, D.C. 20549

The Commission finds that the foregoing revision involves a matter of agency organization and does not require notice and opportunity for comment under section 4 of the Administrative Procedure Act.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

JULY 2, 1963.

[F.R. Doc. 63-7196; Filed, July 8, 1963; 8:54 a.m.]

PART 200—ORGANIZATION; CONDUCT AND ETHICS, AND INFORMATION AND REQUESTS

Subpart G—Plan of Organization and Operation Effective During Emergency Conditions

The Securities and Exchange Commission has adopted a plan to provide basic organization and methods of operation which may be needed by the Commission to perform its essential functions in the event of (i) a national emergency such as an armed attack upon the United States, (ii) official notification of the likelihood of imminence of such attack, or (iii) other authorization by the President, whichever may first occur.

The provisions of this plan are designed to assure continuity of essential governmental functions to be performed by the Commission under the specified conditions. It is published to inform all interested persons of the circumstances and ways in which the Commission will organize and proceed in such an emergency.

When operative, the plan's provisions supersede all inconsistent organizational, administrative, or procedural requirements theretofore observed by the Commission in discharging its functions.

The text of the Commission action follows:

Pursuant to the Securities Exchange Act of 1934, particularly sections 4 and 23 thereof, and to Public Law 87-592 approved August 20, 1962 (76 Stat. 394), the Commission hereby adopts a new Subpart G to Part 200 of Title 17, as follows:

Sec.	Purpose.
200.200	Emergency conditions, effective date, and duration.
200.201	Offices, and information and submittals.
200.202	Organization, and delegations of authority.
200.203	Personnel, fiscal, and service functions.
200.204	Effect upon existing Commission organization, delegations, and rules.

AUTHORITY: §§ 200.200 to 200.205 issued under secs. 4 and 23, 48 Stat. 885, as amended, and 901, 15 U.S.C. 78d and 78w; Act of August 20, 1962, 76 Stat. 394, 15 U.S.C. 78d-1; Reorganization Plan No. 10 of 1950, 64 Stat. 1265.

§ 200.200 Purpose.

This subpart describes the plan of organization and operation which will be observed by the Securities and Exchange Commission in discharging its duties and responsibilities in the event of a national emergency as defined in the following section.

§ 200.201 Emergency conditions, effective date, and duration.

For the purposes of this subpart, emergency conditions shall be deemed to commence at the time of an armed attack upon the United States, its territories and possessions, at the time of official

notification of the likelihood or imminence of such attack, or at a time specified by the authority of the President, whichever may first occur, and shall continue until official notification of cessation of such conditions. The provisions of this subpart shall become operative as at the commencement of emergency conditions and continue until cessation of those conditions, or until the Commission shall by notice or order resume its normal organization and operations.

§ 200.202 Offices, and information and submittals.

(a) During emergency conditions, the location or headquarters of the Commission shall be as designated by the Chairman or his successor. The location of each Regional and Branch Office of the Commission, if different from the normal location, shall be as designated by the Chairman of the Commission or his successor, or in the absence of communications with him, by the Regional Administrator for the area or his acting successor.

(b) During emergency conditions, all formal or informal requests, filings, reports or other submittals shall be delivered to the Commission at designated offices or addressed to the Securities and Exchange Commission, Official Mail and Messenger Service, United States Post Office Department, Washington 25, D.C.

§ 200.203 Organization, and delegations of authority.

(a) During emergency conditions, the respective functions and responsibilities of the Commissioners, the Chairman of the Commission, and the staff members shall be, to the extent possible, as set forth in Subpart A of this part (§ 200.1 et seq.).

(b) Action for and in the name of the Commission taken pursuant to this subpart by one or more Commissioners or by a successor as designated in this section shall mean and include the delegated authority to act for the unavailable or incapacitated Commissioners.

(c) Pursuant to the statutes governing the Commission, to Reorganization Plan No. 10 of 1950, and to Public Law 87-592 approved August 20, 1962, the following automatic delegation of authority is made to provide continuity in the event of an emergency:

(1) In the absence or incapacity of the Chairman of the Commission during an emergency of the nature contemplated by this subpart, the authority of the Chairman to govern the affairs of the Commission and to act for the Commission, as provided for by laws and by delegations from the Commission, will pass to the surviving successor highest on the following list until such time as a duly appointed Chairman of the Commission is available:

- (i) The senior Commissioner.
- (ii) The Director of the Division of Trading and Exchanges.
- (iii) The Director of the Division of Corporate Regulation.

- (iv) The Director of the Division of Corporation Finance.
- (v) The General Counsel.
- (vi) The Chief Accountant.
- (vii) The Director of the Office of Opinion Writing.
- (viii) The Secretary.
- (ix) The Regional Administrator highest on the following list:

Denver.	Seattle.
Fort Worth.	San Francisco.
Chicago.	New York.
Atlanta.	Boston.

(2) If and when a commissioner previously incapacitated or otherwise unavailable, again becomes available, he shall thereupon have all the powers and functions he would have had if he had not been incapacitated or otherwise unavailable.

(d) Actions taken for and in the name of the Commission as described above shall be effective immediately or as specified by the successor acting, but shall be subject to reconsideration by the Commissioners when the Commission has been reconstituted and is functioning.

(e) Except as may be determined otherwise by the Chairman or his successor, the duties of each head of a division or office of the Commission shall be discharged, in the absence or incapacity of such person during the emergency conditions, by the available staff member next in line of succession. The head of each division or office shall designate the line of succession within his division or office. If no such designation has been made or the designee is unavailable, such duties shall be assumed by the available subordinate officer or employee in the particular division or office who is highest in grade and in the event that there is more than one such person, in length of service with the Commission.

§ 200.204 Personnel, fiscal, and service functions.

In the absence or unavailability of the appropriate staff officer or his successor, authority to effect temporary appointments of such additional officers and employees, to classify and allocate positions to their proper grades, to issue travel orders, and to effect emergency purchases of supplies, equipment and services shall be exercised by the respective Regional Administrators, their deputies, or staff in line of succession, as may be required for the discharge of the lawful duties of the respective offices.

§ 200.205 Effect upon existing Commission organization, delegations, and rules.

Except as otherwise provided herein, all outstanding Commission organizational statements, delegations of authority, orders, rules and regulations shall remain in force and effect during emergency conditions, subject to all lawful requirements and such changes as may be authorized by or in the name of the Chairman or the Commission.

The Commission finds that the foregoing sections involve matters of agency organization and procedure which do not require notice and opportunity for comment under section 4(a) of the Adminis-

trative Procedure Act. Accordingly, the plan is adopted, effective forthwith.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

JUNE 24, 1963.

[F.R. Doc. 63-7195; Filed, July 8, 1963; 8:54 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 25—DRESSINGS FOR FOODS Mayonnaise, French Dressing, and Salad Dressing; Confirmation of Effective Date of Order Listing Dried Egg Yolks and Dried Whole Eggs as Optional Ingredients

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055 as amended 70 Stat. 919; 21 U.S.C. 341, 371) and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (25 F.R. 8625), notice is given that no objections were filed to the order published in the FEDERAL REGISTER of May 18, 1963 (28 F.R. 5013), amending the standards of identity for mayonnaise, french dressing, and salad dressing by including dried egg yolks and dried whole eggs in the list of optional ingredients. Accordingly, the amendments promulgated by the order cited will become effective July 17, 1963.

(Secs. 401, 701, 52 Stat. 1046, 1055 as amended 70 Stat. 919; 21 U.S.C. 341, 371)

Dated: July 2, 1963.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 63-7175; Filed, July 8, 1963; 8:49 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

FILTERS, RESIN-BONDED

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by Johnson & Johnson, 4949 West 45th Street, Chicago 38, Illinois, and other relevant material, has concluded that § 121.2536 should be amended to permit the use of such articles to filter milk at temperatures higher than 145° F. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c) (1), 72 Stat. 1786; 21 U.S.C. 348(c) (1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), § 121.2536 is amended by insert-

ing therein a new paragraph (h) reading as follows:

§ 121.2536 Filters, resin-bonded.

(h) Resin-bonded filters conforming with the specifications of subparagraph (1) of this paragraph are used as provided in subparagraph (2) of this paragraph.

(1) Total extractives: The finished filter, when exposed to distilled water at 212° F. for 2 hours, yields total extractives not to exceed 4.0 percent by weight of the filter.

(2) Conditions of use: It is used to filter milk at operating temperatures not to exceed 212° F.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c) (1), 72 Stat. 1786; 21 U.S.C. 348(c) (1))

Dated: July 2, 1963.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 63-7173; Filed, July 8, 1963; 8:48 a.m.]

SUBCHAPTER C—DRUGS

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

Penicillin Tablets

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for the certification of penicillin and penicillin-containing drugs are amended by changing § 146a.27(d) (2) (i) (a) and (3) (i) (a) (2) to read as follows:

§ 146a.27 Penicillin tablets.

- (d) * * *
- (2) * * *
- (1) * * *

(a) If the person who requests certification is the manufacturer of the batch: Average potency, average moisture, and, if required by paragraph (a) of this section, disintegration time of tablets collected during the time of tableting the batch; and, unless the tablets are packaged into dispensing-size containers immediately after they are compressed or the manufacturer has submitted to the Commissioner, and it has been accepted, information adequate to prove that such tests are not necessary, average moisture of tablets collected during each day of packaging the batch.

(3) * * *

(i) * * *

(a) * * *

(2) If, after tableting, such person packaged the batch into dispensing-size containers; 20 tablets collected at equal intervals during each day the tablets are being packaged, except that this sample is not required if the tablets are packaged immediately after they are compressed or if the manufacturer has been exempted by the Commissioner from such requirement; or

Notice and public procedure and delayed effective date are not necessary prerequisites to the promulgation of this order, and I so find, since the nature of the changes is such that they cannot be applied to the specific products unless and until the manufacturer thereof has supplied adequate data regarding the articles involved.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: July 1, 1963.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 63-7174; Filed, July 8, 1963;
8:49 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6662]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Exempt Mutual Insurance Companies and Associations

On January 10, 1963, notice of proposed rule making regarding amendment of the Income Tax Regulations (26 CFR Part 1) to conform the provisions relating to exempt mutual insurance companies and associations to section 822(b) of the Internal Revenue Code of 1954 as amended by section 3(a)(3) of the Life Insurance Company Tax Act for 1955 (70 Stat. 47), to clarify the provisions relating to feeder organizations

in view of the decision in *Hospital Bureau of Standards and Supplies, Inc. v. United States* (Ct. Cl. 1958) 158 F. Supp. 560, and to reflect the amendments made by the Act of April 7, 1958 (Public Law 85-367, 72 Stat. 80) and by section 75(b) of the Technical Amendments Act of 1958 (72 Stat. 1661), was published in the FEDERAL REGISTER (28 F.R. 280). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as proposed are hereby adopted, subject to the changes set forth below in paragraphs 1 and 2, to incorporate those changes required by section 8(d) of the Revenue Act of 1962 (76 Stat. 997).

PARAGRAPH 1. Section 1.501(c)(15) is amended.

PAR. 2. Section 1.501(c)(15)-1, as set forth in paragraph 1 of the notice of proposed rule making, is revised.

Because the additional changes contained in this Treasury decision merely conform the regulations under section 501(c)(15) to reflect the amendment made by section 8(d) of the Revenue Act of 1962, which increases the maximum amount permitted to be received from certain sources by mutual insurance companies and associations exempt from taxation, it is hereby found that it is unnecessary, with respect to such changes, to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

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

[SEAL] BERTRAND M. HARDING,
Acting Commissioner
of Internal Revenue.

Approved: July 1, 1963.

STANLEY S. SURREY,
Assistant Secretary of the
Treasury.

PARAGRAPH 1. Section 1.501(c)(15) is amended to read as follows:

§ 1.501(c)(15) Statutory provisions; exemption from tax on corporations, certain trusts, etc.; mutual insurance organizations other than life or marine.

SEC. 501. *Exemption from tax on corporations, certain trusts, etc.* * * *

(c) *List of exempt organizations.* The following organizations are referred to in subsection (a):

(15) Mutual insurance companies or associations other than life or marine (including interinsurers and reciprocal underwriters) if the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) does not exceed \$150,000.

[Sec. 501(c)(15) as amended by sec. 5(2) of the Life Insurance Company Tax Act for 1955 (70 Stat. 49); sec. 8(d), Rev. Act 1962 (76 Stat. 997)]

PARAGRAPH 2. Section 1.501(c)(15)-1 is amended to read as follows:

§ 1.501(c)(15)-1 Mutual insurance companies or associations.

(a) *Taxable years beginning after December 31, 1962.* An insurance company or association described in section 501(c)(15) is exempt under section 501(a) if it is a mutual company or association (other than life or marine) or if it is a mutual interinsurer or reciprocal underwriter (other than life or marine) and if the gross amount received during the taxable year from the sum of the following items does not exceed \$150,000.

(1) The gross amount of income during the taxable year from—

(i) Interest (including tax-exempt interest and partially tax-exempt interest), as described in § 1.61-7. Interest shall be adjusted for amortization of premium and accrual of discount in accordance with the rules prescribed in section 822(d)(2) and the regulations thereunder.

(ii) Dividends, as described in § 1.61-9.

(iii) Rents and royalties, as described in § 1.61-8.

(iv) The entering into of any lease, mortgage, or other instrument or agreement from which the company may derive interest, rents, or royalties.

(v) The alteration or termination of any instrument or agreement described in subdivision (iv) of this subparagraph.

(2) The gross income from any trade or business (other than an insurance business) carried on by the company or association, or by a partnership of which the company or association is a partner.

(3) Premiums (including deposits and assessments).

(b) *Taxable years beginning after December 31, 1954, and before January 1, 1963.* An insurance company or association described in section 501(c)(15) and paragraph (a) of this section is exempt under section 501(a) if the gross amount received during the taxable year from the sum of the items described in paragraph (a) (1), (2), and (3) of this section does not exceed \$75,000.

(c) *No double inclusion of income.* In computing the gross income from any trade or business (other than an insurance business) carried on by the company or association, or by a partnership of which the company or association is a partner, any item described in section 822(b)(1) (A), (B), or (C) and paragraph (a)(1) of this section shall not be considered as gross income arising from the conduct of such trade or business, but shall be taken into account under section 822(b)(1) (A), (B), or (C) and paragraph (a)(1) of this section.

(d) *Taxable years beginning after December 31, 1953, and before January 1, 1955.* An insurance company or association described in section 501(c)(15) is exempt under section 501(a) if it is a mutual company or association (other than life or marine) or if it is a mutual interinsurer or reciprocal underwriter (other than life or marine) and if the gross amount received during the taxable year from the sum of the following items does not exceed \$75,000:

(1) The gross amount of income during the taxable year from—

(i) Interest (including tax-exempt interest and partially tax-exempt interest), as described in § 1.61-7. Interest shall be adjusted for amortization of premium and accrual of discount in accordance with the rules prescribed in section 822(d) (2) and § 1.822-3.

(ii) Dividends, as described in § 1.61-9.

(iii) Rents (but excluding royalties), as described in § 1.61-8.

(2) Premiums (including deposits and assessments).

(e) *Exclusion of capital gains.* Gains from sales or exchanges of capital assets to the extent provided in subchapter P (section 1201 and following, relating to capital gains and losses), chapter 1 of the Code, shall be excluded from the amounts described in this section.

PAR. 3. Paragraph (b) of § 1.502-1 is amended to read as follows:

§ 1.502-1 Feeder organizations.

(b) If a subsidiary organization of a tax-exempt organization would itself be exempt on the ground that its activities are an integral part of the exempt activities of the parent organization, its exemption will not be lost because, as a matter of accounting between the two organizations, the subsidiary derives a profit from its dealings with its parent organization, for example, a subsidiary organization which is operated for the sole purpose of furnishing electric power used by its parent organization, a tax-exempt educational organization, in carrying on its educational activities. However, the subsidiary organization is not exempt from tax if it is operated for the primary purpose of carrying on a trade or business which would be an unrelated trade or business (that is, unrelated to exempt activities) if regularly carried on by the parent organization. For example, if a subsidiary organization is operated primarily for the purpose of furnishing electric power to consumers other than its parent organization (and the parent's tax-exempt subsidiary organizations), it is not exempt since such business would be an unrelated trade or business if regularly carried on by the parent organization. Similarly, if the organization is owned by several unrelated exempt organizations, and is operated for the purpose of furnishing electric power to each of them, it is not exempt since such business would be an unrelated trade or business if regularly carried on by any one of the tax-exempt organizations. For purposes of this paragraph, organizations are related only if they consist of—

- (1) A parent organization and one or more of its subsidiary organizations; or
- (2) Subsidiary organizations having a common parent organization.

An exempt organization is not related to another exempt organization merely because they both engage in the same type of exempt activities.

PAR. 4. Section 1.512(b) is amended by adding a new paragraph (13) to section 512(b) and by adding a historical note at the end of such § 1.512(b). These added provisions read as follows:

§ 1.512(b) Statutory provisions; unrelated business taxable income; exceptions, additions, and limitations.

SEC. 512. *Unrelated business taxable income.* * * *

(b) *Exceptions, additions, and limitations.* The exceptions, additions, and limitations applicable in determining unrelated business taxable income are the following:

(13) In the case of a trust—

(A) Created by virtue of the provisions of the will of an individual who died after August 16, 1954, and before January 1, 1957,

(B) Which, by virtue of the provisions of such will, is a limited partner in a partnership created under the laws of a State (i) providing for the creation of limited partnerships, and (ii) under which a limited partner has no right to take part in the control of the business without becoming liable as a general partner,

(C) Which, at no time before or during a taxable year of the partnership ending within or with the taxable year of the trust, was (or was liable as) a general partner in such partnership, and

(D) Which is required to distribute all of its income (within the meaning of section 643(b)) currently exclusively for religious, charitable, scientific, literary, or educational purposes, and which is required to distribute all of the corpus exclusively for such purposes,

there shall be excluded its share (determined under subsection (c) without regard to this paragraph and paragraph (11)) of gross income of the partnership as such limited partner and of the partnership deductions directly connected with such income, but, if such share of gross income exceeds such share of deductions, only to the extent that the partnership makes distributions during its taxable year which are attributable to such gross income. For purposes of the preceding sentence (i) any distribution made after the close of a partnership taxable year and on or before the 15th day of the fourth calendar month after the close of such taxable year shall be treated as made on the last day of such taxable year, and (ii) distributions shall be treated as attributable first to gross income other than gross income described in the preceding sentence, and shall be properly adjusted (under regulations prescribed by the Secretary or his delegate) to the extent necessary to reflect capital contributions to the partnership made by the trust, income of the partnership exempt from tax under this title, and other items.

[Sec. 512(b) as amended by Act of April 7, 1958 (Pub. Law 85-367, 72 Stat. 80)]

PAR. 5. Section 1.6033 is amended by revising paragraphs (6) and (7) of section 6033(b), by adding a new paragraph (8) to section 6033(b), and by adding a historical note. These amended and added provisions read as follows:

§ 1.6033 Statutory provisions; returns by exempt organizations.

SEC. 6033. *Returns by exempt organizations.* * * *

(b) *Certain organizations described in section 501(c) (3).* * * *

(6) Its disbursements out of principal in the current and prior years for the purposes for which it is exempt,

(7) A balance sheet showing its assets, liabilities, and net worth as of the beginning of such year, and

(8) The total of the contributions and gifts received by it during the year.

[Sec. 6033 as amended by sec. 75(b), Technical Amendments Act 1958 (72 Stat. 1661)]

[F.R. Doc. 63-7194; Filed, July 8, 1963; 8:53 a.m.]

Title 31—MONEY AND FINANCE: TREASURY

Chapter V—Foreign Assets Control, Department of the Treasury

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

Miscellaneous Amendments

The Foreign Assets Control Regulations, 31 CFR 500.101-500.808 are being amended as follows:

Section 500.316 is being amended to make clear the definition of the term "license."

Section 500.322(a) (1) is being amended to exclude Cuba from the authorized trade territory and § 500.322(a) (5) is being amended to bring up to date the names of several of the areas listed therein.

Section 500.518 is being amended so as not to permit payments from accounts of specially designated nationals.

Section 500.521 is being amended so as not to permit remittances to or for the benefit of specially designated nationals who are not within a designated foreign country.

Section 500.316 is hereby amended to read as follows:

§ 500.316 License.

Except as otherwise specified, the term "license" shall mean any license or authorization contained in or issued pursuant to this chapter.

§ 500.322 [Amendment]

Section 500.322(a) (1) and (5) are hereby amended to read as follows:

(1) North, South, and Central America, including the Caribbean region, except Cuba;

(5) Afghanistan, Bhutan, Federation of Malaya, Burma, Cambodia, Ceylon, Taiwan, Hong Kong, India, Iran, Iraq, Israel, Japan, Jordan, Kuwait, Laos, Lebanon, Macao, Muscat and Oman, Nepal, Pakistan, Saudi Arabia, South Korea, Syrian Arab Republic, Thailand, Viet-Nam (except those areas under Communist control) and Yemen;

Section 500.518 is hereby amended to read as follows:

§ 500.518 Payments for living, traveling, and similar personal expenses in the United States.

(a) Payments and transfers of credit in the United States from blocked accounts in domestic banking institutions held in the name of an individual within the United States to or upon the order of such individual are hereby authorized provided the following terms and conditions are complied with:

(1) Such payments and transfers of credit may be made only for the living, traveling, and similar personal expenses in the United States of such individual or his family; and

(2) The total of all such payments and transfers of credit made under this section from the accounts of such individual may not exceed \$250 in any one calendar month.

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(b) This section does not authorize any payment or transfer from an account in which a specially designated national has an interest.

Section 500.521 is hereby amended to read as follows:

§ 500.521 Certain remittances for necessary living expenses.

(a) Remittances by any person to any individual who is a resident of a foreign country and is within that foreign country are hereby authorized on the following terms and conditions:

(1) Such remittances are made only for the necessary living expenses of the payee and his household and do not exceed \$100 in any one calendar month to any one household;

(2) Such remittances are not made from a blocked account other than from an account in a banking institution within the United States in the name of, or in which the beneficial interest is held by, the payee or members of his household;

(3) Such remittances are not made from a blocked account which is blocked pursuant to Executive Order No. 8389, as amended;

(4) If the payee is within any designated foreign country, such remittances must be made through a domestic bank and any domestic bank is authorized to effect such remittances which, however, may be effected only by the payment of the dollar amount of the remittance to a domestic bank for credit to a blocked account in the name of a banking institution within such country.

(b) This section does not authorize any remittance to, or for the benefit of, a specially designated national who is not within a designated foreign country.

(c) This section does not authorize any remittance to an individual for the purpose of defraying the expenses of a person not constituting part of his household.

(d) As used in this section, the term "household" shall mean:

(1) Those individuals sharing a common dwelling as a family; or
(2) Any individual not sharing a common dwelling with others as a family.

Effective date. These amendments shall become effective 12:01 a.m., e.s.t., July 8, 1963.

(Sec. 5, 40 Stat. 415, as amended, 50 U.S.C., App. 5; E.O. 9193, July 6, 1942, 7 F.R. 5205, 3 CFR 1943 Cum. Supp.; E.O. 9989, August 20, 1948, 13 F.R. 4891, 3 CFR 1948 Supp.)

[SEAL]

DOUGLAS DILLON,
Secretary of the Treasury.

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PART 515—CUBAN ASSETS CONTROL REGULATIONS

Control of Financial and Commercial Transactions Involving Cuba or Nationals Thereof

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AUTHORITY: §§ 515.101–515.808 issued under § 620(a), 75 Stat. 445; Proclamation 3447; Sec. 5, 40 Stat. 415, as amended; 50 U.S.C., App. 5; E.O. 9193, July 6, 1942, 7 F.R. 5205.

3 CFR, Cum. Supp., p. 1174; E.O. 9889, Aug. 20, 1948, 13 F.R. 4891, 3 CFR, 1943-1948 Comp., p. 748.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 515.101 Relation of this part to other laws and regulations.

The Cuban Import Regulations issued on February 6, 1962, as amended, are hereby revoked and the following Regulations are hereby adopted in place thereof controlling all financial and commercial transactions involving Cuba or nationals thereof, provided that the revocation of the Cuban Import Regulations shall not be deemed to authorize any unlicensed importation prohibited by the Cuban Import Regulations and all penalties, forfeitures, and liabilities under such regulations or any other applicable laws or regulations shall continue and may be enforced as if such revocation had not been made.

(a) This part is independent of 8 CFR Ch. II. The prohibitions contained in this part are in addition to the prohibitions contained in 8 CFR Ch. II. No license or authorization contained in or issued pursuant to 8 CFR Ch. II shall be deemed to authorize any transaction prohibited by this part, nor shall any license or authorization issued pursuant to any other provision of law (except this part) be deemed to authorize any transaction so prohibited.

(b) No license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction to the extent that it is prohibited by reason of the provisions of any law or any statute other than paragraph (2) of Proclamation 3447, issued under § 620(a), P.L. 87-195, or section 5(b) of the Trading With the Enemy Act, as amended, or any proclamation, order or regulation other than those contained in or issued pursuant to this part.

Subpart B—Prohibitions

§ 515.201 Transactions involving designated foreign countries or their nationals; effective date.

(a) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if either such transactions are by, or on behalf of, or pursuant to the direction of a foreign country designated under this part, or any national thereof, or such transactions involve property in which a foreign country designated under this part, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All transfers of credit and all payments between, by, through, or to any banking institution or banking institutions wheresoever located, with respect to any property subject to the jurisdiction of the United States or by any person (including a banking institution) subject to the jurisdiction of the United States;

(2) All transactions in foreign exchange by any person within the United States; and

(3) The exportation or withdrawal from the United States of gold or silver coin or bullion, currency or securities, or the earmarking of any such property, by any person within the United States.

(b) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if such transactions involve property in which any foreign country designated under this part, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All dealings in, including, without limitation, transfers, withdrawals, or exportations of, any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States; and

(2) All transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States.

(c) Any transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions set forth in paragraphs (a) or (b) of this section is hereby prohibited.

(d) For the purposes of this part, the term "foreign country designated under this part" and the term "designated foreign country" mean Cuba and the term "effective date" and the term "effective date of this section" mean with respect to Cuba, or any national thereof, 12:01 a.m., e.s.t., July 8, 1963.

§ 515.202 Transactions with respect to securities registered or inscribed in the name of a designated national.

Unless authorized by a license expressly referring to this section, the acquisition, transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of any designated national is prohibited irrespective of the fact that at any time (either prior to, on, or subsequent to the "effective date") the registered or inscribed owner thereof may have, or appears to have, assigned, transferred or otherwise disposed of any such security.

§ 515.203 Effect of transfers violating the provisions of this part.

(a) Any transfer after the "effective date" which is in violation of any provision of this part or of any regulation, ruling, instruction, license, or other direction or authorization thereunder and involves any property in which a designated national has or has had an interest since such "effective date" is null and void and shall not be the basis for the assertion or recognition of any interest in

or right, remedy, power or privilege with respect to such property.

(b) No transfer before the "effective date" shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property in which a designated national has or has had an interest since the "effective date" unless the person with whom such property is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to such "effective date."

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Secretary of the Treasury before, during or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of section 5(b) of the Trading With the Enemy Act, as amended, and this part and any ruling, order, regulation, direction or instruction issued hereunder.

(d) Transfers of property which otherwise would be null and void, or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void, or unenforceable pursuant to such provisions, as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to the provisions of this part and was not so licensed or authorized or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation or the withholding of material facts or was otherwise fraudulently obtained; and

(3) Promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license or other direction or authorization thereunder, or

(ii) Such transfer was not licensed or authorized by the Secretary of the Treasury, or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation or the withholding of material facts or was otherwise fraudulently obtained;

the person with whom such property was held or maintained filed with the Treasury Department, Washington, D.C., a report in triplicate setting forth in full the circumstances relating to such transfer. The filing of a report in accordance with the provisions of this paragraph shall not be deemed to be compliance or evidence of compliance

with subparagraphs (1) and (2) of this paragraph.

(e) Unless unlicensed or authorized by § 515.504 or otherwise licensed or authorized pursuant to this chapter any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the "effective date" there existed the interest of a designated foreign country or national thereof.

(f) For the purpose of this section the term "property" includes gold, silver, bullion, currency, coin, credit, securities (as that term is defined in section 2(1) of the Securities Act of 1933, as amended), bills of exchange, notes, drafts, acceptances, checks, letters of credit, book credits, debts, claims, contracts, negotiable documents of title, mortgages, liens, annuities, insurance policies, options and futures in commodities, and evidences of any of the foregoing. The term "property" shall not, except to the extent indicated, be deemed to include chattels or real property.

§ 515.204 Importation of and dealings in certain merchandise.

(a) Except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, no person subject to the jurisdiction of the United States may purchase, transport, import, or otherwise deal in or engage in any transaction with respect to any merchandise outside the United States if such merchandise:

- (1) Is of Cuban origin; or
- (2) Is or has been located in or transported from or through Cuba; or
- (3) Is made or derived in whole or in part of any article which is the growth, produce or manufacture of Cuba.

Subpart C—General Definitions

§ 515.301 Foreign country.

The term "foreign country" also includes, but not by way of limitation:

(a) The state and the government of any such territory on or after the "effective date" as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof,

(b) Any other government (including any political subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise control, authority, jurisdiction or sovereignty over territory which on the "effective date" constituted such foreign country,

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the "effective date," acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing, and

(d) Any territory which on or since the "effective date" is controlled or oc-

cupied by the military, naval or police forces or other authority of such foreign country.

§ 515.302 National.

(a) The term "national" shall include:

(1) A subject or citizen of, or any person who has been within, a foreign country, whether domiciled or resident therein or otherwise, at any time on or since the "effective date."

(2) Any partnership, association, corporation, or other organization, organized under the laws of, or which on or since the "effective date" had or has had its principal place of business in a foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, a foreign country and/or one or more nationals thereof as defined in this section.

(3) Any person to the extent that such person is or has been, since the "effective date" acting or purporting to act directly or indirectly for the benefit or on behalf of any national of a foreign country.

(4) Any other person who there is reasonable cause to believe is a "national" as defined in this section.

(b) The Secretary of the Treasury retains full power to determine that any person is or shall be deemed to be a "national" within the meaning of this section, and to specify the foreign country of which such person is or shall be deemed to be a national.

§ 515.303 Nationals of more than one foreign country.

(a) Any person who by virtue of any provision in this chapter is a national of more than one foreign country shall be deemed to be a national of each of such foreign countries.

(b) In any case in which a person is a national of two or more designated foreign countries, as defined in this chapter, a license or authorization with respect to nationals of one of such designated foreign countries shall not be deemed to apply to such person unless a license or authorization of equal or greater scope is outstanding with respect to nationals of each other designated foreign country of which such person is a national.

(c) In any case in which the combined interests of two or more designated foreign countries, as defined in this chapter, and/or nationals thereof are sufficient in the aggregate to constitute control or ownership of 25 per centum or more of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of a partnership, association, corporation or other organization, but such control or a substantial part of such stock, shares, bonds, debentures, notes, drafts, or other securities or obligations is not held by any one such foreign country and/or national thereof, such partnership, association, corporation or other organization shall be deemed to be a national of each of such foreign countries.

§ 515.304 [Reserved]

§ 515.305 Designated national.

For the purposes of this part, the term "designated national" shall mean Cuba and any national thereof including any person who is a specially designated national.

§ 515.306 Specially designated national.

(a) The term "specially designated national" shall mean:

(1) Any person who is determined by the Secretary of the Treasury to be a specially designated national,

(2) Any person who on or since the "effective date" has acted for or on behalf of the Government or authorities exercising control over any designated foreign country, or

(3) Any partnership, association, corporation or other organization which on or since the "effective date" has been owned or controlled directly or indirectly by the Government or authorities exercising control over any designated foreign country or by any specially designated national.

§ 515.307 Unblocked national.

Any person licensed as an "unblocked national" shall, while so licensed, be regarded as a person within the United States who is not a national of any designated foreign country: *Provided, however,* That the licensing of any person as an "unblocked national" shall not be deemed to suspend in any way the requirements of any section of this chapter relating to reports, or the production of books, documents, and records specified therein.

§ 515.308 Person.

The term "person" means an individual, partnership, association, corporation, or other organization.

§ 515.309 Transactions.

The phrase "transactions which involve property in which any designated foreign country, or any national thereof, has any interest of any nature whatsoever, direct or indirect," includes, but not by way of limitation (a) any payment or transfer to any such designated foreign country or national thereof, (b) any export or withdrawal from the United States to such designated foreign country, and (c) any transfer of credit, or payment of an obligation, expressed in terms of the currency of such designated foreign country.

§ 515.310 Transfer.

The term "transfer" shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and without limitation upon the foregoing shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of

sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or other fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power.

§ 515.311 Property; property interests.

Except as defined in § 515.203(f) for the purposes of that section the terms "property" and "property interest" or "property interests" shall include, but not by way of limitation, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness obligations, notes, debentures, stocks, bonds, coupons, any other financial securities, bankers' acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, real estate and any interest therein, leaseholds, ground rents, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks, copyrights, contracts or licenses affecting or involving patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 515.312 Interest.

The term "interest" when used with respect to property shall mean an interest of any nature whatsoever, direct or indirect.

§ 515.313 Property subject to the jurisdiction of the United States.

(a) The phrase "property subject to the jurisdiction of the United States" includes, without limitation, securities, whether registered or bearer, issued by:

(1) The United States or any State, district, territory, possession, county, municipality, or any other subdivision or agency or instrumentality of any thereof; or

(2) Any person within the United States whether the certificate which evidences such property or interest is physically located within or outside the United States.

(b) The phrase "property subject to the jurisdiction of the United States" also includes, without limitation, securities, whether registered or bearer, by

whomsoever issued, if the instrument evidencing such property or interest is physically located within the United States.

§ 515.314 Banking institution.

The term "banking institution" shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchases and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or any broker; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate "banking institution."

§ 515.315 [Reserved]

§ 515.316 License.

Except as otherwise specified, the term "license" shall mean any license or authorization contained in or issued pursuant to this part.

§ 515.317 General license.

A general license is any license or authorization the terms of which are set forth in this part.

§ 515.318 Specific license.

A specific license is any license or authorization issued pursuant to this part but not set forth in this part.

The term "blocked account" shall mean an account in which any designated national has an interest, with respect to which account payments, transfers or withdrawals or other dealings may not be made or effected except pursuant to an authorization or license authorizing such action. The term "blocked account" shall not be deemed to include accounts of unblocked nationals.

§ 515.320 Domestic bank.

The term "domestic bank" shall mean any branch or office within the United States of any of the following which is not a national of a designated foreign country: any bank or trust company incorporated under the banking laws of the United States or of any state, territory, or district of the United States, or any private bank or banker subject to supervision and examination under the banking laws of the United States or of any state, territory or district of the United States. The Secretary of the Treasury may also authorize any other banking institution to be treated as a "domestic bank" for the purpose of this definition or for the purpose of any or all sections of this part.

§ 515.321 United States; continental United States.

The term "United States" means the United States and all areas under the jurisdiction or authority thereof including the Panama Canal Zone and the Trust Territory of the Pacific Islands. The term "continental United States" means the states of the United States and the District of Columbia.

§ 515.322 Authorized trade territory; member of the authorized trade territory.

(a) The term "authorized trade territory" shall include:

(1) North, South, and Central America, including the Caribbean region except Cuba;

(2) Africa;

(3) Oceania, including Indonesia and the Philippines;

(4) Andorra, Austria, Belgium, Denmark, Eire, the Federal Republic of Germany, and the Western sector of Berlin, Finland, France (including Monaco), Greece, Iceland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, the United Kingdom and Yugoslavia;

(5) Afghanistan, Bhutan, Federation of Malaya, Burma, Cambodia, Ceylon, Taiwan, Hong Kong, India, Iran, Iraq, Israel, Japan, Jordan, Kuwait, Laos, Lebanon, Macao, Muscat and Oman, Nepal, Pakistan, Saudi Arabia, South Korea, Syrian Arab Republic, Thailand, Viet-Nam (except those areas under Communist control) and Yeman;

(6) Any colony, territory, possession, or protectorate of any country included within this paragraph; but the term shall not include the United States.

(b) The term "member of the authorized trade territory" shall mean any of the foreign countries or political subdivisions comprising the authorized trade territory.

§ 515.323 Occupied area.

The term "occupied area" shall mean any territory occupied by a designated foreign country which was not occupied by such country prior to the effective date of this part.

§ 515.324 [Reserved]

§ 515.325 National securities exchange.

The term "national securities exchange" shall mean an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (48 Stat. 885, 15 U.S.C. 78f).

§ 515.326 Custody of safe deposit boxes.

Safe deposit boxes shall be deemed to be in the "custody" not only of all persons having access thereto but also of the lessors of such boxes whether or not such lessors have access to such boxes. The foregoing shall not in any way be regarded as a limitation upon the meaning of the term "custody."

§ 515.327 Blocked estate of a decedent.

The term "blocked estate of a decedent" shall mean any decedent's estate in which a designated national has an interest. A person shall be deemed to have an interest in a decedent's estate if he (a) was the decedent; (b) is a personal representative; or (c) is a creditor, heir, legatee, devisee, distributee, or beneficiary.

§ 515.328 [Reserved]**§ 515.329 Person subject to the jurisdiction of the United States.**

(a) The term "person subject to the jurisdiction of the United States" includes:

(1) Any person, wheresoever located who is a citizen or resident of the United States;

(2) Any person actually within the United States;

(3) Any corporation organized under the laws of the United States or of any state, territory, possession, or district of the United States; and

(4) Any partnership, association, corporation, or other organization wheresoever organized or doing business which is owned or controlled by persons specified in subparagraph (1), (2), or (3) of this paragraph.

§ 515.330 Person within the United States.

(a) The term "person within the United States," includes:

(1) Any person, wheresoever located, who is a resident of the United States;

(2) Any person actually within the United States;

(3) Any corporation organized under the laws of the United States or of any state, territory, possession, or district of the United States; and

(4) Any partnership, association, corporation, or other organization, wheresoever organized, or doing business, which is owned or controlled by any person or persons specified in subparagraph (1), (2) or (3) of this paragraph.

§ 515.331 Merchandise.

The term "merchandise" means all goods, wares and chattels of every description without limitation of any kind.

Subpart D—Interpretations**§ 515.401 Reference to amended sections.**

Reference to any section of this part or to any regulation, ruling, order, instruction, direction or license issued pursuant to this part shall be deemed to refer to the same as currently amended unless otherwise so specified.

§ 515.402 Effect of amendment of sections of this part or of other orders, etc.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Secretary of the Treasury pursuant to section 3(a) or 5(b) of the Trading With the Enemy Act, as amended, or pursuant to Proclamation 3447, shall not unless otherwise specifically provided be deemed to affect any act done or omitted to be done, or any suit or proceeding had or commenced in any civil or criminal case, prior to such amendment, modification, or revocation, and all penalties, forfeitures, and liabilities under any such section, order, regulation, ruling, instruction or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 515.403 Termination and acquisition of the interest of a designated national.

(a) Except as provided in § 515.525, whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a designated national, such property shall no longer be deemed to be property in which a designated national has or has had an interest unless there exists in such property an interest of a designated national, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization contained in or issued pursuant to this part, if property (including any property interest) is transferred to a designated national such property shall be deemed to be property in which there exists the interest of a designated national.

§ 515.404 Transactions between principal and agent.

A transaction between any person within the United States and any principal, agent, home office, branch, or correspondent, outside the United States of such person is a transaction prohibited by § 515.201 to the same extent as if the parties to the transaction were in no way affiliated or associated with each other.

§ 515.405 Exportation of securities, currency, checks, drafts and promissory notes.

Section 515.201 prohibits the exportation of securities, currency, checks, drafts and promissory notes to a designated foreign country.

§ 515.406 Drafts under irrevocable letters of credit; documentary drafts.

Section 515.201 prohibits the presentation, acceptance or payment of:

(a) Drafts or other orders for payment drawn under irrevocable letters of credit issued in favor of or on behalf of any designated national;

(b) Drafts or other orders for payment, in which any designated national has on or since the "effective date" had any interest, drawn under any irrevocable letter of credit; and

(c) Documentary drafts in which any designated national has on or since the "effective date" had any interest.

§ 515.407 Administration of blocked estates of decedents.

Section 515.201 prohibits all transactions incident to the administration of the blocked estate of a decedent, including the appointment and qualification of personal representatives, the collection and liquidation of assets, the payment of claims, and distribution to beneficiaries. Attention is directed to § 515.523 which authorizes certain transactions in connection with the administration of blocked estates of decedents.

§ 515.408 Access to certain safe deposit boxes prohibited.

Section 515.201 prohibits access to any safe deposit box within the United States in the custody of any designated national

or containing any property in which any designated national has any interest or which there is reasonable cause to believe contains property in which any such designated national has any interest. Attention is directed to § 515.517 which authorizes access to such safe deposit boxes under certain conditions.

§ 515.409 Certain payments to a designated foreign country and nationals through third countries.

Section 515.201 prohibits any request or authorization made by or on behalf of a bank or other person within the United States to a bank or other person outside of the United States as a result of which request or authorization such latter bank or person makes a payment or transfer of credit either directly or indirectly to a designated national.

Subpart E—Licenses and Authorizations**§ 515.501 [Reserved]****§ 515.502 Effect of subsequent license or authorization.**

(a) No license or other authorization contained in this part or otherwise issued by or under the direction of the Secretary of the Treasury pursuant to section 3(a) or 5(b) of the Trading with the Enemy Act, as amended, or section 620(a), Public Law 87-195, or Proclamation 3447, shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Treasury Department and specifically refers to this part. No regulation, ruling, instruction or license referring to this part shall be deemed to authorize any transaction prohibited by Part 500 of this chapter unless the regulation, ruling, instruction or license specifically refers to Part 500.

§ 515.503 Exclusion from licenses and authorizations.

The Secretary of the Treasury reserves the right to exclude from the operation of any license or from the privileges therein conferred or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof.

§ 515.504 Certain judicial proceedings with respect to property of designated nationals.

(a) Subject to the limitations of paragraphs (b), (c) and (d) of this section judicial proceedings are authorized with respect to property in which on or since the "effective date" there has existed the interest of a designated national.

(b) A judicial proceeding is authorized by this section only if it is based upon a cause of action which accrued prior to the "effective date".

(c) This section does not authorize or license:

(1) The entry of any judgment or of any decree or order of similar or analogous effect upon any judgment book, minute book, journal or otherwise, or the docketing of any judgment in any docket book, or the filing of any judgment roll or the taking of any other similar or analogous action.

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding nor does it authorize the enforcement or carrying out of any judgment or decree or order of similar or analogous effect with regard to any property in which a designated national has an interest.

(d) If a judicial proceeding relates to property in which there exists the interest of any designated national other than a person who would not have been a designated national except for his relationship to an occupied area, such proceeding is authorized only if it is based upon a claim in which no person other than any of the following has had an interest since the "effective date":

(1) A citizen of the United States;

(2) A corporation organized under the laws of the United States or any State, territory or possession thereof, or the District of Columbia;

(3) A natural person who is and has been since the "effective date" a resident of the United States and who has not been a specially designated national;

(4) A legal representative (whether or not appointed by a court of the United States) or successor in interest by inheritance, devise, bequest, or operation of law, who falls within any of the categories specified in subparagraphs (1), (2), and (3) of this paragraph but only to the same extent that their principals or predecessors would be qualified by such subparagraphs.

§ 515.505 Certain persons in the United States unblocked.

(a) Except as provided in paragraph (b) of this section the following are hereby licensed as unblocked nationals:

(1) Any individual resident in and within the United States except an individual who on or after the "effective date" has acted or purported to act directly or indirectly for the benefit of or on behalf of a designated country.

(2) Any partnership, association, corporation, or other organization which is a national of a designated foreign country solely by reason of the interest of persons licensed by this section.

(b) This section does not license as an unblocked national any person who is a specially blocked national.

§ 515.506 Certain persons in authorized trade territory unblocked.

(a) Except as provided in paragraph (b) of this section the following are hereby licensed as unblocked nationals:

(1) Any individual in the authorized trade territory except an individual who on or after the "effective date" was in, or who on or since such date, has acted or purported to act directly or indirectly for the benefit of or on behalf of a designated foreign country.

(2) Any partnership, association, corporation, or other organization which is a national of a designated foreign

country solely by reason of the interest of persons licensed by this section.

(b) This section does not license as an unblocked national any person who is a specially designated national.

§ 515.507 Individuals who are citizens of, and residing only in the United States, unblocked.

(a) Any individual who is a citizen of the United States, residing only in the United States, and who is a national of a designated foreign country solely by reason of having been formerly domiciled or resident therein is hereby licensed as an unblocked national.

(b) This section does not license as an unblocked national any individual citizen of the United States who is a national of a designated foreign country by reason of any fact other than his former domicile or residence in such country.

§ 515.508 Payments to blocked accounts in domestic banks.

(a) Any payment or transfer of credit to a blocked account in a domestic bank in the name of any designated national is hereby authorized providing such payment or transfer shall not be made:

(1) From any blocked account in a domestic bank; or

(2) From any other blocked account if such payment or transfer represents, directly or indirectly, a transfer of the interest of a designated national to any other country or person.

(b) This section does not authorize:

(1) Any payment or transfer to any blocked account held in a name other than that of the designated national who is the ultimate beneficiary of such payment or transfer; or

(2) Any foreign exchange transaction including, but not by way of limitation, any transfer of credit, or payment of an obligation, expressed in terms of the currency of any foreign country.

(c) This section does not authorize any payment or transfer of credit comprising an integral part of a transaction which cannot be effected without the subsequent issuance of a further license.

(d) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a subaccount thereof, or the income derived from such securities to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

§ 515.509 Entries in certain accounts for normal service charges.

(a) Any banking institution within the United States is hereby authorized to:

(1) Debit any blocked account with such banking institution (or with another office within the United States of such banking institution) in payment or reimbursement for normal service charges owed to such banking institution by the owner of such blocked account.

(2) Make book entries against any foreign currency account maintained by it with a banking institution in a designated foreign country for the purpose of responding to debits to such account for

normal service charges in connection therewith.

(b) As used in this section, the term "normal service charge" shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, account carrying charges, notary and protest fees, and charges for reference books, photostats, credit reports, transcripts of statements, registered mail insurance, stationery and supplies, check books, and other similar items.

§ 515.510 Payments to the United States, States and political subdivisions.

(a) The payment from any blocked account to the United States or any agency or instrumentality thereof or to any State, territory, district, county, municipality or other political subdivision in the United States, of customs duties, taxes, and fees payable thereto by the owner of such blocked account is hereby authorized.

(b) This section also authorizes transactions incident to the payment of customs duties, taxes, and fees from blocked accounts, such as the levying of assessments, the creation and enforcement of liens, and the sale of blocked property in satisfaction of liens for customs duties, taxes, and fees.

§ 515.511 Transactions by certain business enterprises.

(a) Except as provided in paragraphs (b), (c) and (d) of this section any partnership, association, corporation or other organization which on the "effective date" was actually engaged in a commercial, banking or financial business within the United States and which is a national of a designated foreign country, is hereby authorized to engage in all transactions ordinarily incidental to the normal conduct of its business activities within the United States.

(b) This section does not authorize any transaction which would require a license if such organization were not a national of a designated foreign country.

(c) This section does not authorize any transaction by a specially designated national.

(d) Any organization engaging in business pursuant to this section shall not engage in any transaction, pursuant to this section or any other license or authorization contained in this part, which, directly or indirectly, substantially diminishes or imperils the assets of such organization or otherwise prejudicially affects the financial position of such organization.

(e) No dealings with regard to any account shall be evidence that any person having an interest therein is actually engaged in commercial, banking or financial business within the United States.

§ 515.512 [Reserved]

§ 515.513 Purchase and sale of certain securities.

(a) The bona fide purchase and sale of securities on a national securities

exchange by banking institutions within the United States for the account, and pursuant to the authorization, of nationals of a designated foreign country and the making and receipt of payments, transfers of credit, and transfers of such securities which are necessary incidents of any such purchase or sale are hereby authorized provided the following terms and conditions are complied with:

(1) In the case of the purchase of securities, the securities purchased shall be held in an account in a banking institution within the United States in the name of the national whose account was debited to purchase such securities; and

(2) In the case of the sale of securities, the proceeds of the sale shall be credited to an account in the name of the national for whose account the sale was made and in the banking institution within the United States which held the securities for such national.

(b) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a sub-account thereof, to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such securities were held.

(c) Securities issued or guaranteed by the Government of the United States or any State, territory, district, county, municipality, or other political subdivision thereof (including agencies and instrumentalities of the foregoing) need not be purchased or sold on a national securities exchange, but purchases or sales of such securities shall be made at market value and pursuant to all other terms and conditions prescribed in this section.

§ 515.514 Payment of dividends and interest on and redemption and collection of securities.

(a) The payment to, and receipt by, a banking institution within the United States of funds or other property representing dividends or interest on securities held by such banking institution in a blocked account is hereby authorized provided the funds or other property are credited to or deposited in a blocked account in such banking institution in the name of the national for whose account the securities were held. Notwithstanding § 515.202, this paragraph authorizes the foregoing transactions although such securities are registered or inscribed in the name of any designated national and although the national in whose name the securities are registered or inscribed may not be the owner of such blocked account.

(b) The payment to, and receipt by, a banking institution within the United States of funds payable in respect of securities (including coupons) presented by such banking institution to the proper paying agents within the United States for redemption or collection for the account and pursuant to the authorization of nationals of a designated country is hereby authorized provided the proceeds of the redemption or collection are credited to a blocked account in such banking institution in the name of the national for whose account the redemption or collection was made.

(c) The performance of such other acts, and the effecting of such other transactions, as may be necessarily incident to any of the foregoing, are also hereby authorized.

(d) This section does not authorize the crediting of the proceeds of the redemption or collection of securities (including coupons) held in a blocked account or a sub-account thereof, or the income derived from such securities to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such securities were held.

(e) This section does not authorize any issuer or other obligor, with respect to a security, who is a designated national, to make any payment, transfer or withdrawal.

§ 515.515 Transfers of securities to blocked accounts in domestic banks.

(a) Transactions ordinarily incident to the transfer of securities from a blocked account in the name of any person to a blocked account in the same name in a domestic bank are hereby authorized provided the following terms and conditions are complied with:

(1) Such securities shall not be transferred from any blocked account in a domestic bank; and

(2) Such securities shall not be transferred from any other blocked account if such transfer represents, directly or indirectly, a transfer of the interest of a designated national to any other country or person.

(b) This section does not authorize the transfer of securities held in a blocked account or sub-account thereof to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such securities were held.

§ 515.516 Voting and soliciting of proxies on securities.

Notwithstanding § 515.202, the voting and the soliciting of proxies or other authorizations is authorized with respect to the voting of securities issued by a corporation organized under the laws of the United States or of any State, territory, or district thereof, in which a designated national has any interest.

§ 515.517 Access to safe deposit boxes under certain conditions.

(a) Access to any safe deposit box leased to a designated national or containing property in which any designated national has an interest, and the deposit therein or removal therefrom of any property is hereby authorized, provided the following terms and conditions are complied with:

(1) Access shall be permitted only in the presence of an authorized representative of the lessor of such box; and

(2) In the event that any property in which any designated national has any interest is to be removed from such box, access shall be permitted only in the presence of an authorized representative of a banking institution within the United States, which may be the lessor of such box, which shall receive such

property into its custody immediately upon removal from such box and which shall hold the same in a blocked account under an appropriate designation indicating the interest therein of designated nationals.

(b) The terms and conditions set forth in paragraph (a) of this section shall not apply to access granted to a representative of the Office of Alien Property pursuant to any rule, regulation or order of such Office.

§ 515.518 Payments for living, traveling, and similar personal expenses in the United States.

(a) Payments and transfers of credit in the United States from blocked accounts in domestic banking institutions held in the name of an individual within the United States to or upon the order of such individual are hereby authorized provided the following terms and conditions are complied with:

(1) Such payments and transfers of credit may be made only for the living, traveling, and similar personal expenses in the United States of such individual or his family; and

(2) The total of all such payments and transfers of credit made under this section from the accounts of such individual may not exceed \$250 in any one calendar month.

(b) This section does not authorize any payment or transfer from an account in which a specialty designated national has an interest.

§ 515.519 Limited payments from accounts of United States citizens abroad.

(a) Payments and transfers of credit from blocked accounts for expenditures within the United States or the authorized trade territory of any citizen of the United States who is within any foreign country are hereby authorized provided the following terms and conditions are complied with:

(1) Such payments and transfers shall be made only from blocked accounts in the name of, or in which the beneficial interest is held by, such citizen or his family; and

(2) The total of all such payments and transfers made under this section shall not exceed \$1,000 in any one calendar month for any such citizen or his family.

(b) This section does not authorize any remittance to a designated foreign country or, any payment, transfer, or withdrawal which could not be effected without a license by a person within the United States who is not a national of a designated foreign country.

§ 515.520 Payments from accounts of United States citizens in employ of United States in foreign countries and certain other persons.

(a) Banking institutions within the United States are hereby authorized to make all payments, transfers and withdrawals from accounts in the name of citizens of the United States while such citizens are within any foreign country in the course of their employment by the Government of the United States.

(b) Banking institutions within the United States are also hereby authorized

to make all payments, transfers and withdrawals from accounts in the name of members of the armed forces of the United States and of citizens of the United States accompanying such armed forces in the course of their employment by any organization acting on behalf of the Government of the United States while such persons are within any foreign country.

(c) This section is deemed to apply to the accounts of members of the armed forces of the United States and of citizens of the United States accompanying such armed forces in the course of their employment by the Government of the United States or by any organization acting on its behalf even though they are captured or reported missing.

§ 515.521 Certain remittances for necessary living expenses.

(a) Remittances by any person to any individual who is a resident of a foreign country and is within that foreign country are hereby authorized on the following terms and conditions:

(1) Such remittances are made only for the necessary living expenses of the payee and his household and do not exceed \$100 in any one calendar month to any one household;

(2) Such remittances are not made from a blocked account other than from an account in a banking institution within the United States in the name of, or in which the beneficial interest is held by, the payee or members of his household.

(3) Such remittances are not made from a blocked account which is blocked pursuant to Executive Order No. 8389, as amended;

(4) If the payee is within a designated foreign country, such remittances must be made through a domestic bank and any domestic bank is authorized to effect such remittances which, however, may be effected only by the payment of the dollar amount of the remittance to a domestic bank for credit to a blocked account in the name of a banking institution within such country.

(b) This section does not authorize any remittance to, or for the benefit of, a specially designated national who is not within a designated foreign country.

(c) This section does not authorize any remittance to an individual for the purpose of defraying the expenses of a person not constituting part of his household.

(d) As used in this section, the term "household" shall mean:

(1) Those individuals sharing a common dwelling as a family; or

(2) Any individual not sharing a common dwelling with others as a family.

§ 515.522 Certain remittances to United States citizens in foreign countries.

(a) Remittances by any person through any domestic bank to any individual who is a citizen of the United States within any foreign country are hereby authorized and any domestic bank is authorized to effect such remittances, on the following terms and conditions:

(1) Such remittances do not exceed \$1,000 in any one calendar month to any payee and his household and are made only for the necessary living and traveling expenses of the payee and his household, except that an additional sum not exceeding \$1,000 may be remitted once to such payee if such sum will be used for the purpose of enabling the payee or his household to return to the United States;

(2) Such remittances are not made from a blocked account other than from an account in a banking institution within the United States in the name of, or in which the beneficial interest is held by, the payee or members of his household.

(b) This section does not authorize any remittance to an individual for the purpose of defraying the expenses of a person not constituting part of his household.

(c) As used in this section, the term "household" shall mean:

(1) Those individuals sharing a common dwelling as a family; or

(2) Any individual not sharing a common dwelling with others as a family.

§ 515.523 Transactions incident to the administration of decedents' estates.

(a) The following transactions are authorized in connection with the administration of the assets in the United States of any blocked estate of a decedent:

(1) The appointment and qualification of a personal representative;

(2) The collection and preservation of such assets by such personal representative and the payment of all costs, fees and charges in connection therewith; and

(3) The payment by such personal representative of funeral expenses and expenses of the last illness.

(b) In addition to the authorization contained in paragraph (a) of this section, all other transactions incident to the administration of assets situated in the United States of any blocked estate of a decedent are authorized if:

(1) The decedent was not a national of a designated foreign country at the time of his death;

(2) The decedent was a citizen of the United States and a national of a designated foreign country at the time of his death solely by reason of his presence in a designated foreign country as a result of his employment by, or service with the United States Government; or

(3) The gross value of the assets within the United States does not exceed \$5,000.

(c) Any property or interest therein distributed pursuant to this section to a designated national shall be regarded for the purpose of this chapter as property in which such national has an interest and shall accordingly be subject to all the pertinent sections of this chapter. Any payment or distribution of any funds, securities or other choses in action to a designated national shall be made by deposit in a blocked account in a domestic bank or with a public officer, agency, or instrumentality designated by a court having jurisdiction of the estate.

Any such deposit shall be made in one of the following ways:

(1) In the name of the national who is the ultimate beneficiary thereof;

(2) In the name of a person who is not a national of a designated foreign country in trust for the national who is the ultimate beneficiary; or

(3) Under some other designation which clearly shows the interest therein of such national.

(d) Any distribution of property authorized pursuant to this section may be made to a trustee of any testamentary trust or to the guardian of an estate of a minor or of an incompetent.

(e) This section does not authorize:

(1) Any designated national to act as personal representative or co-representative of any estate;

(2) Any designated national to represent, directly or indirectly, any person who has an interest in an estate;

(3) Any designated national to take distribution of any property as the trustee of any testamentary trust or as the guardian of an estate of a minor or of an incompetent; or

(4) Any transaction which could not be effected if no designated national had any interest in such estate.

(f) Any payment or distribution authorized by this section may be deposited in a blocked account in a domestic bank or with a public officer, agency, or instrumentality designated by the court having jurisdiction of the estate in one of the ways prescribed in paragraph (c) (1), (2) or (3) of this section, but this section does not authorize any other transaction directly or indirectly at the request, or upon the instructions of any designated national.

§ 515.524 Payment from, and transactions in the administration of certain trusts and estates.

(a) Any bank or trust company incorporated under the laws of the United States, or of any State, territory, or district of the United States, or any private bank subject to supervision and examination under the banking laws of any State of the United States, acting as trustee of any trust administered in the United States or as legal representative of any estate of an infant or incompetent administered in the United States in which trust or estate one or more persons who are nationals of a designated foreign country have an interest, beneficial or otherwise, or are cotrustees or co-representatives, is hereby authorized to engage in the following transactions:

(1) Payments of distributive shares of principal or income to all persons legally entitled thereto upon the condition prescribed in paragraph (b) of this section.

(2) Other transactions arising in the administration of such trust or estate which might be engaged in if no national of a designated foreign country were a beneficiary, co-trustee or co-representative of such trust or estate upon the condition prescribed in paragraph (b) of this section.

(b) Any payment or distribution of any funds, securities or other choses in action to a national of a designated foreign country under this section shall be

made by deposit in a blocked account in a domestic bank in the name of the national who is the ultimate beneficiary thereof.

(c) Any payment or distribution into a blocked account in a domestic bank in the name of any such national of a designated foreign country who is the ultimate beneficiary of and legally entitled to any such payment or distribution is authorized by this section, but this section does not authorize such trustee or legal representative to engage in any other transaction at the request, or upon the instructions, of any beneficiary, co-trustee or corepresentative of such trust or estate or other person who is a national of any designated foreign country.

§ 515.525 Certain transfers by operation of law.

(a) The following are hereby authorized:

(1) Any transfer of any dower, curtesy, community property, or other interest of any nature whatsoever, provided that such transfer arises solely as a consequence of the existence or change of marital status;

(2) Any transfer to any person by intestate succession;

(3) Any transfer to any person as administrator, executor, or other fiduciary by reason of any testamentary disposition; and

(4) Any transfer to any person as administrator, executor, or fiduciary by reason of judicial appointment or approval in connection with any testamentary disposition or intestate succession.

(b) Except to the limited extent authorized by § 515.523 or by any other license or authorization contained in or issued pursuant to this part no transfer to any person by intestate succession and no transfer to any person as administrator, executor, or other fiduciary by reason of any testamentary disposition, and no transfer to any person as administrator, executor, or fiduciary by reason of judicial appointment or approval in connection with any testamentary disposition or intestate succession shall be deemed to terminate the interest of the decedent in the property transferred if the decedent was a designated national.

§ 515.526 Transactions involving blocked life insurance policies.

(a) The following transactions are hereby authorized:

(1) The payment of premiums and interest on policy loans with respect to any blocked life insurance policy;

(2) The issuance, servicing or transfer of any blocked life insurance policy in which the only blocked interest is that of one or more of the following:

(i) A member of the armed forces of the United States or a person accompanying such forces (including personnel of the American Red Cross, and similar organizations);

(ii) An officer or employee of the United States; or

(iii) A citizen of the United States resident in a designated foreign country; and

(3) The issuance, servicing or transfer of any blocked life insurance policy

in which the only blocked interest (other than that of a person specified in subparagraph (2) of this paragraph) is that of a beneficiary.

(b) Paragraph (a) of this section does not authorize:

(1) Any payment to the insurer from any blocked account except a blocked account of the insured or beneficiary, or

(2) Any payment by the insurer to a national of a designated foreign country unless payment is made by deposit in a blocked account in a domestic bank in the name of the national who is the ultimate beneficiary thereof.

(c) The application, in accordance with the provisions of the policy or the established practice of the insurer of the dividends, cash surrender value, or loan value, of any blocked life insurance policy is also hereby authorized for the purpose of:

(1) Paying premiums;

(2) Paying policy loans and interest thereon;

(3) Establishing paid-up insurance; or

(4) Accumulating such dividends or values to the credit of the policy on the books of the insurer.

(d) As used in this section:

(1) The term "blocked life insurance policy" shall mean any life insurance policy or annuity contract, or contract supplementary thereto, in which there is a blocked interest.

(2) Any interest of a national of a designated foreign country shall be deemed to be a "blocked interest."

(3) The term "servicing" shall mean the following transactions with respect to any blocked life insurance policy;

(i) The payment of premiums, the payment of loan interest, and the repayment of policy loans;

(ii) The effecting by a life insurance company or other insurer of loans to an insured;

(iii) The effecting on behalf of an insured of surrenders, conversions, modifications, and reinstatements; and

(iv) The exercise or election by an insured of nonforfeiture options, optional modes of settlement, optional disposition of dividends, and other policy options and privileges not involving payment by the insurer.

(4) The term "transfer" shall mean the change of beneficiary, or the assignment or pledge of the interest of an insured in any blocked life insurance policy subsequent to the issuance thereof.

(e) This section does not authorize any transaction with respect to any blocked life insurance policy issued by a life insurance company or other insurer which is a national of a designated foreign country or which is not doing business or effecting insurance in the United States.

§ 515.527 Certain transactions with respect to United States patents, trademarks, and copyrights.

(a) There are hereby authorized:

(1) The filing in the United States Patent Office of applications for letters patent and for trademarks registration;

(2) The making and filing in the United States Copyright Office of applications for registration or renewal of copyrights;

(3) The prosecution in the United States Patent Office of applications for letters patent and for trademarks registration;

(4) The receipt of letters patent or trademark registration certificates or copyright registration or renewal certificates granted pursuant to any such applications in which any designated national has at any time on or since the "effective date" had any interest.

(b) This section further authorizes, subject to the terms and conditions prescribed in paragraphs (c) and (d) of this section, the execution and recording of any instrument recordable in the United States Patent Office or the United States Copyright Office which affects title to or grants any interest in, including licenses under, any United States letters patent, trademark registration, copyright or renewal thereof, or application therefor, in which a designated national, who is such a national solely by reason of his relationship to an occupied area, has at any time on or since the "effective date" had any interest, or which constitutes or evidences a transaction made by, or on behalf of, or pursuant to the direction of or with such a designated national, or if any of the parties to such instrument is such a designated national.

(c) Any such instrument the recording or the execution and recording of which is authorized by paragraph (b) of this section shall be recorded in the United States Patent Office or in the United States Copyright Office within ninety days of the date of execution thereof or ninety days from the "effective date" whichever is the longer period, or within such further time as may be allowed by the Secretary of the Treasury. The person presenting such instrument for recording shall file therewith in the United States Patent Office or United States Copyright Office a statement that such instrument is being recorded in accordance with the provisions of this section.

(d) Any such instrument the recording or the execution and recording of which is authorized by paragraph (b) of this section may be set aside by the Secretary of the Treasury at any time within a period of three years from the date of recording except that the Secretary of the Treasury may in his discretion reduce such period of time with respect to any such instrument after the recording thereof, and further, the patents, trademarks, interests, applications, or rights thereunder so transferred may be vested by the Secretary of the Treasury.

(e) This section also authorizes the payment from blocked accounts or otherwise, of fees currently due to the United States Government in connection with any transactions authorized by this section.

(f) This section further authorizes the payment from blocked accounts or otherwise of the reasonable and customary fees and charges currently due to attorneys or representatives within the United States in connection with the transactions referred to in paragraphs (a), (b), and (e) of this section, provided

that such payment shall not exceed (1) \$100 for the preparation, filing, and prosecution of any letters patent; or (2) \$50 for the preparation, filing and prosecution of any application for a trademark registration; or (3) \$25 for the securing and registration of any copyright; or (4) \$35 for the preparation and filing of any amendment to a pending application for letters patent or for a trademark registration.

(g) This section also authorizes the payment of a nominal consideration not exceeding one dollar, to any party to an instrument executed or recorded hereunder with respect to the property affected by such instrument, as long as such instrument is subject to being set aside in accordance with paragraph (d) of this section.

§ 515.528 Certain transactions with respect to blocked foreign patents, trademarks and copyrights authorized.

(a) The following transactions by any person who is not a designated national are hereby authorized:

(1) The filing and prosecution of any application for a blocked foreign patent, trademark or copyright, or for the renewal thereof;

(2) The receipt of any blocked foreign patent, trademark or copyright;

(3) The filing and prosecution of opposition or infringement proceedings with respect to any blocked foreign patent, trademark, or copyright, and the prosecution of a defense to any such proceedings;

(4) The payment of fees currently due to the government of any foreign country, either directly or through an attorney or representative, in connection with any of the transactions authorized by subparagraphs (1), (2), and (3) of this paragraph or for the maintenance of any blocked foreign patent, trademark or copyright; and

(5) The payment of reasonable and customary fees currently due to attorneys or representatives in any foreign country incurred in connection with any of the transactions authorized by subparagraphs (1), (2), (3) or (4) of this paragraph.

(b) Payments effected pursuant to the terms of paragraph (a) (4) and (5) of this section may not be made from any blocked account.

(c) As used in this section the term "blocked foreign patent, trademark, or copyright" shall mean any patent, petty patent, design patent, trademark or copyright issued by any foreign country, in which a designated foreign country or national thereof has an interest, including any patent, petty patent, design patent, trademark, or copyright issued by a designated foreign country.

§ 515.529 Powers of attorney.

(a) No power of attorney, whether granted before or after the "effective date" shall be invalid by reason of any of the provisions of this part with respect to any transaction licensed by or pursuant to the provisions of this part.

(b) This section does not authorize any transaction pursuant to a power of attorney if such transaction is prohib-

ited by § 515.201 and is not otherwise licensed or authorized by or pursuant to this part.

(c) This section does not authorize the creation of any power of attorney in favor of any person outside of the United States or the exportation from the United States of any power of attorney.

§ 515.530 Exportation of powers of attorney or instructions relating to certain types of transactions.

(a) The exportation to any foreign country of powers of attorney or other instruments executed or issued by any person within the United States who is not a national of a designated foreign country, which are limited to authorizations or instructions to effect transactions incident to the following, are hereby authorized upon the condition prescribed in paragraph (b) of this section:

(1) The representation of the interest of such person in a decedent's estate which is being administered in a designated foreign country and the collection of the distributive share of such person in such estate;

(2) The maintenance, preservation, supervision or management of any property located in a designated foreign country in which such person has an interest; and

(3) The conveyance, transfer, release, sale or other disposition of any property specified in subparagraph (1) of this paragraph or any real estate or tangible personal property if the value thereof does not exceed the sum of \$5,000 or its equivalent in foreign currency.

(b) No instrument which authorizes the conveyance, transfer, release, sale or other disposition of any property may be exported under this section unless it contains an express stipulation that such authority may not be exercised if the value of such property exceeds the sum of \$5,000 or the equivalent thereof in foreign currency.

(c) As used in this section, the term "tangible personal property" shall not include cash, bullion, deposits, credits, securities, patents, trademarks, or copyrights.

§ 515.531 Payment of certain checks and drafts.

(a) Any banking institution within the United States is hereby authorized to make payments from blocked accounts with such banking institution:

(1) Of checks and drafts drawn or issued prior to the "effective date" provided:

(i) The amount involved in any one payment, acceptance, or debit does not exceed \$500; or

(ii) The check or draft was within the United States in process of collection by a domestic bank on or prior to the "effective date."

(b) This section does not authorize any payment to a designated foreign country or any designated national thereof except payments into a blocked account in a domestic bank, unless such designated national is otherwise licensed to receive such payment.

(c) The authorization contained in this section shall expire at the close of business on August 8, 1963.

§ 515.532 Completion of certain securities transactions.

(a) Banking institutions within the United States are hereby authorized to complete, on or before July 12, 1963 purchases and sales made prior to the "effective date" of securities purchased or sold for the account of a designated foreign country or any designated national thereof provided the following terms and conditions are complied with, respectively:

(1) The proceeds of such sale are credited to a blocked account in a banking institution in the name of the person for whose account the sale was made; and

(2) The securities so purchased are held in a blocked account in a banking institution in the name of the person for whose account the purchase was made.

(b) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a subaccount thereof, to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

§ 515.533 Transactions incident to exportations to designated countries.

(a) All transactions ordinarily incident to the exportation of goods, wares and merchandise from the United States to any person within a designated foreign country are hereby authorized, provided the following terms and conditions are complied with:

(1) The exportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Control Act of 1949, as amended (sec. 3, 63 Stat. 7, sec. 44, 76 Stat. 127, 50 U.S.C., App. Supp. 2023); and

(2) Banking institutions within the United States, prior to issuing, confirming or advising letters of credit, or accepting or paying drafts drawn, or reimbursing themselves for payments made, under letters of credit, or making any other payment or transfer of credit, in connection with any exportation pursuant to this section, or engaging in any other transaction herein authorized, shall satisfy themselves that: (i) Each such transaction is incident to a bona fide exportation and is customary in the normal course of business, and that the value of such exportation reasonably corresponds with the sums of money involved in financing such transaction; and (ii) such exportation is made pursuant to all the terms and conditions of this section.

(b) This section does not authorize:

(1) The financing of any transaction from any blocked account;

(2) Any transaction involving, directly or indirectly, property in which any designated national, other than a person located in the country to which the exportation is consigned, has an interest, or has had an interest since the "effective date".

§ 515.534 [Reserved]

§ 515.535 Exchange of certain securities.

(a) Subject to the limitations and conditions of paragraph (b) of this section and notwithstanding § 515.202, any banking institution within the United States is authorized to engage in the following transactions with respect to securities listed on a national securities exchange, including the withdrawal of such securities from blocked accounts:

(1) Exchange of certificates necessitated by reason of changes in corporate name, par value or capitalization.

(2) Exchanges of temporary for permanent certificates,

(3) Exchanges or deposits under plans of reorganization,

(4) Exchanges under refunding plans, or

(5) Exchanges pursuant to conversion privileges accruing to securities held.

(b) This section does not authorize the following transactions:

(1) Any exchange of securities unless the new securities and other proceeds, if any, received are deposited in the blocked account in which the original securities were held immediately prior to the exchange.

(2) Any exchange of securities registered in the name of any designated national, unless the new securities received are registered in the same name in which the securities exchanged were registered prior to the exchange.

(3) Any exchange of securities issued by a person engaged in the business of offering, buying, selling, or otherwise dealing, or trading in securities, or evidences thereof, issued by another person.

(4) Any transaction with respect to any security by an issuer or other obligor who is a designated national.

§§ 515.536–515.539 [Reserved]

§ 515.540 Passengers baggage.

The importation of goods otherwise prohibited under this part which are brought into the United States as baggage by any person arriving in the United States other than a citizen or resident of the United States is hereby licensed, notwithstanding the provisions of § 515.808 of this part, provided that such goods are not in commercial quantities and are not imported for resale.

§ 515.541 Certain transactions by non-banking organizations in foreign countries owned or controlled by persons in the United States.

(a) Except as provided in paragraphs (b), (c), (d), and (e) of this section, all transactions incidental to the conduct of business activities abroad engaged in by any non-banking association, corporation, or other organization, which is organized and doing business under the laws of any foreign country in the authorized trade territory are hereby authorized.

(b) This section does not authorize any transaction involving United States dollar accounts or any other property subject to the jurisdiction of the United States.

(c) This section does not authorize any transaction involving the purchase or sale or other transfer of any merchandise of United States origin or the obtaining of a credit in connection therewith.

(d) This section does not authorize the transportation aboard any vessel which is owned or controlled by any organization described in paragraph (a) of this section of any merchandise from a designated foreign country to any country or from any country directly or indirectly to a designated foreign country.

(e) This section does not authorize any person subject to the jurisdiction of the United States other than an organization described in paragraph (a) of this section to engage in or participate in or be involved in any transaction. For the purpose of this section only, no person shall be deemed to be engaged in or participating in or involved in a transaction solely because of the fact that he has a financial interest in any organization described in paragraph (a) of this section.

§ 515.542 Communications.

All transactions of common carriers incidental to the receipt or transmission of mail and telecommunications with a designated foreign country are hereby authorized.

Subpart F—Reports

§ 515.601 Records

Every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each such transaction engaged in by him, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least two years after the date of such transaction.

§ 515.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Secretary of the Treasury or any person acting under his direction or authorization complete information relative to any transaction subject to the provisions of this part or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect. The Secretary of the Treasury or any person acting under his direction may require that such reports include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Secretary of the Treasury may, through any person or agency, investigate any such transaction or property or any violation of the provisions of this part regardless of whether any report has been required or filed in connection therewith.

Subpart G—Penalties

§ 515.701 Penalties.

(a) Attention is directed to section 5 (b) of the Trading With the Enemy Act, as amended, which provides in part:

Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000 or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

This section of the Trading With the Enemy Act, as amended, is applicable to violations of any provision of this chapter and to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this chapter or otherwise under section 5(b) of the Trading With the Enemy Act, as amended.

(b) Attention is also directed to 18 U.S.C. 1001 which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Subpart H—Procedures

§ 515.801 Licensing.

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions, many types of transactions which are subject to the prohibitions contained in Subpart B of this part. All such licenses are set forth in Subpart E of this part. It is the policy of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses are required to file reports and statements in accordance with the instructions specified in the licenses.

(b) *Specific licenses.*—(1) *General course of procedure.* Transactions subject to the prohibitions contained in Subpart B of this part which are not authorized by general license may be effected only under specific license. The specific licensing activities of Foreign Assets Control are performed by the central organization and the Federal Reserve Bank of New York. When an unusual problem is presented, the proposed action is cleared with the Director of Foreign Assets Control or such person as he may designate.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transaction prohibited by or pursuant to this part are to be filed in

duplicate on Form TFAC-5 with the Federal Reserve Bank of New York. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing the effecting of such transaction, and there is no requirement that any other person having an interest in such transaction shall or should join in making or filing such application.

(3) *Information to be supplied.* Applicants must supply all information specified by the respective forms and instructions. Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Control. If an applicant or other party in interest desires to present additional information or discuss or argue the application, he may do so at any time before or after decision. Arrangements for oral presentation should be made with the Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition upon the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by Foreign Assets Control acting on behalf of the Secretary of the Treasury or by the Federal Reserve Bank of New York, acting in accordance with such regulations, rulings and instructions as the Secretary of the Treasury or Foreign Assets Control may from time to time prescribe, in such cases or classes of cases as the Secretary of the Treasury or Foreign Assets Control may determine, or licenses may be issued by the Secretary of the Treasury acting directly or through any person, agency, or instrumentality designated by him.

§ 515.802 Unblocking.

Any interested person desiring the unblocking of accounts or other property on the ground that no person having an interest in the property is a designated national may file such an application. Such application shall be filed in the manner provided in § 515.801(b) and shall contain full information in support of the administrative action requested.

The applicant is entitled to be heard on the application. If the applicant desires a hearing, arrangements should be made with Foreign Assets Control.

§ 515.803 Decision.

Foreign Assets Control or the Federal Reserve Bank of New York will advise each applicant of the decision respecting applications filed by him. The decision of Foreign Assets Control acting on be-

half of the Secretary of the Treasury with respect to an application shall be final.

§ 515.804 Records and reporting.

Records are required to be kept by every person engaging in any transaction subject to the provisions of this part, as provided in § 515.601.

§ 515.805 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, authorizations, instructions, orders, or forms issued thereunder may be amended, modified, or revoked at any time.

§ 515.806 Rule making.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of Foreign Assets Control. Except to the extent that there is involved any military, naval, or foreign affairs function of the United States or any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts and except when interpretative rules, general statements of policy, or rules of agency organization, practice, or procedure are involved or when notice and public procedure are impracticable, unnecessary or contrary to the public interest, interested persons will be afforded an opportunity to participate in rule making through submission of written data, views, or argument, with oral presentation in the discretion of the Director. In general, rule making by Foreign Assets Control involves foreign affairs functions of the United States. Wherever possible, however, it is the practice to hold informal consultations with interested groups or persons before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of Foreign Assets Control in writing for the issuance, amendment or repeal of any rule.

§ 515.807 Delegation by the Secretary of the Treasury.

Any action under § 515.201 which the Secretary of the Treasury is authorized to take pursuant to Proclamation 3447 or the Trading With the Enemy Act may be taken by the Director, Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 515.808 Customs procedures; merchandise specified in § 515.204.

(a) With respect to merchandise specified in § 515.204, whether or not such merchandise has been imported into the United States, collectors of customs shall not accept or allow any:

- (1) Entry for consumption (including any appraisement entry, any entry of goods imported in the mails, regardless of value, and any other informal entries);
- (2) Entry for immediate exportation;
- (3) Entry for transportation and exportation;
- (4) Withdrawal from warehouse;
- (5) Transfer or withdrawal from a foreign-trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign-trade zone, unless either:

- (i) The merchandise was imported prior to 12:01 a.m., February 7, 1962, or
- (ii) A specific license pursuant to this part is presented, or

(iii) Instructions from the Foreign Assets Control, either directly or through the Federal Reserve Bank of New York, authorizing the transaction are received.

(b) Whenever a specific license is presented to a collector of customs in accordance with this section, one additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise involved shall be filed with the collector of customs at the port where the transaction is to take place. Each copy of any such entry, withdrawal or other appropriate document, including the additional copy, shall bear plainly on its face the number of the license pursuant to which it is filed. The original copy of the specific license shall be presented to the collector in respect of each such transaction and shall bear a notation in ink by the licensee or person presenting the license showing the description, quantity, and value of the merchandise to be entered, withdrawn or otherwise dealt with. This notation should be so placed and so written that there will exist no possibility of confusing it with anything placed on the license at the time of its issuance. If the license in fact authorizes the entry, withdrawal or other transaction with regard to the merchandise the collector, or other authorized customs employee, shall verify the notation by signing or initialing it after first assuring himself that it accurately describes the merchandise it purports to represent. The license shall thereafter be returned to the person presenting it and the additional copy of the entry, withdrawal or other appropriate document shall be forwarded by the collector to the Foreign Assets Control.

(c) Whenever a person shall present an entry, withdrawal or other appropriate document affected by this section and shall assert that no specific Foreign Assets Control license is required in connection therewith, the collector of customs shall withhold action thereon and shall advise such person to communicate directly with the Federal Reserve Bank of New York to request that instructions be issued to the collector to authorize him to take action with regard thereto.

[SEAL]

DOUGLAS DILLON,
Secretary of the Treasury.

[F.R. Doc. 63-7262; Filed, July 8, 1963;
9:15 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration PART 8—NATIONAL SERVICE LIFE INSURANCE

Eligibility

In § 8.0(b)(1), subdivision (iii) is amended to read as follows:

§ 3.0 Eligibility.

(b) *Applications for insurance under section 722(a) of Title 38, United States Code.* (1) * * *

(iii) Written application for such insurance must be submitted within 1 year from the date service connection of any disability is determined by the Veterans Administration by a rating made subsequent to discharge: *Provided*, That if the applicant is shown by evidence satisfactory to the Administrator to have been mentally incompetent during any part of the 1-year period, application under this paragraph may be filed within 1 year after a guardian is appointed or within 1 year after the removal of such mental incompetency as determined by the Administrator, whichever is the earlier date. If a guardian was appointed or the removal of such disability occurred before January 1, 1959, application under this paragraph may be made within 1 year after that date. This subdivision shall be effective from and after April 25, 1951.

(72 Stat. 1114; 38 U.S.C. 210)

This VA Regulation is effective April 25, 1951.

Approved: July 1, 1963.

By direction of the Administrator.

[SEAL]

W. J. DRIVER,
Deputy Administrator.

[F.R. Doc. 63-7180; Filed, July 8, 1963;
8:50 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 5a—Federal Supply Service, General Services Administration

PART 5A-1—GENERAL

Title 41 is amended by the addition of Chapter 5A, Federal Supply Service, General Services Administration, reading as follows:

Sec.

5A-1.000 Scope of part.

Subpart 5A-1.1—Introduction

5A-1.101 Scope of subpart.

5A-1.102 Establishment of Chapter 5A, General Services Administration Procurement Regulations.

5A-1.103 Relationship of Chapter 5A to the FPR and Chapter 5, GSPR.

5A-1.104 Applicability.

5A-1.105 Exclusions.

5A-1.106 Method of issuance.

5A-1.107 Arrangement.

5A-1.107-1 General plan.

5A-1.107-2 Numbering.

5A-1.107-3 Cross-references.

5A-1.108 Citation.

5A-1.109 Deviation.

Subpart 5A-1.71—Criteria for Determining Method of Supply

5A-1.7101 General.

5A-1.7102 Definition of use point.

5A-1.7103 Basic criteria.

5A-1.7104 Purchase for storage and issue.

5A-1.7105 Consolidated purchase for direct delivery.

Sec.

5A-1.7106 Purchase through indefinite delivery type contracts.

5A-1.7107 Local purchase.

AUTHORITY: §§ 5A-1.000 to 5A-1.7107 issued under sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 41 CFR 5-1.101(c), 28 F.R. 4559.

§ 5A-1.000 Scope of part.

This part describes the method by which the Federal Supply Service implements and supplements the Federal Procurement Regulations (Chapter 1 of Title 41, Code of Federal Regulations) and the GSA-wide procurement policies and procedures (Chapter 5 of the General Services Administration Procurement Regulations). In addition, it contains policies and procedures which implement and supplement Chapter 1 and Chapter 5.

Subpart 5A-1.1—Introduction

§ 5A-1.101 Scope of subpart.

This subpart establishes Chapter 5A of the General Services Administration Procurement Regulations (41 CFR Ch. 5A), states its relationship to the Federal Procurement Regulations (FPR) and Chapter 5 of the General Services Administration Procurement Regulations (GSPR), and sets forth other introductory information.

§ 5A-1.102 Establishment of Chapter 5A, General Services Administration Procurement Regulations.

This Chapter 5A of GSPR is prescribed by the Commissioner, Federal Supply Service, and is established to provide all Federal Supply Service (FSS) activities with additional uniform policies and procedures applicable to the procurement of personal property and nonpersonal services.

§ 5A-1.103 Relationship of Chapter 5A to the FPR and Chapter 5, GSPR.

(a) GSPR Chapter 5A implements and supplements the FPR and GSPR Chapter 5. Implementing material is that which expands upon related FPR or Chapter 5 material. Supplementing material is that for which there is no counterpart in the FPR or Chapter 5.

(b) Material published in the FPR or GSPR Chapter 5 becomes effective throughout FSS upon the effective date of the particular FPR or Chapter 5 material. Such material will not be repeated, paraphrased, or restated in Chapter 5A. Therefore, all three must be reviewed to obtain comprehensive coverage of FSS-wide procurement policies and procedures.

(c) Material in Chapter 5A implements and supplements but does not supersede the FPR or Chapter 5 unless a deviation has been authorized and the deviation is explicitly referenced. In case of other conflict, or when Chapter 5A contains no related material implementing the FPR or Chapter 5, the FPR or Chapter 5 will govern.

§ 5A-1.104 Applicability.

Chapter 5A applies to all purchases and contracts made by FSS for the procurement of personal property and nonpersonal services.

§ 5A-1.105 Exclusions.

(a) Certain FSS procurement policies and procedures which come within the scope of this chapter nevertheless may be excluded therefrom when there is justification. These inclusions include the following categories:

(1) Subject matter which bears a security classification.

(2) Policies or procedures which are expected to be effective for a period of less than six months.

(3) Policies or procedures which are effective on an experimental basis for a reasonable period.

(4) Policies or procedures pertaining to other functions of FSS as well as to procurement functions and there is need to make the issuance available simultaneously to all FSS employees concerned.

(5) Where speed of issuance is essential, numerous changes are required, and all necessary changes cannot be made promptly.

(b) Procurement policies and procedures issued in other than the FPR System format under paragraphs (a) (4) and (5), above, shall be codified into Chapter 5A at the earliest practicable date, but in any event not later than six months from date of issuance.

§ 5A-1.106 Method of issuance.

(a) All Chapter 5A material deemed necessary for business concerns, and others interested, to understand FSS procurement policies and procedures will be published in the FEDERAL REGISTER. Other related material also may be published in the FEDERAL REGISTER when its inclusion will provide a logical, comprehensive statement of FSS procurement policies and procedures.

(b) Chapter 5A material published in the FEDERAL REGISTER will be published in cumulative form in Chapter 5A of Title 41 of the Code of Federal Regulations (41 CFR Ch. 5A). The FEDERAL REGISTER and Title 41 of the Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

§ 5A-1.107 Arrangement.

§ 5A-1.107-1 General plan.

Chapter 5A is divided into parts, subparts, sections, subsections, and further subdivisions as necessary.

§ 5A-1.107-2 Numbering.

(a) Generally, the numbering system used in Chapter 5A conforms to that of the FPR (see § 1-1.007-2). Thus, a particular procurement policy or procedure is identified by the same number in the FPR, Chapter 5, and Chapter 5A, except that the first digit of the number is either 1, 5, or 5A.

(b) Where Chapter 5A implements a part, subpart, section, or subsection of the FPR or Chapter 5, the implementing part, subpart, section, or subsection of Chapter 5A will be numbered (and captioned) to correspond to the FPR or the Chapter 5 part, subpart, section, or subsection.

(c) Where Chapter 5A supplements the FPR or Chapter 5 and thus deals with subject matter not contained in the

FPR or Chapter 5, numbers in the group 70 through 89 will be assigned to the respective supplementing parts, subparts, sections, or subsections.

(d) Where the subject matter contained in a part, subpart, section, or subsection of the FPR or Chapter 5 requires no implementation, Chapter 5A will contain no corresponding part, subpart, section, or subsection number. Thus, there may be gaps in the Chapter 5A series of part, subpart, section, or subsection numbers. In such cases, reference must be made to the FPR and Chapter 5 for policy and procedure applicable throughout FSS.

§ 5A-1.107-3 Cross-references.

(a) Within Chapter 5A, cross-references to the FPR will be made in the same manner as used within the FPR and Chapter 5. Illustrations of cross-references to Chapter 5 are:

- (1) Part 5-3.
- (2) Subpart 5-3.1.
- (3) § 5-3.102-50.

(b) Within Chapter 5A, cross-references to parts, subparts, and sections will be made in a manner generally similar to that used in making cross-references to the FPR. For example, this paragraph would be referenced as "§ 5A-1.107-3(b)".

§ 5A-1.108 Citation.

(a) Citation in formal documents, such as legal briefs, shall give the number of the part, subpart, or section of Chapter 5A following the words "General Services Administration Procurement Regulations" and shall include an appropriate reference to "41 CFR ____" where the material has been published in the FEDERAL REGISTER.

(b) Any section of Chapter 5A, for purpose of brevity, may be informally identified as "GSPR" followed by the section number. For example, this paragraph could be identified in a memorandum as "GSPR 5A-1.108(b)".

§ 5A-1.109 Deviation.

(a) The term "deviation" as used in this Chapter 5A is defined in the same manner as described in § 1-1.009-1.

(b) In order to maintain uniformity to the greatest extent feasible, deviation by FSS activities from this Chapter 5A will be kept to a minimum and controlled as follows:

(1) Deviation will be made only after prior approval by the Assistant Commissioner for Procurement, if the deviation does not affect the programs and operations assigned to any other Assistant Commissioner of FSS.

(2) Deviation affecting the programs and operations of two or more Assistant Commissioners, FSS, will be made only after prior approval by the Commissioner, FSS.

(3) Requests for authority to deviate from Chapter 5A shall be submitted to the Assistant Commissioner for Procurement. Such requests will be supported by statements adequate to disclose fully the nature of the deviation and the reasons for special action.

(4) Deviations in classes of cases, authorized under subparagraphs (1) and (2), above, will expire, unless extended,

12 months from the date of approval, unless sooner rescinded, without prejudice to any action taken thereunder.

Subpart 5A-1.71—Criteria for Determining Method of Supply

§ 5A-1.7101 General.

This subpart establishes criteria for guidance in determining when requirements for items needed on a recurring basis should be consolidated for procurement at one or more points, and whether such consolidated requirements should be purchased and stored at redistribution points in advance of immediate need for issue to use points as needs arise; purchased in definite quantities for direct delivery to use points; or contracted for in advance of immediate need under indefinite delivery type contracts covering specific periods and providing for delivery to use points as needs arise.

§ 5A-1.7102 Definition of use point.

The term "use point," as used in this subpart, means that point from which supplies are issued to consumers or equipment is placed in use, as distinguished from storage points where supplies and equipment are issued to redistribution points.

§ 5A-1.7103 Basic criteria.

(a) The basic criteria set forth in this subpart are intended to be applied only to the normal recurring needs of the Government and shall be subject to appropriate adjustments in technique when purchase of abnormally large quantities are involved, or requirements involved cover special items for which stocks are maintained in support of a specific activity of any Government agency.

(b) Principles are established governing selection of the appropriate methods of supply to be utilized. However, in applying these criteria to specific items and requirements therefor, appropriate consideration shall be given to any other significant factors not mentioned herein.

§ 5A-1.7104 Purchase for storage and issue.

The following criteria will govern in determining whether an item can be handled most advantageously through consolidated purchasing for storage and issue to use points:

(a) The items shall be physically adaptable to storage and issue and of such a character that it is feasible to forecast with reasonable accuracy overall requirements of the use points served.

(b) Rate of use and frequency of ordering by use points shall be sufficient to warrant storage and issue.

(c) Rate of deterioration or obsolescence shall be sufficiently low to avoid unnecessary loss.

(d) Price advantage through bulk buying shall be sufficient to render storage and issue more economical, all costs both direct and indirect considered, or conditions exist where any of the following factors require consolidated purchasing of items suitable for storage and issue:

(1) Where close inspection or testing is necessary to assure quality, or where repetitive inspection and test of small

lots are prohibitive from the standpoint of cost or potential urgency of need.

(2) Where advance purchase and storage are necessitated by long procurement lead time.

(3) Where an item is of special manufacture or design and is not readily available from commercial sources.

(4) Where an adequate industry distribution system does not exist to assure availability at use points.

(5) Where contracts for production quantities are necessary to secure timely deliveries and advantageous prices.

(6) Where market conditions are such that central procurement is required to secure adequate supply.

§ 5A-1.7105 Consolidated purchase for direct delivery.

The following criteria shall govern in determining whether an item can be most advantageously handled through consolidated purchase for direct delivery to use points:

(a) The items shall be equipment or supply items of such a character that it is feasible to forecast requirements for delivery to specific use points.

(b) The greatest price advantage, both direct and indirect costs considered, shall be obtainable through definite quantity purchasing, or conditions exist where any of the following factors require consolidated purchasing of such items for direct delivery to use points:

(1) Where an item is of special manufacture or design and is not readily available from commercial sources.

(2) Where market conditions are such that central procurement is required to assure adequate supply.

(3) Where contracts for production quantities are necessary to secure timely deliveries and advantageous prices.

(4) Where quantity is large enough to assure lowest transportation cost, or conversely, where transportation costs for small quantity redistribution are so excessive that it is not feasible to store and issue the item.

§ 5A-1.7106 Purchase through indefinite delivery type contracts.

The following criteria shall govern in determining whether an item can be most advantageously purchased through the medium of indefinite delivery type contracts, as described in § 1-3.405-5 (such as Federal Supply Schedules), covering specific periods and providing for delivery to use points as needs arise:

(a) The item shall be of such a character that:

(1) Handling on a storage and issue basis is not economically sound.

(2) It is either not feasible to forecast definite requirements for delivery to specific use points, or no advantage accrues for doing so.

(b) Industry distribution facilities shall be adequate to serve properly the use points involved.

(c) Price advantage shall be sufficient to warrant the cost involved in maintaining indefinite delivery type contracts, or conditions exist where any of the following factors require handling on that basis:

(1) Where acute competitive bidding problems exist based upon highly tech-

RULES AND REGULATIONS

nical matters which can best be met by centralizing contracting work.

(2) Where item is of special manufacture or design and is not readily available from commercial sources.

(d) This method of purchase shall be used also when:

(1) Items are proprietary or so highly complex in design, function, or operation as to be noncompetitive.

(2) Technical assistance or service to be furnished by suppliers is a fundamental consideration in use of equipment.

§ 5A-1.7107 Local purchase.

Whenever it is not feasible to procure under any of the other methods described in this subpart, procurement shall be made locally by the FSS buying office to which the requirement has been submitted in accordance with applicable procedures.

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

Dated: July 1, 1963.

C. D. BEAN,
Commissioner,
Federal Supply Service.

[F.R. Doc. 63-7181; Filed, July 8, 1963;
8:51 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 48]

MANUFACTURERS AND RETAILERS EXCISE TAX

Revision of the Definition of the Term "Power Supply Units" in Con- nection With the Determination of Tax- able Radio or Television Compo- nents

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] BERTRAND M. HARDING,
Acting Commissioner
of Internal Revenue.

In order to revise the definition of the term "power supply units" contained in subparagraph (6) of § 48.4142-1(c) of the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48), such subparagraph is amended to read as follows:

§ 48.4142-1 Radio and television components.

* * * * *

(c) Definitions. * * *

(6) Power supply units. (i) In the case of articles sold before the first day of the first month which begins more than 30 days after the date of publication of this subparagraph in the FEDERAL REGISTER, the term "power supply units" includes all devices which are suitable for use on or in connection with, or as component parts of, any radio or television receiving set, phonograph, or combination of any of the foregoing and which convert electric current of ordi-

nary commercial and domestic voltages into electric current voltages suitable for operating any such articles.

(ii) In the case of articles sold on or after the first day of the first month which begins more than 30 days after the date of publication of this subparagraph in the FEDERAL REGISTER, the term "power supply units" includes all devices which are suitable for use on or in connection with, or as component parts of, any radio or television receiving set, phonograph, or combination of any of the foregoing and which convert electric current into electric current at voltages suitable for operating any such articles. This includes devices which convert electric current at ordinary commercial, domestic, or automotive voltages into electric current at voltages suitable for operating any radio or television receiving set, phonograph, or combination of any of the foregoing.

[F.R. Doc. 63-7193; Filed, July 8, 1963; 8:53 a.m.]

DEPARTMENT OF LABOR

Division of Public Contracts

[41 CFR Part 50-202]

ENGINES AND TURBINES INDUSTRY

Tentative Decision Determining Prevailing Minimum Wages

A complete record of proceedings under sections 1 and 10 of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 and 43a) to determine the prevailing minimum wages for persons employed in the engines and turbines industry has been certified by the hearing examiner. A tentative decision, including a statement of findings and conclusions as well as the reasons and basis therefor, on all material issues of fact, law, and discretion presented on the record, and any proposed wage determination, is now appropriate under the applicable rules of practice (41 CFR Part 50-203.21(b)) and the Administrative Procedure Act (5 U.S.C. 1007(b)).

DEFINITION

A proposed definition of the industry based on industry group number 351 of the 1957 edition of the *Standard Industrial Classification (SIC) Manual* is contained in the notice of hearing (27 F.R. 2532). No criticisms were proffered concerning this definition. It appears to be satisfactory to both labor and management. The SIC Manual was prepared by the Bureau of the Budget of the Executive Office of the President for the purpose of promoting uniformity and comparability in industry classifications used by various agencies of the United States Government. The SIC appears to be an appropriate foundation for defining the industry for this wage deter-

mination, as the wage determination will exclusively affect contracts to which federal agencies are parties. The definition proposed in the notice of hearing is adopted for the purpose of this tentative decision.

BRANCHES

The employers' representatives have proposed that the industry be divided into the following branches for wage determination purposes: (1) The steam engines, turbines, and turbine generator sets branch; and (2) the internal combustion engines branch. This proposal was supported by substantial evidence that establishments which make products in one of these proposed branches generally do not, and are not equipped to make products in the other branch. This evidence is further supported by the SIC Manual's similar division of the industry into Nos. 3511 and 3519. For these reasons, and because the record provides separate definitions and separate wage data which provide a basis for dividing the industry into the two requested branches, I have decided so to divide it in this tentative determination.

LOCALITY

The next issue to be considered concerns the question of whether the geographic area of competition for contracts subject to the Walsh-Healey Public Contracts Act for products of each branch of the industry extends to all the area in which the branch has its plants so as to require branchwide minimum wage determinations, or whether such competition is limited to smaller geographic areas in either or both branches so as to authorize separate minimum wage determinations for smaller localities in one or both of the branches. The record contains extensive data prepared by the Wage and Hour and Public Contracts Divisions of the Department of Labor concerning this subject. These data clearly indicate that when bids are invited the geographic area of competition for Government contracts for the products of each branch of this industry is not confined to the locality where the goods are to be delivered. There is no way to predict at that time the geographic area in which the successful bidder's plant will be located. In their testimony at the hearing the representatives of organized labor took the position that the area of competition for Government contracts for the products of this industry was industrywide. Counsel for the National Electrical Manufacturers Association (NEMA) stipulated for the record that the turbine members of NEMA ship their products throughout the nation. Moreover, although counsel for the Internal Combustion Engine Institute (ICEI) and the Diesel Engine Manufacturers Association (DEMA) took no position on this issue, several witnesses appearing on behalf of individual establishments in the internal

combustion engines branch testified that they competed with establishments throughout the United States.

Accordingly, it is my finding that the locality in which products of each branch of the engines and turbines industry are to be manufactured or furnished for any Government contract subject to the Walsh-Healey Public Contracts Act cannot be defined more narrowly than the entire area in which the branch operates. Under these circumstances, a wage determination without geographic divisions is essential to achieve the purposes of Congress in enacting the statute (See the tentative decision in the textile industry, 17 F.R. 11197; *Mitchell v. Covington Mills, Inc.*, 229 F. 2d 506, certiorari denied, 350 U.S. 1002, rehearing denied, 351 U.S. 934).

PREVAILING MINIMUM WAGES IN THE STEAM ENGINES, TURBINES, AND TURBINE GENERATOR SETS BRANCH

The record contains a survey prepared by the Bureau of Labor Statistics (BLS) which shows the minimum wages paid in October 1961 by each establishment with 20 or more employees in which the manufacture of products of this industry were found to constitute 50 percent or more of its total value of sales in 1960, and in which the manufacture of the products of this branch were found to constitute more of the total value of its sales than the manufacture of the products of the other branch in that year. There were 17 such establishments paying widely scattered minimum wages and employing a total of 15,042 workers of the type covered by the act when performing under a contract subject to it (hereafter called "covered workers"). This survey was supplemented by a survey prepared by the National Electrical Manufacturers Association of the minimum wages paid in ten of the 17 establishments in June 1962. In order to cause its survey to reflect minimum wages paid in all of the establishments within the scope of the BLS survey, NEMA prepared a table for all 17 establishments by combining the June 1962 data for the ten establishments it had surveyed with the October 1961 data for the seven other establishments (NEMA exhibit 7).

For the purpose of obtaining June 1962 data for these seven establishments, NEMA renewed its application for a subpoena which would in effect require the BLS to provide NEMA with the identity of these establishments. The hearing examiner declined to grant the application. The application for the subpoena had originally been made and was denied by an order issued prior to the commencement of the hearing. The text of this order is set forth as an appendix to this decision.

It is my finding that the hearing examiner acted correctly in denying this application, for the value of the possibility of replacing October 1961 data with June 1962 data for a minor part of the industry does not in my opinion outweigh the reasons for denial of the subpoena as set forth in the original order.

The NEMA table shows that a majority of 52.9% of the establishments in this

branch paid no covered worker less than \$1.70 an hour, and that a majority of 52.4% of the covered workers in the branch were employed in establishments which paid no covered worker less than \$1.75. It therefore appears that the rate which is most representative of the minimum wages paid in the branch as a whole lies between \$1.70 and \$1.75 an hour. Most of the employment within this range is in the largest plant in the branch which accounts for over one-third of its total covered worker employment. Its minimum wage is \$1.71 per hour. I find that rate to be the prevailing minimum wage in this branch of the industry.

PREVAILING MINIMUM WAGES IN THE INTERNAL COMBUSTION ENGINES BRANCH

The BLS survey presents data on the minimum wages paid in this branch comparable in every detail with that presented for the other branch. No recommendations were received from the representatives of employers concerning the question of what are the prevailing minimum wages in the branch. The Internal Combustion Engine Institute and Diesel Engine Manufacturers Association did, however, criticize the BLS survey in a number of respects. They contend that employers are prejudiced because establishments with less than 20 employees are excluded from the survey. This claim is not substantiated by the evidence. These establishments were excluded merely because they represented so small a part of the industry (being responsible for only three-tenths of one percent of the shipments of internal combustion engines) as not to warrant the administrative difficulty involved in including them. Moreover, there is nothing in the record to indicate that the survey was in any way biased by this limitation on its scope. The association also objects to the fact that a large portion of the industry was excluded from the survey because of its limitation to establishments at least half of the value of whose products were within the industry. However, if the survey is to serve its purpose most effectively, it should exclude establishments whose productive activities are principally directed in other industry channels, and I find that exclusion of establishments which produce over half the value of their products for some other industry or industries is the most feasible way of achieving this result. The survey was also criticized because it did not show rates said to be "established" by various plants in the industry although lower than the lowest rates actually paid. Such rates were not surveyed because of the long standing rule, which has been reconsidered with care time and time again and of which I approve, that lowest rates actually paid are the best guide to prevailing minimum wages. See: Photographic and blueprinting equipment and supplies industry—final decision (21 F.R. 2243); tires and related products industry—tentative decision (24 F.R. 8741); electron tubes and related products industry—tentative decision (25 F.R. 7801); metal business furniture and storage equipment industry—tentative decision (25 F.R. 12363);

electronic component parts industry—tentative decision (26 F.R. 4173); manifold business forms industry—tentative decision (26 F.R. 5898).

Counsel for ICEI and DEMA contends that the BLS data are not dependable or reliable evidence. This criticism grows out of the contention that some respondents initially failed to understand the scope of the definition of covered employment and filed erroneous returns. On rechecking their copies of the questionnaire after discussing the matter with counsel, several employers submitted revisions of the data originally provided the BLS. The proposed changes were verified by the BLS and all necessary revisions with the exception of the corrections of the Briggs and Stratton Company were incorporated in the July 1962 revision of the wage survey. Subsequently, corrected data for Briggs and Stratton were received and incorporated in the record.

From the record, it is evident that every effort to make the survey as accurate as possible was made. Moreover, the technical proficiency of the BLS in conducting wage surveys is without question. Although mistakes are inherently possible in any survey, there is every reason to believe that this survey was made with the highest degree of competence and accuracy.

I find, therefore, that the evidence of record provides a sound basis for determining the prevailing minimum wage in this branch. This evidence shows that in October 1961, 51.8 percent of the establishments employing 55.3 percent of the covered workers paid no covered worker less than \$1.69 an hour. This rate most nearly represents the central tendency among the widely scattered minimum wages paid by establishments in the branch. Accordingly, I find \$1.69 an hour to be the prevailing minimum wage in the internal combustion engines branch of the industry.

A SECOND LEVEL OF PREVAILING MINIMUM WAGES

The representatives of organized labor contend that any minimum wage determination for this industry (or either of its branches) arrived at in the manner discussed in the preceding paragraphs is inadequate for use with respect to the industry (or either of its branches) as a whole. They insist that the wages paid to the lowest paid employee in each establishment in the industry does not provide a valid guide to the lower end of the wage scales which characterize such establishments. In support of this contention, they point to evidence in the BLS survey which indicates that if the wage determination was based upon data which excluded the lowest paid one percent of the covered workers in each establishment a substantially higher wage determination would be warranted for the industry (or its branches). They, therefore, contend that in determining prevailing minimum wages for this industry, I should recognize the fact that this industry is characterized by establishments which employ a very small portion of their workers (or a single worker) at much lower

wages than the bulk of their lower paid workers; that in view of such circumstances two levels of prevailing minimum wages should be established; one in the manner discussed in the preceding paragraphs to be applied to the lowest paid one percent of the workers in an establishment; and a second based on the minimum wage paid to the other 99 percent of the workers in each establishment to be applied to the other 99 percent of the workers in an establishment when performing upon a contract subject to the Act.

The peculiar composition of this industry to which labor refers creates a situation which raises some question as to whether a determination based upon the absolute minimum wage paid in each establishment is likely to foster one purpose of the Act—"to use the leverage of the Government's immense purchasing power to raise labor standards" (Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 507). This results from the fact that such a determination is based upon wage rates which are so far removed from those paid in any substantial portion of the employment in each establishment of which the industry is composed as to have practically no effect upon any workers in the industry. This is illustrated by the BLS survey which shows that only between two and three-tenths of one percent of the covered workers in the steam engines, turbines, and turbine generator sets branch of the industry received less than the previously discussed prevailing minimum wage for that branch and only between one and two percent of the covered workers in the internal combustion engines branch received less than the corresponding rate for that branch.

The problem thus created by the composition of this industry requires special consideration. I have examined the evidence to determine the possible results of the application of the technique recommended by labor. It reveals that the \$1.71 rate for the steam engines, turbines, and turbine generator sets branch could be supplemented by a rate somewhere between \$1.70 an hour based upon the minimum wages paid in establishments weighted equally and \$2.00 an hour based on the minimum wages paid in establishments weighted according to their covered employment. The comparable rates which could supplement the \$1.69 an hour rate for the internal combustion engines branch are \$2.00 an hour and \$2.10 an hour. Accordingly, if I were to adopt labor's proposal, employers in the internal combustion engines branch would become subject to a lower minimum wage determination for a few of their workers than employers in the steam engines, turbines, and turbine generator sets branch, and a higher minimum wage determination for most workers. Aside from the practical difficulties of applying the proposed percentage test under conditions of day-to-day employment fluctuations and providing equitably for small plants employing less than 100 workers, this would yield an anomalous result, considering the fact that the general wage structure of the internal combustion engines branch is

lower than that of the other branch. I have concluded, therefore, that this record presents a poor case for the innovation suggested by labor. I have decided not to provide any second level of prevailing minimum wages for this industry or either of its branches in this tentative determination.

RECENT CHANGES IN PREVAILING MINIMUM WAGES

The principal remaining subject concerns the question of what changes have taken place in prevailing minimum wages since the survey dates. The evidence shows that there was no significant change in the wages paid between the time of the BLS survey and hearing date in the internal combustion engines branch. Most of the data on which the survey of the steam engines, turbines, and turbine generator sets branch rests were current at the time of the hearing. The representatives of labor argue, however, that in determining prevailing minimum wages, I should rely upon the most recent BLS data available to the Department at the time the final determination is made. This would have the advantage of providing a determination which takes into consideration wage changes in the industry between the hearing date and the effective date of the determination. However, as stated in the final determination for the office, computing, and accounting machines industry (27 F.R. 1269) this cannot be done without first reopening the hearing. Thereafter, it would be necessary to provide additional time for the filing of new proposed findings, conclusions, and exceptions resulting in a further delay which would in turn dissipate any merits involved in using the new evidence.

DELAY IN EFFECTIVE DATE

For the reasons fully stated in the final decision for the paper and pulp and manifold business forms industries (26 F.R. 7698, 7699), this tentative decision finds good cause to make the final decision in these proceedings effective seven days after it is published in the FEDERAL REGISTER.

PROPOSED DETERMINATIONS

Accordingly, upon the findings and conclusions stated herein, I propose to amend Part 50-202 of Title 41 of the Code of Federal Regulations by the addition of § 50-202.34 to read as follows:

§ 50-202.34 Engines and turbines industry.

(a) *Definition.* (1) The engines and turbines industry is defined as that industry which manufactures or furnishes steam engines; steam turbines; hydraulic turbines; gas turbines (except aircraft); complete steam, gas, and hydraulic turbine generator sets; internal combustion engines (except aircraft and non-diesel automotive) such as diesel and semi-diesel engines, including marine, locomotive, and military tank engines; jet propulsion engines (except aircraft); outboard motors and propelling units; and parts, attachments and accessories specifically designed for the foregoing products such as, but not limited to, governors for steam and gas tur-

bines, turbine blades, assembled diaphragms, turning gear drives, marine propulsion gears, head covers, bottom rings, discharge rings, pit liners, pistons, vibration dampers, cam follower rollers, crankshafts, piston pins and gear covers.

(2) Specifically excluded from this definition are: prime mover generator sets (except complete steam, gas or hydraulic turbine generator sets); all types of generators; aircraft engines; rocket engines; automotive engines (except diesel); locomotives; and parts commonly recognized as products of industries other than the engines and turbines industry such as, but not limited to, temperature relays, packings, pulsation dampeners, roller and ball bearings, compressors, piping and tubing, oil pumps, couplings, rubber sealing rings, clutches, governors for diesel engines, gaskets, thrust bearings, torque converters, silencers, valve seat inserts and non-metallic engine mountings.

(b) *Minimum wages.* (1) The minimum wage for persons employed in the manufacture or furnishing of steam engines, steam turbines, hydraulic turbines, gas turbines (except aircraft), complete steam, gas, and hydraulic turbine generator sets; and parts, attachments, and accessories specifically designed for the foregoing products, shall be not less than \$1.71 an hour.

(2) The minimum wage for persons employed in the manufacture or furnishing of internal combustion engines (except aircraft and non-diesel automotive) such as diesel and semi-diesel engines, including marine, locomotive, and military tank engines; jet propulsion engines (except aircraft); outboard motors and propelling units; and parts, attachments, and accessories specifically designed for the foregoing products shall be not less than \$1.69 an hour.

Within twenty-one days from the date of publication of this tentative decision in the FEDERAL REGISTER, interested persons may submit written exceptions to the proposed action described therein, together with supporting reasons. Exceptions shall be directed to the Secretary of Labor and filed with the Chief Hearing Examiner, Room 4410, United States Department of Labor, 14th Street and Constitution Avenue NW., Washington 25, D.C.

Signed at Washington, D.C., this 1st day of July 1963.

W. WILLARD WIRTZ,
Secretary of Labor.

APPENDIX

DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

ENGINES AND TURBINES INDUSTRY

ORDER RELATIVE TO DETERMINATION OF PREVAILING MINIMUM WAGES

The National Electrical Manufacturers Association, hereinafter referred to as the Association, has applied for the issuance of a subpoena duces tecum under 41 CFR 50-203.19(a) calling for: (1) the production for inspection by its counsel of the originals, or copies if the originals cannot be produced, of the completed questionnaire forms received by the Bureau of Labor Statistics (BLS) from each of the 68 establishments

included in its survey of employment and wages in the engines and turbines industry (except the establishments of the companies listed in the application, which are already known to the Association and from which the Association has collected wage and employment data) or in the alternative, (2) the preparation and presentation by April 7, 1962, of a list showing the name and address of each of the establishments in the survey which are not known to the Association.

In connection with the asserted reasonableness in scope of the alternative request of the Association for a list of the names and addresses of those included in the BLS survey which are unknown to it, the Association contends that the production of that list would not affect in any way the pledge of confidence prefacing each questionnaire form. It is apparently conceded that a granting of the initial request for the forms completed by the respondents would breach that pledge.

A careful examination of the questionnaire form indicates that the alternative request for a list of the establishments unknown to the Association would also constitute a breach of the pledge of confidence. Such a list would to some extent reveal responses to Items III and IV of the questionnaire. The inclusion of an establishment in such a list would indicate that the establishment responded that it had 50 percent or more of its sales in products in the engines and turbines industry and that it had 20 or more employees. The pledge contains no qualifications permitting the disclosure of this information. No releases from the pledge, not even one from the applicants, have been received permitting its disclosure.

On the strength of the application, there is not sufficient cause to warrant a disclosure of this information which was received in confidence. Therefore, the request is considered unreasonable. In balance, the need for the confidential information is outweighed by the burden which would be placed upon the Government by its production.

The stated need is to enable the applicant to conduct such cross-examination at the hearing as will be necessary for a full and true disclosure of the facts. However, where the subject matter and evidence in rule-making proceedings are broadly economic or statistical and the parties or witnesses are numerous, as in minimum wage proceedings under the Walsh-Healey Public Contracts Act, the direct and rebuttal evidence may be such that cross-examination may add nothing substantial to the record. Cf. Sen. Doc. 248, 79th Cong. 2d sess., entitled "Administrative Procedure Act—Legislative History", p. 271. In minimum wage proceedings under the Act, interested persons, such as individual manufacturers, trade associations, and labor unions, regularly prepare and submit employment and earnings data bearing

upon the particular industry that may be involved. Consequently, the confidential information sought may not be necessary for a full and complete disclosure of the facts. It would seem that in any event the application is prematurely submitted since the need for the requested information cannot be accurately assessed at this time.

To be weighed against the need of the applicant for the requested confidential information, is the fact that not only the effectiveness of future BLS wage surveys for use in minimum wage proceedings under the Act, but also the other programs of the BLS, such as its production of monthly figures on employment, hours, and earnings in the non-agricultural economy, is dependent upon the receipt of voluntary responses to questionnaires. See: United States Government Organization Manual, 1961-62, pp. 334-338. It is readily apparent that such responses are not likely to be made if ever the pledge of confidence is violated as is here requested.

Upon the basis of the foregoing, the application is denied.

Signed at Washington, D.C., this 26th day of April, 1962.

W. WILLARD WIRTZ,
Acting Secretary of Labor.

[F.R. Doc. 63-7170; Filed, July 8, 1963;
8:48 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 507]

[Reg. Docket No. 1819]

MARTIN

Proposed Airworthiness Directives

The Federal Aviation Agency has under consideration a proposal to amend Part 507 of the Regulations of the Administrator to include an airworthiness directive for Martin Models 202, 202A, and 440 aircraft. Numerous cracks have been found in the engine mounts on the subject aircraft. In order to correct this unsafe condition, the proposed AD requires inspection of the engine mounts and repair or replacement of any parts found cracked before further flight.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the Federal Aviation Agency, Office of the General Counsel: Attention Rules Docket, Room A-103, 1711 New York Avenue NW., Washington 25, D.C. All communications re-

ceived on or before August 8, 1963, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) of Part 507 (14 CFR Part 507), by adding the following airworthiness directive:

MARTIN. Applies to all Models 202, 202A, and 404 aircraft.

Compliance required as indicated.

Numerous cracks have been discovered in Martin Models 202 (P/N A10100), 202A (P/N A16647-81) and 404 (P/N 404-5000004, and P/N 404-5000005) aircraft engine mounts. To preclude the possibility of engine loss due to this condition, accomplish the following:

(a) Within the next 2,500 hours of time in service after the effective date of this AD, and at intervals thereafter not to exceed 2,500 hours of time in service from the last inspection, inspect the engine mount tubular members and welds for cracks using either X-ray, Magnafix, dye-penetrant method in conjunction with at least a 10 power magnifying glass, or an FAA approved equivalent method.

(b) If cracks are found, cracked parts shall be repaired in accordance with an FAA approved repair procedure or replaced with an uncracked part having the same part number or with another FAA approved equivalent part, before further flight, except that one flight may be made in accordance with the provisions of CAR 1.76 for the purpose of obtaining these repairs or replacements.

(c) Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA Eastern Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for such operator.

Issued in Washington, D.C., on July 2, 1963.

W. LLOYD LANE,
Acting Director,

Flight Standards Service.

[F.R. Doc. 63-7154; Filed, July 8, 1963;
8:45 a.m.]

Notices

DEPARTMENT OF STATE

Agency for International Development

DEPUTY U.S. COORDINATOR FOR THE ALLIANCE FOR PROGRESS AND DEPUTY ASSISTANT ADMINISTRATOR FOR CAPITAL DEVELOPMENT AND FINANCE, LATIN AMERICA

Delegation of Authority Regarding Loans

This Delegation of Authority supersedes my Delegations of Authority to you dated March 20, 1962, and April 2, 1963, respectively.

Pursuant to the authority delegated to me in Delegation of Authority No. 23 of the Administrator of the Agency for International Development, I hereby delegate to you, subject to the limitations set by the Administrator in Delegation of Authority No. 23, authority to:

(a) Authorize loans, and negotiate, execute and implement loan agreements, pursuant to section 104 (e) and (g) of the Agricultural Trade Development and Assistance Act of 1954, as amended;

(b) Negotiate, execute, and implement all amendments of, and ancillary agreements with respect to, the loans enumerated in (a) above and those agreements relating to such loans entered into heretofore, as you may deem necessary or desirable.

The authority herein delegated to you may not be redelegated.

Dated: April 22, 1963.

TEODORO MOSCOSO,
U.S. Coordinator for the
Alliance for Progress.

[F.R. Doc. 63-7167; Filed, July 8, 1963;
8:47 a.m.]

DEPARTMENT OF THE TREASURY

**Comptroller of the Currency
INSURED BANKS**

Joint Call for Report of Condition

CROSS REFERENCE: For a document relating to a joint call for report of condition of insured banks, see F.R. Doc. 63-7184, Federal Deposit Insurance Corporation, *infra*.

POST OFFICE DEPARTMENT

POSTMASTER GENERAL ET AL.

Delegation of Authority and Emergency Line of Succession

The following is an excerpt from Headquarters Circular No. 63-15, signed by the Postmaster General, revising and

No. 132—Pt. I—8

reissuing the emergency line of succession for the Post Office Department:

Line of Succession for Department.
A. In case the Postmaster General and the Deputy Postmaster General are incapacitated as a result of an enemy attack or other national emergency conditions, the following shall be the line of succession as to officers who shall perform the duties of the office of Postmaster General:

(1) Assistant Postmaster General, Bureau of Operations.

(2) Assistant Postmaster General, Bureau of Transportation.

(3) Assistant Postmaster General, Bureau of Finance.

(4) Assistant Postmaster General, Bureau of Facilities.

(5) Assistant Postmaster General, Bureau of Personnel.

(6) General Counsel.

(7) Chief Postal Inspector.

(8) Deputy Assistant Postmaster General, Bureau of Transportation (Research and Development and International).

(9) Director, Installations Management Division, Bureau of Operations.

(10) Regional Director, New York, New York.

(11) Regional Director, Minneapolis, Minnesota.

(12) Regional Director, San Francisco, California.

(13) Regional Director, Dallas, Texas.

B. Authority is hereby delegated to the officer who assumes the duties of the Postmaster General under authority of this order, to execute and perform in his own name all powers, functions and duties conferred by law upon the Postmaster General, including the authority to modify, suspend, or rescind orders, instructions, and regulations which have heretofore or which hereafter may be issued in the name of the Postmaster General, except that exclusive authority is hereby reserved to the Postmaster General, the Deputy Postmaster General, and to any officer designated by Executive Order as Acting Postmaster General, to modify, suspend or rescind all or any part of the authority delegated by this order. The officer performing the duties of the Postmaster General under authority of this order also is authorized to delegate to any officer, employee or agency of the Post Office Department designated by him such of the powers, functions and duties delegated to him by this order as he deems appropriate.

This delegation of authority supersedes Headquarters Circular No. 62-41 (27 F.R. 10912-10913).

(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 309, 501)

LOUIS J. DOYLE,
General Counsel.

[F.R. Doc. 63-7166; Filed, July 8, 1963;
8:47 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Bureau Order 551, Amdt. 83]

FUNCTIONS RELATING TO SPECIFIC LEGISLATION

Redelegation of Authority

JUNE 29, 1963.

Order 551, as amended, is further amended by addition of a new section under the heading "Functions Relating to Specific Legislation," to read as follows:

SEC. 372. *Authority under Act of June 25, 1910 (P.L. 313; 61st Congress, 2d Session; 36 Stat. 861, as amended, 25 U.S.C. 47)*—The exercise of the authority vested in the Secretary of the Interior in section 23 of said Act, which relates to the employment of Indian labor and for the purchase of the products of Indian industry in the open market; subject to the exceptions contained in the authority delegated by the Secretary to the Commissioner in Order 2508, Amendment 56 (28 F.R. 5687).

PHILLEO NASH,
Commissioner.

JULY 2, 1963.

[F.R. Doc. 63-7162; Filed, July 8, 1963;
8:46 a.m.]

Bureau of Land Management

[Arizona 032636]

ARIZONA

Notice of Proposed Withdrawal and Reservation of Lands

The Federal Bureau of Investigation, United States Department of Justice, has filed an application, serial number Arizona 032636 for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the general mining and mineral leasing laws, subject to existing valid rights.

The applicant desires the land for establishment of training facilities and firearms ranges for special agents of the F.B.I. and designated local, county, state and federal law enforcement agencies.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal, may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 3022 Federal Building, Phoenix 25, Arizona.

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

6993

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

The lands involved in the application are:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 6 N., R. 2 E.,
Sec. 28, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$.

The area described above aggregates 160 acres. The subject lands are situated approximately 18 miles north of Phoenix, Arizona.

FRED J. WEILER,
State Director.

JULY 1, 1963.

[F.R. Doc. 63-7163; Filed, July 8, 1963;
8:46 a.m.]

[Arizona 032538]

ARIZONA

Notice of Proposed Withdrawal and Reservation of Lands

The Forest Service, United States Department of Agriculture, has filed an application, Serial Number Arizona 032538 for the withdrawal of lands described below, from location and entry under the General Mining Laws, subject to existing valid claims.

The applicant desires the land for protection of a highly scenic desert view which includes the Superstition Wilderness Area.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 3022 Federal Building, Phoenix 25, Arizona.

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

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

The lands involved in the application are:

GILA AND SALT RIVER BASE MERIDIAN, ARIZONA

TONTON NATIONAL FOREST

T. 4 N., R. 8 E., unsurveyed,
Sec. 27, N $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$.

The area described above aggregates 160 acres. The lands are situated approximately 20 miles northeast of Phoenix, Arizona.

FRED J. WEILER,
State Director.

JULY 1, 1963.

[F.R. Doc. 63-7164; Filed, July 8, 1963;
8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 14625; Order E-19771]

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.

Order of Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 3d day of July 1963.

Cargo rates from Hawaiian points to California points by Pan American World Airways, Inc., The Flying Tiger Line Inc., and World Airways, Inc.; Docket No. 14625.

Tariff revisions involving charter rates for the carriage of fresh fruits and vegetables have recently been filed applicable from Hawaiian points to California points, as follows:

1. For World Airways, Inc. (World), \$3,200 per trip in L-1049 and L-1649 equipment to Oakland:

(a) From Honolulu, effective June 23, 1963,

(b) From Hilo or Kahului, to become effective July 7, 1963.

2. For The Flying Tiger Line Inc., (Tiger), \$3,200 per trip in L-1049H aircraft and of \$4,800 in CL-44D aircraft to San Francisco:

(a) From Honolulu, effective June 25, 1963,

(b) From Hilo, to become effective July 25, 1963.

The foregoing rates are similar to certain charter rates of Tiger, World, and The Slick Corporation already under investigation in Dockets 13487 and 14559, except that the latter rates are not restricted to the carriage of fresh fruits and vegetables. The same issues are involved in both sets of rates. Consequently, on the basis of the findings made in the orders of investigation in the foregoing dockets,¹ the Board finds that the rates indicated above may be unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, and should be investigated.

We are also instituting an investigation of the rates in effect of Pan American World Airways, Inc. (Pan American), on fruits and vegetables from Honolulu to various U.S. West Coast points. This rate, amounting to 8 cents per pound for minimum shipments of 1,100 pounds, is essentially equivalent to the foregoing charter rates we are setting for investigation in that it is at a relatively low level and may be unlawful.

We have concluded not to suspend any of the foregoing proposed rates. The instant proposals are restricted to fresh fruits and vegetables, for which an essentially equivalent rate from Honolulu is already in effect for Pan American. The distance from Honolulu to California points may be greater than from Hilo and Kahului on certain routes;

¹ Order E-18138, adopted March 22, 1962, Order E-18999, adopted November 13, 1962, and Order E-19666, adopted June 12, 1963.

moreover, there have been no complaints.²

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof:

It is ordered that:

1. An investigation be instituted to determine whether the charter charges from Hilo, Hawaii, or Honolulu, Hawaii, to San Francisco, California (Applicable only to Fruits and Vegetables, Fresh), appearing on 9th Revised Page 4-B of The Flying Tiger Line Inc. C.A.B. No. 32, the charter rates from Hilo, Hawaii, Kahului, Hawaii or Honolulu, Hawaii, to Oakland, California (Applicable only to Fruits and Vegetables, Fresh) appearing on 3d Revised Page 15 of World Airways, Incorporated C.A.B. No. 12, and the rates on Fruits and/or Vegetables, Fresh (Commodity Item Number 0007Q) from Honolulu, USA, to Los Angeles, USA, Portland, Oregon, USA, San Francisco, USA, and Seattle, USA, appearing on 6th Revised Page 14-A of Agent R. C. Lounsbury's C.A.B. No. 118, including subsequent revisions and reissues of such rates and charges, are, or will be, unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful and if found to be unlawful, to determine and prescribe the lawful rates and charges;

2. The proceeding herein be assigned before an examiner of the Board at a time and place hereafter to be designated;

3. Copies of this order shall be served upon Pan American World Airways, Inc., The Flying Tiger Line Inc., and World Airways, Inc., which are hereby made parties to this proceeding.

This order will be published in the *FEDERAL REGISTER*.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 63-7185; Filed, July 8, 1963;
8:51 a.m.]

[Docket No. 14624; Order E-19770]

WORLD AIRWAYS, INC.

Order of Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 3d day of July 1963.

Cargo charter rates from Hawaiian points to Los Angeles proposed by World Airways, Incorporated; Docket No. 14624.

By tariff revision marked to become effective July 7, 1963, World Airways, Incorporated (World), proposes a cargo charter rate of \$3,200 for L-1649 aircraft, applicable from Hilo, Honolulu, or

² The period allowed in the Board's rules of practice (§ 302.505) has not expired with respect to Tiger's proposal from Hilo. The Board will, of course, consider any timely complaints seeking suspension of this tariff.

Kahului (Hawaii) to Los Angeles, California. No complaints have been filed.

The proposed rate is essentially identical to the rate in effect for World applicable to L-1049 aircraft in the same markets, which the Board set for investigation by Order E-18999, dated November 13, 1962.¹ The two types of aircraft involved have practically the same capacity and essentially the same operating costs. World has presented no justification for its current proposal distinguishing it from the rate for L-1049 aircraft under investigation.

The issues involved in World's current L-1649 filing appear to be essentially identical to those raised when the Board considered the above-mentioned L-1049 rate. Consistent with the findings in the foregoing order and for the same reasons, and upon consideration of all other relevant matters, the Board finds that the tariff proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, and should be investigated.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof:

It is ordered that:

1. An investigation be hereby instituted to determine whether the cargo charter rate of \$3,200.00 for L-1649 aircraft from Hilo, Hawaii, Honolulu, Hawaii, or Kahului, Hawaii, to Los Angeles, California, appearing on 1st Revised Page 15 of World Airways, Incorporated, C.A.B. No. 12, including subsequent revisions and reissues thereof, is, or will be, unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful rate;

2. The proceeding ordered herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated; and

3. A copy of this order shall be served upon World Airways, Incorporated, which is hereby made a party to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 63-7186; Filed, July 8, 1963;
8:52 a.m.]

stock markets referred to herein, which were posted on the respective dates specified below as being subject to the provi-

sions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), have been changed as indicated below.

Original name of stockyard, location, and date of posting	Current name of stockyard and date of change in name
ARKANSAS	
Lafayette County Livestock Auction Company, Lewisville, October 2, 1959.	Lafayette County Livestock Auction, March 7, 1963.
IDAHO	
Pocatello Livestock Auction, Pocatello, November 16, 1955.	Pocatello Livestock Exchange, May 27, 1963.
IOWA	
Bowman Cattle Co., Maquoketa, August 16, 1940.	Bowman Cattle Company, Inc., March 15, 1963.
KENTUCKY	
Franklin Livestock Market, Inc., Franklin, December 12, 1959.	Franklin Livestock Market, May 15, 1963.
NEBRASKA	
Broken Bow Stockyards, Broken Bow, September 15, 1939.	Central Nebraska Commission Company Stockyards, January 1, 1961.
NORTH CAROLINA	
Hooker and Company, Kinston, May 13, 1959----	Hill's Stockyard, April 29, 1963.
NORTH DAKOTA	
Dobler Livestock Sales Co., Ashley, July 9, 1959--	Ashley Livestock Sales Company, June 1, 1963.
Stanley Livestock Auction Market, Stanley, June 11, 1960.	Williston Sales Company, April 15, 1963.
PENNSYLVANIA	
Tri County Auction, Brockway, February 3, 1960--	Tri County Livestock Auction, Inc., April 9, 1963.
OKLAHOMA	
Ranchers Livestock Commission Company, Antlers, November 29, 1949.	Antlers Livestock Auction, May 20, 1963.
SOUTH DAKOTA	
Sisseton Livestock Sales Pavilion, Sisseton, October 8, 1954.	Sisseton Livestock Auction, Inc., January 1, 1963.
TEXAS	
Anderson County Commission Company, Palestine, January 20, 1960.	Anderson County Livestock Commission Company, April 5, 1963.
Farmers and Ranchers Livestock Exchange, Shamrock, November 8, 1956.	Shamrock Livestock Auction, March 22, 1963.
Liberty County Auction Company, Hardin, April 18, 1959.	Hardin Livestock Auction Company, September 24, 1962.
Shamrock Livestock Auction, Shamrock, June 6, 1963.	R. L. (Bob) George Cattle Motel and Livestock Auction, June 6, 1963.

Done at Washington, D.C., this 3d day of July 1963.

H. L. JONES,
Chief, Rates and Registrations Branch,
Packers and Stockyards Division,
Agricultural Marketing Service.

[F.R. Doc. 63-7200; Filed, July 8, 1963; 8:54 a.m.]

Agricultural Stabilization and Conservation Service

SUGARCANE WAGES AND PRICES IN LOUISIANA

Notice of Hearing and Designation of Presiding Officers

Pursuant to the authority contained in sections 301(c)(1) and 301(c)(2) of the Sugar Act of 1948, as amended (61 Stat. 929; 7 U.S.C. 1131), and in accordance with the rules of practices and procedure applicable to wage and price proceedings (7 CFR 802.1 et seq.), notice is hereby given that a public hearing will be held in Houma, Louisiana, in the District Court Room, 2nd Floor, Parish

Courthouse, on July 18, 1963, beginning at 10:00 a.m.

The purpose of this hearing is to receive evidence likely to be of assistance to the Secretary of Agriculture in determining (1), pursuant to the provisions of section 301(c)(1) of said Act, fair and reasonable wage rates for persons employed in the harvesting of the 1963 crop of sugarcane, and in the production and cultivation of sugarcane during the calendar year 1964, and (2), pursuant to the provisions of section 301(c)(2) of said Act, fair and reasonable prices for the 1963 crop of sugarcane to be paid, under either purchase or toll agreements, by producers who process sugarcane grown by other producers and who apply for payments under the Act.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

LAFAYETTE COUNTY LIVESTOCK AUCTION CO. ET AL.

Changes in Names of Posted Stockyards

It has been ascertained, and notice is hereby given, that the names of the live-

¹ Docket 14146, subsequently consolidated into Docket 13487, Hawaii-Mainland Directional Charter Case. Similar rates of The Slick Corporation and The Flying Tiger Line Inc. are also comprised in this investigation.

In the interest of obtaining the best possible information, all interested persons are requested to appear at the hearing to express their views and present appropriate data in regard to wages and prices. While testimony on all pertinent points is desired, it is especially requested that witnesses be prepared to offer information and recommendations on the following matter regarding fair wages for fieldworkers and fair prices for sugarcane:

I. *Wages.* Elimination of the differential in wage rates between harvesting work and production and cultivation work for tractor drivers.

II. *Prices.* The 1962 crop determination fixed the period October 5, 1962, through February 28, 1963 for determining the season's average price of raw sugar. The same period was established for determining the season's average price of blackstrap molasses. What periods will provide an equitable basis for pricing raw sugar and molasses of the 1963 crop?

The hearing, after being called to order at the time and place mentioned herein, may be continued from day to day within the discretion of the presiding officers and may be adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing by the presiding officers.

Ward S. Stevenson and Charles F. Denny are hereby designated as presiding officers to conduct either jointly or severally the foregoing hearing.

Signed at Washington, D.C., on July 5, 1963.

H. D. GODFREY,
Administrator, Agricultural Sta-
bilization and Conservation
Service.

[F.R. Doc. 63-7169; Filed, July 8, 1963;
10:47 a.m.]

Office of the Secretary MONTANA

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Montana, a natural disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

MONTANA

Glacier.	Pondera.
Hill.	Toole.
Liberty.	

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1964, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 2d day of July 1963.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 63-7172; Filed, July 8, 1963;
8:48 a.m.]

DEPARTMENT OF HEALTH, EDU- CATION, AND WELFARE

Food and Drug Administration

DAVISON CHEMICAL COMPANY, DI- VISION OF W. R. GRACE & CO.

Notice of Filing of Petition Regarding Food Additive Silicon Dioxide

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 1168) has been filed by Davison Chemical Company, Division of W. R. Grace & Co., Baltimore 3, Maryland, proposing the amendment of § 121.1058 to provide for the safe use of silicon dioxide as a stabilizer in the production of beer.

Dated: July 2, 1963.

J. K. KIRK,
Assistant Commissioner
of Food and Drugs.

[F.R. Doc. 63-7176; Filed, July 8, 1963;
8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 15074, 15075; FCC 63M-771]

AUTOMATED ELECTRONICS, INC., AND CAPITOL BROADCASTING CO.

Order Continuing Hearing

In re applications of Automated Electronics, Inc., Arlington, Va., Docket No. 15074, File No. BPCT-3064; Capital Broadcasting Company, Washington, D.C., Docket No. 15075, File No. BPCT-3122; for construction permits for New Television Broadcast Stations (Channel 20).

The Hearing Examiner has before him a "Petition to Continue Pre-Hearing Conference," filed by Capital Broadcasting Company on June 27, 1963, requesting that the prehearing conference now scheduled for July 1, 1963, be continued to July 30, 1963; and

It appearing that parties to the proceeding are now engaged in negotiations looking to an agreement which may obviate the necessity of a hearing; and

It further appearing that all parties to the proceeding have consented to grant of the request for continuance and to its immediate consideration;

It is ordered, This 1st day of July 1963, that the petition for continuance is granted; and the prehearing conference

now scheduled to be held at 9:00 a.m., July 1, 1963, is continued to 9:00 a.m., July 30, 1963: And it is further ordered, That hearing in the above-entitled matter is continued from 10:00 a.m., July 15, 1963, to 10:00 a.m., September 3, 1963.
Released: July 2, 1963.

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

[F.R. Doc. 63-7188; Filed, July 8, 1963;
8:52 a.m.]

[Docket No. 15115; FCC 63M-779]

NORTHLAND RADIO CORP. (KWEB)

Order Scheduling Hearing

In re application of Northland Radio Corporation (KWEB), Rochester, Minnesota, Docket No. 15115, File No. BP-14979; for construction permit.

It is ordered, This 2d day of July 1963, that Walther W. Guenther will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on September 16, 1963, in Washington, D.C.: And, it is further ordered, That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., July 31, 1963.

Released: July 2, 1963.

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

[F.R. Doc. 63-7189; Filed, July 8, 1963;
8:52 a.m.]

[Docket Nos. 14868-14870; FCC 63M-767]

OREGON MOBILE RADIO ET AL.

Order Scheduling Prehearing Conference

In re applications of Robert H. Larson and George E. Milligan d/b as Oregon Mobile Radio, Docket No. 14868, File No. 2174-C2-P-61; for a construction permit to establish a new two-way communications service in the Domestic Public Land Mobile Radio Service at Medford, Oregon; Empire Communications of Medford, Inc., Docket No. 14869, File No. 4080-C2-P-61; for a construction permit to establish a new two-way communications service with control facilities in the Domestic Public Land Mobile Radio Service at Medford, Oregon; Medford Business Exchange, Inc., Docket No. 14870, File No. 589-C2-P-62; for a construction permit to establish a new two-way communications service in the Domestic Public Land Mobile Radio Service at Medford, Oregon.

On the Hearing Examiner's own motion: It is ordered, This 28th day of June 1963, that a further prehearing conference in the above-entitled matter (further hearing in which has been continued indefinitely) will be held at 10:00 a.m., July 10, 1963, in Room 6354, New Post Office Building, 12th Street and

Pennsylvania Avenue NW., Washington, D.C.

Released: July 2, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-7190; Filed, July 8, 1963;
8:52 a.m.]

[Docket No. 15116; FCC 63M-780]

WGUN, INC. (WGUN)

Order Scheduling Hearing

In re application of WGUN, Incorporated (WGUN), Decatur, Georgia, Docket No. 15116, File No. BML-1924; for modification of license.

It is ordered, This 2d day of July 1963, that Sol Schildhouse will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on September 11, 1963, in Washington, D.C.: And, it is further ordered, That a prehearing conference in the proceeding will be convened by the presiding officer at 9:00 a.m., July 31, 1963.

Released: July 2, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-7191; Filed, July 8, 1963;
8:52 a.m.]

[Docket Nos. 15006-15008; FCC 63M-778]

**HARRY WALLERSTEIN, RECEIVER,
TELEVISION COMPANY OF AMERICA, INC., ET AL.**

Order Continuing Prehearing Conference

In re applications of Harry Wallerstein, receiver, Television Company of America, Inc., Docket No. 15006, File No. BRCT-397; for renewal of license of Station KSHO-TV, Las Vegas, Nevada; Harry Wallerstein, receiver, Television Company of America, Inc. (Assignor) and Television Company of America, Inc. (Assignee), Docket No. 15007, File No. BALCT-181; for assignment of license of Station KSHO-TV, Las Vegas, Nevada; Reed R. Maxfield, Robert W. Hughes, Carl A. Hulbert and Alex Gold (Transferees) and Arthur Powell Williams, (Transferee), Docket No. 15008, File No. BTC-3965; for transfer of control of Nevada Broadcasters' Fund, Inc., Holding Company of Television Company of America, Inc., Licensee of Station KSHO-TV, Las Vegas, Nevada.

The Hearing Examiner having under consideration the "Broadcast Bureau Motion to Reschedule Prehearing Conference" filed July 1, 1963, in the above-entitled matter;

It appearing, that the date of July 2, 1963, the presently scheduled date for the aforesaid prehearing conference, was selected at a prior prehearing conference as a date by which it was expected that a pending petition for reconsideration by the Commission would have been disposed of; and

It further appearing, that the said petition has not as yet been acted upon and that a further prehearing conference at this time would be to no avail; and

It further appearing, that all of the parties to this proceeding have given their oral consent to a continuation of the presently scheduled prehearing conference, and that good cause has been shown for a grant thereof:

It is ordered, This 1st day of July 1963, that the "Broadcast Bureau Motion to Reschedule Prehearing Conference" filed July 1, 1963, be, and the same is, hereby granted, and that the date for the prehearing conference presently scheduled for July 2, 1963, be, and the same is, hereby continued to July 18, 1963, at 2:00 p.m.

Released: July 2, 1963.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 63-7192; Filed, July 8, 1963;
8:52 a.m.]

FEDERAL DEPOSIT INSURANCE CORPORATION

INSURED BANKS

Joint Call for Report of Condition

Pursuant to the provisions of section 7(a) (3) of the Federal Deposit Insurance Act each insured bank is required to make a Report of Condition as of the close of business June 29, 1963 to the appropriate agency designated herein, within ten days after notice that such report shall be made: Provided, that if such reporting date is a nonbusiness day for any bank, the preceding business day shall be its reporting date.

Each national bank and each bank in the District of Columbia shall make its original Report of Condition on Office of the Comptroller Form 2130-A—Call No. 446,¹ and shall send the same to the Comptroller of the Currency, and shall send a signed and attested copy thereof to the Federal Deposit Insurance Corporation. Each insured State bank which is a member of the Federal Reserve System, except a bank in the District of Columbia, shall make its original Report of Condition on Federal Reserve Form 105—Call 168,¹ and shall send the same to the Federal Reserve Bank of the District wherein the bank is located, and shall send a signed and attested copy thereof to the Federal Deposit Insurance Corporation. Each insured State bank not a member of the Federal Reserve System, except a bank in the District of Columbia and a mutual savings bank, shall make its original Report of Condition on FDIC Form 64—Call No. 64,¹ and shall send the same to the Federal Deposit Insurance Corporation.

The original Report of Condition required to be furnished hereunder to the Comptroller of the Currency and the copy thereof required to be furnished to the

¹ Filed as part of original document.

Federal Deposit Insurance Corporation shall be prepared in accordance with "Instructions for preparation of Reports of Condition by National Banking Associations," dated January, 1961.¹ The original Report of Condition required to be furnished hereunder to the Federal Reserve Bank of the District wherein the bank is located and the copy thereof required to be furnished to the Federal Deposit Insurance Corporation shall be prepared in accordance with "Instructions for the preparation of Reports of Condition by State Member Banks of the Federal Reserve System," dated February, 1961.¹ The original Report of Condition required to be furnished hereunder to the Federal Deposit Insurance Corporation shall be prepared in accordance with "Instructions for the preparation of Report of Condition on Form 64, by insured State banks not members of the Federal Reserve System," dated January, 1961.¹

Each insured mutual savings bank not a member of the Federal Reserve System shall make its original Report of Condition on FDIC Form 64 (Savings),¹ prepared in accordance with "Instructions for the preparation of Report of Condition on Form 64 (Savings) and Report of Income and Dividends on Form 73 (Savings) by Mutual Savings Banks," dated December, 1962,¹ and shall send the same to the Federal Deposit Insurance Corporation.

[SEAL]

ERLE COCKE, Sr.,
Chairman, Federal Deposit
Insurance Corporation.

JAMES J. SAXON,
Comptroller of the Currency.

WM. MCC. MARTIN, Jr.,
Chairman, Board of Governors
of the Federal Reserve System.

[F.R. Doc. 63-7184; Filed, July 8, 1963;
8:51 a.m.]

FEDERAL POWER COMMISSION

[Project No. 2365]

**KENNEBEC RIVER PULP & PAPER
COMPANY, INC.**

Notice of Application for License

JULY 1, 1963.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Kennebec River Pulp & Paper Company, Inc. (correspondence to: Kennebec River Pulp & Paper Company, Inc., Madison, Maine) for license for constructed Project No. 2365, known as the Anson Project, located on the Kennebec River, Somerset County, Maine, in the towns of Anson and Madison.

The project consists of: a reinforced concrete dam including a concrete log sluice topped with 5-foot flashboards; a spillway section; a canal separated by a guard wall from a forebay, which has a normal headwater elevation of 102 feet; a powerhouse integral with the dam equipped with 5 turbines of 1,500 horsepower each connected to 5 generators having a total installed capacity

of 6,000 kilowatts; and other appurtenant facilities.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is August 15, 1963. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-7158; Filed, July 8, 1963;
8:45 a.m.]

[Docket No. CP63-301]

NORTHERN UTILITIES, INC.

Notice of Application and Date of Hearing

JULY 1, 1963.

Take notice that on May 10, 1963, Northern Utilities, Inc. (Applicant), Casper, Wyoming, filed in Docket No. CP63-301 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 certain facilities and the transportation and delivery of additional volumes of natural gas for the account of Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska), all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Applicant proposes to construct and operate the following facilities:

(a) Approximately 25 miles of 16-inch main pipeline loop on Applicant's interstate transmission pipeline between Sand Draw Field, Fremont County, Wyoming, and the city of Casper, Natrona County, Wyoming;

(b) A 12-inch meter run at the delivery point to Kansas-Nebraska at the latter's Casper compressor station, replacing the existing 8-inch meter run, and,

(c) Meter stations to receive additional volume of gas from Kansas-Nebraska.

The proposed facilities will enable Applicant to deliver a maximum daily volume of 26,000 Mcf* of natural gas which volume Kansas-Nebraska has requested Applicant to transport and deliver pursuant to the transportation agreement, dated August 25, 1962, between the two companies. The application indicates that the subject volumes will be tendered by Kansas-Nebraska to Applicant from producing areas in Fremont and Natrona Counties, Wyoming, and that said volumes will be transported by Applicant and delivered to Kansas-Nebraska for utilization by the latter in its market areas in eastern Wyoming and western Nebraska.

The application shows the estimated cost of the proposed facilities to be \$914,388, which cost will be financed

from cash on hand and obtained from the sale of assets.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on August 6, 1963, at 9:30 a.m., e.d.s.t., in a hearing room of the Federal Power Commission, 441 G. Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before July 26, 1963. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-7159; Filed, July 8, 1963;
8:45 a.m.]

[Docket No. G-19461]

PANHANDLE EASTERN PIPE LINE CO.

Notice of Application to Amend

JULY 1, 1963.

Take notice that on May 24, 1963, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. G-19461 an application to amend the Commission's order, issued May 25, 1961, in said docket to renew and extend for one year the certificate authorization granted by said order, all as more fully set forth in the application to amend on file with the Commission and open to public inspection.

The subject order, among other things, authorized Applicant to construct and operate facilities to test and develop by May 25, 1963, the Waverly Storage Field, located in Morgan and Sangamon Counties, Illinois. Applicant was authorized to inject and withdraw up to 6,000,000 Mcf of natural gas.

Applicant states that the testing phase was highly successful. Applicant states further that to meet a portion of the 1963-64 winter increased requirements of its utility customers, for which Applicant is preparing a substantial expansion application, Applicant seeks a one year

extension and renewal of the developmental authorization. The application indicates that it is essential that storage injection be continued while the said expansion application is being prepared and also during the period in which such application is pending before the Commission. Applicant states that it has not yet injected the full 6,000,000 Mcf of additional gas covered by the subject authorization. Applicant also states that it has the capacity to provide the injection volumes.

Protests, petitions to intervene or requests for hearing in this proceeding may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before July 25, 1963.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-7160; Filed, July 8, 1963;
8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JULY 3, 1963.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 38411: *Plaster and related articles to southern territory.* Filed by Western Trunk Line Committee, Agent (No. A-2308), for interested rail carriers. Rates on plaster and/or gypsum wallboard and related articles, as described in the application, in carloads, from Cody, Wyo., to points in southern territory.

Grounds for relief: Market competition.

Tariff: Supplement 83 to Western Trunk Line Committee, Agent, tariff I.C.C. A-4396.

FSA No. 38412: *Lumber from points in southern territory.* Filed by O. W. South, Jr., Agent (No. A-4341), for interested rail carriers. Rates on lumber and related articles, in carloads, from points in southern territory, to points in Illinois Freight Association and western trunk-line territories.

Grounds for relief: Short-line distance formula and grouping.

Tariffs: Supplements 70, 134, 121, 137 and 184 to Southern Freight Association, Agent, tariffs I.C.C. S-3, 1443, 1412, 1388 and 1238, respectively.

By the Commission.

[SEAL] HAROLD D. McCoy,
Secretary.

[F.R. Doc. 63-7178; Filed, July 8, 1963;
8:50 a.m.]

*At 15.025 psia.

[Section 5a, Application No. 2; Amdt. 13]

WESTERN TRAFFIC ASSOCIATION

Application for Approval of Amendment to Agreement

JULY 3, 1963.

The Commission is in receipt of an application in the above-entitled and numbered proceeding for approval of amendments to the agreement therein approved under the provisions of section 5a of the Interstate Commerce Act.

Filed June 27, 1963, by: T. H. Maguire, Attorney-in-Fact, Room 514 Union Station, Chicago 6, Ill.

Amendments involved: Change the Articles of Organization and Procedure of the Western Railroad Traffic Association so as to create a new committee entitled the Colorado-Utah-Wyoming Committee by consolidating the Colorado-Wyoming Committee and the Colorado-Utah Committee.

The application may be inspected at the office of the Commission in Washington, D.C.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 20 days from the date of this notice. As provided by the general rules of practice of the Commission, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing.

By the Commission, Division 2.

[SEAL]

HAROLD D. McCoy,
Secretary.

[F.R. Doc. 63-7179; Filed, July 8, 1963;
8:50 a.m.]

FEDERAL RESERVE SYSTEM

INSURED BANKS

Joint Call for Report of Condition

CROSS REFERENCE: For a document relating to a joint call for report of con-

dition of insured banks, see F.R. Doc. 63-7184, Federal Deposit Insurance Corporation, *supra*.

VIRGINIA COMMONWEALTH CORP.

Order Granting Determination Under Bank Holding Company Act

In the matter of the application of Virginia Commonwealth Corporation, Richmond, Virginia, pursuant to section 4(c)(6) of the Bank Holding Company Act of 1956 (Docket No. BHC-67).

The Virginia Commonwealth Corporation, Richmond, Virginia, a registered bank holding company as of May 20, 1963, pursuant to § 222.3 (a) and (b) of the Board's Regulation Y (12 CFR 222.3 (a) and (b)) filed, at a date prior to its registration, a request for a determination by the Board of Governors of the Federal Reserve System that Virginia Standard Corporation and State-Wide Insurance Agency, Inc., both Virginia corporations, and their activities, are of the kind described in section 4(c)(6) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(c)(6) and § 222.5(b) of the Board's Regulation Y (12 CFR 222.5(b))), so as to make it unnecessary for the prohibitions of section 4 of the Act with respect to acquisition and retention of shares in nonbanking organizations to apply in order to carry out the purposes of the Act.

A hearing has been held pursuant to section 4(c)(6) of the Act and in accordance with §§ 222.5(b) and 222.7(a) (12 CFR 222.7(a)) of the Board's Regulation Y; a brief in support of its request has been filed by Virginia Commonwealth Corporation; on March 29, 1963, the Hearing Examiner filed his Report and Recommended Decision wherein he recommended that the request with respect to Virginia Standard Corporation and State-Wide Insurance Agency, Inc., be approved; and the time for filing with the Board exceptions and brief to the recommended decision of the Hearing Examiner has expired and no exceptions have been filed. The Board has given due consideration to all relevant aspects of the matter, and all such steps have been taken in accordance with the

Board's Rules of Practice for Formal Hearings (12 CFR Part 263).

Accordingly, it is hereby ordered, For the reasons set forth in the accompanying statement¹ of the Board of this date, that Virginia Standard Corporation and State-Wide Insurance Agency, Inc., and their activities are determined to be so closely related to the business of banking or of managing or controlling banks as to be a proper incident thereto and as to make it unnecessary for the prohibitions of section 4 of the Bank Holding Company Act of 1956 to apply in order to carry out the purposes of that Act, and therefore Applicant's request with respect to Virginia Standard Corporation and State-Wide Insurance Agency, Inc., shall be, and hereby is, granted: *Provided*, That Virginia Standard Corporation shall be merged into Virginia Commonwealth Corporation not more than sixty days after the date of this Order: *And provided further*, That State-Wide Insurance Agency, Inc., shall engage only in the insurance business as described by Applicant and set forth in the statement accompanying this order and in no other activity or activities; *And provided further*, That this determination shall be subject to revocation by the Board if the facts upon which it is based should substantially change in such a manner as to make the reasons for such determination no longer applicable.

Dated at Washington, D.C., this 28th day of June 1963.

By order of the Board of Governors.²

[SEAL]

MERRITT SHERMAN,
Secretary.

[F.R. Doc. 63-7168; Filed, July 8, 1963;
8:47 a.m.]

¹ Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington 25, D.C., or to the Federal Reserve Bank of Richmond. Hearing Examiner's Report and Recommended Decision also filed as part of the original document and available upon request.

² Voting for this action: Governors Balderston, Mills, Robertson, and Shepardson. Absent and not voting: Chairman Martin, and Governors King and Mitchell.

CUMULATIVE CODIFICATION GUIDE—JULY

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VOLUME 28 NUMBER 132

Washington, Tuesday, July 9, 1963

Department of Labor

Wage and Hour Division

•—————•

Fair Labor Standards; Executive, Administrative, and Professional Exemptions

Tentative Decision on Proposed Rule Making Proceedings

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 541]

EXECUTIVE, ADMINISTRATIVE AND PROFESSIONAL EXEMPTIONS

Tentative Decision on Proposed Rule Making Proceedings

Pursuant to notices published in the FEDERAL REGISTER regarding the regulations (29 CFR Part 541) issued under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213), defining and delimiting the terms "employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of an outside salesman", both oral and written data, views and arguments have been received on the following questions specifically noticed for consideration:

1. What, if any, changes should be made in 29 CFR 541.1(f), 541.2(e), and 541.3(e) with respect to the level of the salaries or fees prerequisite to the exemption from the minimum wage and overtime requirements of the act for executive, administrative, and professional employees who are engaged in commerce or in the production of goods for commerce? (27 F.R. 665) and;

2. What, if any, additions or changes should be made in Subpart A of 29 CFR, Part 541 for determining the exemption from the minimum wage and overtime requirements of the act for bona fide executive, administrative, and professional employees in the retail and service establishments or industries? (27 F.R. 7,651).

Evidence was received on the first question March 26 through March 29, 1962, in Washington, D.C. and April 9 and 10, 1962, in Santurce, Puerto Rico, and, on the second question, in Washington, D.C., October 15 through October 23, 1962 and in Santurce, Puerto Rico on October 29, 1962.

Employers were represented at the March proceedings by the American Bankers Association, the American Bottlers of Carbonated Beverages, the American Pulpwood Association, the American Retail Federation, the Association of Stock Exchange Firms, the Automotive Service Industry Association, the Electronics Industry Association, the Illinois Manufacturers Association, the Illinois State Chamber of Commerce, the Manufacturers Association of Syracuse, the National Association of Independent Insurers, the National Restaurant Association, and the U.S. Independent Telephone Association and by representatives of the Baltimore Gas and Electric Company and the Campbell Soup Company. At the April proceedings, employers were represented by the Association of Sugar Producers of Puerto Rico and by representatives of the following firms: Casco Sales Agency, Industrial Siderurgica, Inc., International Shoe Corporation of Puerto Rico, Puerto Rican International Paper Company, Ltd., and the Puerto Rico Telephone Company.

Employees were represented at the March proceedings by the AFL-CIO, the American Newspaper Guild, the International Brotherhood of Electrical Workers, the International Ladies' Garment Workers' Union, the International Union of Electrical, Radio, and Machine Workers, the Office Employees International Union, the United Auto Workers, and the United Steelworkers of America. Certain groups of professional employees were represented by the American Federation of Technical Engineers and the National Society of Professional Engineers.

Employers were represented at the October proceedings on the mainland by the American Farm Bureau Federation, the American Retail Federation, the Associated Merchandising Corporation, the Automotive Parts Rebuilders Association, the Chamber of Commerce of the United States, the Institute of Distribution, the National Association of Direct Selling Companies, the National Association of Retail Grocers of the U.S., the National Association of Food Chains, the National Council of Farmer Cooperatives, the National Retail Merchants Association, the Ohio State Council of Retail Merchants, the Retail Labor Standards Association, the Variety Stores Association, Inc. and by Malcolm J. Reid (operator of food stores in Staunton and Charlottesville, Virginia), and by representatives of the following firms: Associated Lerner Shops of America, Federated Department Stores, Grand Union Company, Jordan Marsh Co. of Boston, Massachusetts, G. C. Murphy Company, Sears, Roebuck and Company, and the Sherwin-Williams Company; at the October proceedings in Puerto Rico by representatives of the following firms: Grand Union de Puerto Rico, Prime Meat Market, Inc., and Pueblo Supermarkets, Inc.

Employees were represented at the October proceedings by the AFL-CIO, the Amalgamated Clothing Workers of America, the Amalgamated Meat Cutters and Butcher Workmen of North America, and the Retail Clerks International Association. Certain professional employees were represented by the National Society of Professional Engineers.

PART I. SALARY LEVELS FOR EMPLOYEES OF OTHER THAN RETAIL OR SERVICE ESTABLISHMENTS

Data on minimum salaries paid employees exempt under § 541.1, 541.2 or 541.3 of 29 CFR, Part 541, collected in a special survey by the Wage and Hour Division in September to December 1961, are presented in a report which was made part of the record of the proceedings.

Employer representatives' position. Certain employer representatives proposed that the salary tests be eliminated as a prerequisite to exemption. Others proposed that differential rates be set on an industry, area, or regional basis; still others that the salary tests be set at the level of the lowest paid executive employees in the lowest wage and salary areas of the country.

However, the basic position of employer representatives is that the present salary

levels should not be increased. They also urged that, if any increase in the salary levels should be contemplated, such increase be limited to the percentage increase in the cost of living since the present salary levels were established.

With regard to salary tests for Puerto Rico and the Virgin Islands, employer representatives recognized that the data presented showed that the level of employee earnings in Puerto Rico had increased and recommended that the salary tests for employees in both areas be increased in like proportion. They proposed, however, that the salary test under the special proviso for higher-paid employees be set at a lower level for those employed in Puerto Rico or the Virgin Islands than for those employed in other areas.

Certain professional groups proposed that the salary tests be eliminated for professional employees, such as licensed engineers and chemists who hold academic degrees, and that such employees be accorded the same exception as is presently accorded physicians and lawyers.

Employee representatives' position. Employee representatives proposed that the salary test for executive employees be set at \$125 a week, at \$150 a week for administrative and professional employees, and at \$200 a week under the special proviso for higher-paid employees, with proportionate increases in the salary tests for employees in Puerto Rico and the Virgin Islands. Alternatively, they proposed that executive-type employees be considered to meet the salary requirements if they are paid at least 30 percent more than the highest paid employee under their supervision.

PART II. APPLICATION OF THE REGULATIONS TO EMPLOYEES OF RETAIL AND SERVICE ESTABLISHMENTS AND INDUSTRIES

Data on minimum weekly salaries paid executive, administrative and professional employees in retail establishments, collected in a special survey conducted for the Wage and Hour Division in June 1962 by the Bureau of Labor Statistics, are presented in a report which was made part of the record of the October proceedings on the application of the regulations to employees of retail or service establishments.

A. Employer representatives' position. The basic position of employer representatives is that the present regulations are not appropriate to the retail and service industry and should not be applied. Specifically, employer representatives hold that the status of an executive employee in the merchandising industry is determined by the function he performs as part of the management team, whether actually managing an establishment or department or merely participating in its management, and by the purpose for which his nonmanagerial activities (such as making sales, checking cash registers, replenishing stock on the floor) are performed.

Representatives of employers propose that separate and special regulations be issued. The regulations which they propose would include a specific definition

of "management" in retail or service establishments and regard as exempt work (and therefore not to be offset against the statutory tolerance for nonexempt work) any activity of whatever nature which is performed by managerial personnel for the "purpose of management". Their proposals would also extend the special increased tolerance for nonexempt work to all executive and administrative employees in establishments which "function as an integral part of the retail establishment", whether employed in the main establishment or in physically separated warehouses, service buildings, central offices or other units located apart from the retail establishment, and whether or not their work may relate to the operations of units or establishments other than that in which they are employed. In addition, they would except managers of leased (licensed) departments in departmentalized retail or service establishments from any nonexempt work limitation.

1. *Definition of "executive".* The definition of an "executive" employee in a retail or service establishment which employer representatives propose would relax the "primary duty test" in the present regulations to include employees, such as assistant managers and assistant buyers in department stores, who "participate in" the management of the establishment or department in which they are employed, as well as employees, such as managers and buyers, who actually manage the establishment or department. The proposed definition would also relax the personnel management functions tests to permit an employee to qualify who either supervises two or more employees or has the authority to hire and fire or whose suggestions as to change of status of other employees is given particular weight. This is distinguished from the present tests which, in this regard, require that both conditions be met. The definition would also relax the exercise of discretion test to permit an employee to qualify who customarily and regularly exercises discretionary "judgment", as distinguished from the present regulations which, in this regard, require that the employee customarily and regularly exercise discretionary "powers". Excluded from the category of nonexempt work under the proposal would be any work of whatever nature which is performed by an executive employee for the "purpose of the performance of" the work described above, and no limitation whatever would be placed on the amount of nonexempt work which may be performed by an employee who is in sole charge of a leased (licensed) department in a department store or other retail or service establishment.

Employer representatives made it clear that the primary purpose of these proposals (except for that relating to leased departments) is to extend the minimum wage and overtime exemption to assistant managers and assistant buyers. They stated that many of these employees, whom employers in the retail industry consider key management personnel, fail to qualify for exemption as "executives" under the present regulations because they do not supervise two

or more employees and often fail to qualify for exemption as "administrative" employees because they do not meet the salary test.

Definition of "administrative" employee. Representatives of employers would retain the present definition of an "administrative" employee, except that an "administrative" employee would be identified as a "staff employee"; characterization of his work as "office or non-manual field work" would be deleted; and the requirement that he exercise discretion and independent judgment be confined to the area of his "principal responsibility."

Two or more executives. Employer representatives further state that it is necessary in retail establishments to delegate managerial authority and responsibility downward to the lowest possible echelons. With particular reference to assistant managers and assistant buyers in this regard, they contend that such employees are not "assistants to" the manager or buyer, but that they in fact have equal authority and responsibility with the manager or buyer in the managerial function. They urge that the regulations recognize that there can be more than one executive in a particular area or department.

Leased departments. Their view with respect to managers of leased (licensed) departments is that a leased department, such as a shoe department in a retail store, is nothing more than a branch establishment of a chain enterprise of which it (the shoe department) is a part, and is comparable to, and should be treated as if it were, a physically separated branch store. They contend that the manager of such a leased department, although he may occasionally be assisted by part-time employees, generally has fewer than two employees under his supervision and is, in fact, in "sole charge" of the leased department no less than the manager of a physically separated branch store is in "sole charge" of the branch. They therefore propose that such managers be accorded the same complete exception from the percentage limitation on nonexempt work as is accorded, under 29 CFR 541.1(e), to persons who are in "sole charge of an independent establishment or a physically separated branch establishment".

Salary tests and levels. Certain employer representatives argue against the imposition of any salary tests for employees in retail or service establishments. They state that it is the practice in the retail industry for part of an executive employee's compensation to be paid in the form of an annual bonus based on a percentage of sales or of the firm's gross profit and that the imposition of salary tests would require a complete revamping of their accounting practices.

The basic position of employer representatives with respect to salary tests and levels, however, is that if the special regulations and definitions which they propose are adopted in full, the salary tests set forth in the present regulations should be retained (that is, \$80 a week for executive employees, \$95 a week for ad-

ministrative and professional employees, and \$125 a week under the special proviso for higher-paid employees). If these proposals are not adopted, they propose that the salary test for administrative employees be set at the same level as that for executive employees, and that the salary level for both executive and administrative employees in retail and service establishments be held at \$80 a week (\$55 in Puerto Rico and the Virgin Islands) with \$125 per week (\$85 in Puerto Rico and the Virgin Islands) for purposes of the special proviso. If any increase in present levels should be contemplated, they urge that such increase be limited to the percentage increase in the cost of living which, in the interval since the last previous adjustment in the salary tests, has amounted to approximately 3.5 percent.

Employee representatives' position. The basic position of the representatives of employees is that the present regulations are applicable in the retail and service industries and that no special treatment, beyond that granted by Congress, should be accorded these industries and no special or separate regulations issued.

This position is based on the view that the present regulations are basic and have met the test of time. They have been applied uniformly to all covered industries and, although these industries have many distinctive and diverse occupations and wage settings, this fact has not prevented their being covered by a common set of regulations. They also comment that a segment of the retail industry itself has long been subject to the present regulations and their application has presented no difficulties. The variations in various segments of the retail and service industries are as wide as those between them and other industries. Hence, employee representatives believe, the need for regulations of general applicability is obvious.

Salary tests and levels. It is the position of employee representatives that the salary tests for employees in retail and service establishments should be set at the same levels which they have recommended for other covered employees, that is, \$125 a week for executive employees, \$150 a week for administrative and professional employees, and \$200 a week for purposes of the proviso for higher-paid employees. They propose that the salary tests for employees in retail or service establishments in Puerto Rico or the Virgin Islands be set at the same level as those for employees in other establishments in these areas.

PART III. ADMINISTRATOR'S VIEWS AND TENTATIVE PROPOSALS

After having given careful consideration to all relevant information received, I have tentatively decided to revise 29 CFR Part 541 as hereinafter set out for the following reasons.

Salary data, tests and levels. I cannot concur in the proposals made by certain employer representatives that the salary test be eliminated as a prerequisite to exemption under section 13(a)(1) of the act. Similar views were expressed when the regulations, in their present form, were being drafted in 1940 and when re-

visions of the salary levels were being considered in 1949 and in 1954. The validity of this test has been fully explored. The Division's views with respect to this issue, stated in the report of the presiding officer in the 1940 proceedings (pp. 19-20) and restated in greater detail in the respective reports of the presiding officers in the subsequent proceedings (pp. 6-7 of the 1949 report and pp. 2-3 of the report of the 1954 proceedings) are included here by reference. I find nothing in the record to warrant any change in this view and must therefore reject the proposal of employer representatives on this issue.

I must also reject proposals made by employer representatives that, if the present salary levels are to be increased, the salary tests should reflect the level of the lowest paid segment of employees within the scope of this exemption in those geographic areas with the lowest wage and salary levels in the United States. To do so would be to render the salary test meaningless for all but a relatively few and thus have the effect of eliminating the salary tests with respect to the great majority of the employees to whom these regulations apply.

I must likewise reject the alternative proposal made by certain employer representatives that a multiplicity of salary tests be established to reflect differentials in wages and salaries paid in various geographical areas of the continental United States. There is no evidence in the record, nor in the Division's experience, that the uniform salary tests which have been applied for nearly a quarter of a century have affected the application of the section 13(a)(1) exemption on any extrinsic basis, geographic or otherwise. The uniform standards contained in the regulations, moreover, have met the test of time. No useful purpose would be served by fragmenting these standards.

I am persuaded, however, by the Division's experience, by the results of the relevant surveys, and by arguments advanced, principally by representatives of employers in the retail industry, that the facts do not now support the setting of the salary test for administrative employees at a higher level than that for executive employees. When this differential was established in 1940, the rationale was that no nonexempt work limitation could be placed on work performed by administrative employees because of the heterogeneous nature of their work and the difficulty in determining what constitutes exempt and nonexempt work. Thus, it was believed that a higher salary should be set for administrative employees to guard against any abuses. However, during the period from 1940 to 1949, when the act was again amended, it was the Division's experience that the 20-percent tolerance for nonexempt work performed by executive and professional employees had been a very effective guide in determining the employees' status and there was no longer adequate justification for not using the same guide for administrative employees. When the regulations were revised in 1949, the 20-percent tolerance for nonexempt work for administrative

employees was added and definite criteria for determining what constitutes exempt and nonexempt work were set up; the differential in the salary level, however, was retained.

Employer representatives contend, and the Division's experience under the regulations has demonstrated, that there is frequently an overlapping in the work performed by executive and administrative employees, with attendant difficulty in distinguishing these categories. This is, in fact, recognized in the interpretative regulations (29 CFR 541.600). The record in the current proceedings indicates, moreover, that employees employed in an executive capacity are usually paid salaries at least as high as those paid administrative employees. Elimination of the differential in the minimum salary tests for executive and administrative employees thus appears to be both economically and administratively sound. A single rate for executive and administrative employees would recognize the realities of their relationship in practice, and benefit employers, employees and the government alike in simplifying the task of determining the exemption status of such employees under the regulations.

I therefore propose to establish the same relative salary test for administrative as for executive employees.

As to the dollar level at which the salary tests shall be set, I must reject, as unsupported by the facts and data available both the employer representatives' proposal that there be no increase in the salary levels set forth in the present regulations and employee representatives' proposals which would set the tests at levels above those supported by the record.

The 1961 survey data for the 50 States indicate that 11 percent of the surveyed establishments paid one or more executive employees less than \$95 per week, and that 13 percent paid one or more less than \$100 per week. Of the establishments employing administrative employees, 4 percent paid one or more of them less than \$100 a week, and 15 percent paid one or more less than \$105. Of the establishments employing professional employees, only 12 percent paid any professional employee less than \$115 a week.

I propose to set the salary test for executive and administrative employees in the 50 States at \$100 per week and at \$115 per week for professional employees, effective September 3, 1963. Salary tests set at this level would bear approximately the same relationship to the minimum salaries reflected in the 1961 survey data as the tests adopted in 1958, on the occasion of the last previous adjustment, bore to the minimum salaries reflected in a comparable survey, adjusted by trend data to early 1958. At that time, 10 percent of the establishments employing executive employees paid one or more executive employees less than the minimum salary adopted for executive employees and 15 percent of the establishments employing administrative or professional employees paid one or more employees employed in such capacities less than the minimum salary adopted for administrative and professional employees.

I propose to set the salary test for executive and administrative employees in Puerto Rico and the Virgin Islands at \$75 a week and for professional employees in Puerto Rico and the Virgin Islands at \$95 a week, effective September 3, 1963. The rates which I propose would narrow somewhat the differential which now exists between the level of the salary tests for employees in these areas and the level of the tests applicable to employees in the 50 States. I believe this to be consistent with the fact that the differential between such salaries in the islands and on the mainland has narrowed just as the minimum wage differential has narrowed under the policy stated in subsections 8(a) and 8(b) of the act with respect to the setting of minimum wage rates in Puerto Rico and the Virgin Islands and the action of the respective industry wage committees in this regard. I further propose to stipulate in the regulations that the rates which I have proposed for employees in Puerto Rico and the Virgin Islands shall also apply in American Samoa. The regulations are now silent on this matter. While in the past, the standards applicable in the 50 States have, in fact, been applied in American Samoa, I believe a continuation of this practice would be inconsistent with the Fair Labor Standards Amendments of 1961 which made applicable to American Samoa the same policy and procedures in setting minimum wage rates which now apply in Puerto Rico and the Virgin Islands.

For the purposes of the special proviso for higher-paid employees, I propose to set a salary test of \$150 per week which shall be applicable in all areas.

Salary levels in retail and service establishments. There is evidence in the record that the present level of minimum salaries paid executive, administrative and professional employees in retail and service establishments is relatively low. The survey data indicate that in the type of establishment in which all employees would have qualified for the "retail" exemption under section 13(a)(2) of the act, 29 percent of the executive and 32 percent of the administrative employees were paid less than \$100 a week. Thirteen percent of the executive employees and 19 percent of the administrative employees were paid less than \$80 a week.

Accordingly, I propose that, effective September 3, 1963, the salary test for employees of retail or service establishments (except employees of such establishments in Puerto Rico, the Virgin Islands or American Samoa) shall be \$80 a week for executive and administrative employees, \$95 a week for professional employees, and \$125 per week for purposes of the special proviso for higher-paid employees in all categories. For employees of retail or service establishments in Puerto Rico, the Virgin Islands or American Samoa, I propose to set salary tests which will reflect approximately the same differential as is reflected in the rates proposed for all other covered industries, namely, \$55 a week for executive and administrative employees, \$75 a week for professional employees.

employees, and \$125 a week for purposes of the special proviso, effective September 3, 1963.

I am not satisfied, however, that these lower salary tests for persons employed in a bona fide executive, administrative, or professional capacity in retail and service establishments will long serve their purpose of assisting in distinguishing between that group and the non-exempt employees. This is because the retail and service industries brought under the act by the 1961 amendments are in the process of adjusting their compensation practices to the act's progressive requirements. These include increases in the present minimum wage of \$1.00 per hour to \$1.15 in 1964 and to \$1.25 in 1965, as well as reduction in the maximum workweek without overtime compensation for nonexempt employees from 44 hours to 42 and 40.

In nearly a quarter of a century of administering the act, we have discovered each time we have examined the salary levels of executive, administrative and professional employees following an increase in statutory minimum wages that there has been an increase in those salary levels from the levels existing when they were previously examined. The salary test established for executives as a result of these examinations has fluctuated between 73 and 120 times the statutory hourly minimum wage applicable at the time, the arithmetical mean being 92. The multiples revealed by the present study are 80 for retail and service establishments and 87 for the remainder of industry. If these figures were to remain unchanged to the end of 1965, when higher minimum wages will be effective, the multiples would become 64 and 80, respectively.

A multiple of 80, which means twice the minimum wage for a 40-hour week, does not appear unreasonable in the light of our previous experience, but a multiple of 64, which is no more than the minimum wage employees will earn for a 56-hour week, will not, I am convinced, be truly descriptive of the wages of executive and administrative employees in retail and service establishments, nor will it serve as a useful criterion in identifying those who are employed in a bona fide executive, or administrative capacity.

It would, of course, be possible to hold further proceedings after the minimum wage for retail and service establishments has become \$1.25 per hour to ascertain the appropriate salary levels at that time. If my duty and authority were restricted to definition, this might be indicated. But such a course would involve repetition in a relatively short time of all the expense and inconvenience to representatives of employers, employees, and the public that have marked the proceedings now being brought to a close. The interim uncertainty concerning the salary level to be determined at that time would also inconvenience those who must adjust to it, whereas advance notice would be a distinct aid in transition.

The statute expressly authorizes the Secretary of Labor to delimit as well as define the terms "any employee employed in a bona fide executive, administrative, or professional capacity." Though any

effort, on data presently available, to set a precise salary test as a definition of these employments in late 1965 would necessarily involve some hazard of speculation, I am satisfied that application to retail and service establishments of the salary tests presently being made applicable to the remainder of industry would make an appropriate limitation on those employments to be considered exempt under these provisions at that time. Seventy-one percent of the executive and 68 percent of the administrative employees in retail and service establishments are already receiving \$100 per week or more. The relationship between these salaries and the minimum wage would be well within the range which our experience has led us to expect. It involves precisely the same multiple now being determined for application to all the other establishments to which the act applies.

Exercise of the authority to limit, as distinguished from merely to define, calls for application of judgment which is quasi-legislative in character. In this I have for guidance the Congressional solution of the problem of extending the act to persons employed in retail and service establishments and enterprises. Congress was fully aware of the relatively low level of wages and salaries in these industries. It provided for a lower minimum wage and a longer maximum workweek to apply to persons employed in them during a transition period. The application of lower salary tests during this same period to identify persons employed in a bona fide executive, administrative or professional capacity as above proposed will harmonize with this provision. Congress also provided, however, that the wage and hour standards should be equalized for covered workers in all industries by September 3, 1965. I propose to exercise my authority to limit the employments in a bona fide executive, administrative and professional capacity which will be exempt from the wage and hour provisions of the act, therefore, so that such salary levels in all industries will be equalized by September 3, 1965.

Accordingly, I propose that effective September 3, 1965, the salary tests for executive, administrative and professional employees in retail and service establishments shall become uniform with those to go into effect September 3, 1963, for all other covered employees, that is, \$100 a week for executive and administrative employees (\$75 a week in Puerto Rico, the Virgin Islands, and American Samoa) and \$115 a week for professional employees (\$95 a week in Puerto Rico, the Virgin Islands, and American Samoa), with a minimum salary test of \$150 a week for purposes of the special proviso for higher-paid employees in all categories and areas.

The managerial function in retail and service establishments. I am not persuaded by the facts or arguments contained in the record that the managerial functions of executive employees in retail and service establishments differ in any significant particular from those of bona fide executive employees in other industries or establishments. Further, without intending comment as to the merits of the proposed definition of man-

agement in retail and service establishments, I consider it both unnecessary and improper to include in the regulations a definition of the managerial function which would have exclusive application in any one industry.

I am impressed, however, by the multiplicity of essentially nonmanagerial tasks which executive-type personnel in retail and service establishments perform in the regular course of their duties which, but for the special tolerance for nonexempt work granted by the Congress, would disqualify such employees for exemption under section 13(a) (1) of the act.

The 20-percent tolerance provided in the present regulations recognizes the fact that bona fide executive and administrative employees in all industries customarily and of necessity spend some part of their hours of work in activities which are not managerial in nature. The legislative history of that part of section 13(a) (1) which allows a much greater tolerance for executive and administrative employees of retail and service establishments indicates that Congress did not question either the propriety of imposing a limitation on the amount of nonmanagerial work which a managerial employee may perform without defeating the exemption, or the adequacy generally of the present 20-percent tolerance for nonexempt work. On the contrary, the legislative history indicates that the Congress was aware of and gave tacit approval to the established tolerance and the distinctions between exempt and nonexempt work which govern its application. Taking these existing distinctions as a necessary basic premise, but being well aware of the fact that executive-type personnel in retail and service establishments spend a great deal more time in activities which are not closely and directly related to the performance of their managerial function than executive-type personnel in other industries and establishments customarily do, Congress granted executive and administrative employees of retail and service establishments an increase in that tolerance to allow application of the exemption to an otherwise qualified employee so long as he spends less than 40 percent of his workweek in such nonmanagerial work.

Activities such as making sales to customers on the floor, replenishing stocks of merchandise on the floor, removing merchandise from fitting rooms and returning it to stock or shelves are not managerial in nature, but are, in fact, representative of the type of activity to which the special tolerance for nonexempt work was intended to apply. The interpretative regulations will therefore make clear that, while the planning, supervision and direction of such activities is part of the executive function, the actual performance of such operations, except for supervisory training and demonstration purposes, is not. The amount of time which an otherwise qualified executive employee spends in such activities must therefore be offset against the tolerance and must be less than 40 percent of the hours worked in the workweek if the exemption is to apply.

Employer representatives' proposed definition. The definition of an "executive" employee proposed by employer representatives reflects and implements the contentions considered above which, for the reasons stated above, I cannot accept. I therefore cannot approve either the principle of issuing separate and special definitions or regulations applicable in this industry, or, with the exceptions elsewhere noted, the specifics which would relax present standards and extend the nonexempt work tolerance beyond the statutory limits.

To the extent that they relate to substantive matters, the same is true of employer representatives' proposals to amend the definition of an "administrative" employee.

I agree, however, that in § 541.2(a) of the regulations, which defines the primary duty of an "administrative" employee as "the performance of office or nonmanual field work directly related to management policies * * *", the term "field", in the sense that it is here used, is extraneous and should be deleted.

Prior to 1949, the regulations read, in pertinent part, "the performance of nonmanual office or field work * * *". This language was amended in 1949 to read as it now does to make clear that if the work performed is "office" work, it is immaterial whether it is manual or nonmanual in nature. Work other than office work, however, must be nonmanual in nature if the employee is to be considered employed in a bona fide "administrative" capacity (1949 report, pp. 59-61). This is clearly stated in § 541.203 of the interpretative regulations. Section 541.204 further explains that the term "field" work, as used in the regulations, is meant to include all work which is not "office" work. This is not the ordinary meaning of the term, however, and, since the present § 541.203 of the interpretative regulations makes the intent of this part of the definition incapable of being misunderstood, I do not believe that the continued use of the term "field" work serves any useful purpose. I therefore propose to amend this part of § 541.2(a) of the regulations to read " * * * the performance of office or nonmanual work directly related to management policies * * *". This change makes it unnecessary to continue § 541.204 of the interpretative regulations.

As to employer representatives' proposal that administrative employees be identified as "staff employees", it should be noted that the application of the administrative exemption to such employees is made clear in the present interpretative regulations (see § 541.201 (a) (2) (i)).

Tolerance for less than 40 percent nonexempt work—Employees in warehouses, central offices and service buildings. The thrust of employer representatives' argument in support of their proposal that the statutory tolerance of less than 40 percent nonexempt work should be applied to employees who work in and for establishments other than the retail establishment itself or who, if employed in the retail establishment, are engaged

in activities related to the operations of establishments other than the retail establishment in which they work, is against the Division's interpretation of the phrase "any employee employed by a retail or service establishment", as used in section 13(a) (2) of the act. In this connection, it is appropriate to consider the legislative history of this section of the act.

As enacted in 1938, section 13(a) (2) provided an exemption for "any employee employed in a retail or service establishment". In the amendments of 1949, this language was amended to read "any employee employed by a retail or service establishment". In a discussion of the effects of this change, the conference report on the bill which became law states that this section of the act does not "exempt warehouses and central offices of chain-store systems. The employees in such warehouses and central offices are not employed 'by' any single retail or service establishment in the chain but rather by the chain itself." (H. Report No. 1453, 81st Congress, 1st Session, p. 25.) The "establishment" which constitutes a retail or service establishment within the meaning of the act is a single physical place of business in which goods or services are sold at retail to the extent required by the statute; a group or organization of such places of business, however closely knit and unified in operation, or a place devoted to performing central functions for such an organization, cannot qualify as a retail or service establishment. The courts have made this clear in such cases as *Phillips v. Walling*, 324 U.S. 490; *Mitchell v. Bekins*, 352 U.S. 1027, and *Goldberg v. Sunshine Department Stores*, 292 F. 2d 645.

Employees engaged in commerce or in the production of goods for commerce, employed in performing central functions for a multi-unit organization rather than for a single retailing unit, were thus covered by the act and not exempted by section 13(a) (2) prior to the 1961 amendments and have therefore been subject, when employed in an executive or administrative capacity, to the 20-percent tolerance for nonexempt work contained in the regulations.

Further, as stated in 29 CFR 779.307 (the interpretative bulletin on the application of the amended act to retailers of goods or services), the position is taken that, as used in section 13 of the act, the phrase "employee of", which appears in section 13(a) (1), as amended in 1961, and the phrase "employed by", which appears in section 13(a) (2) and was not affected by the 1961 amendments, are synonymous. The legislative history is clear that the increased tolerance was provided for executive and administrative personnel whose previous exemption under section 13(a) (2) was terminated by the amendments. Accordingly, as indicated in 29 CFR 779.403, I take the position that executive and administrative employees performing duties relating to the warehouses, central offices and service units which serve a multi-unit retailing operation, such as a chain-store system, remain subject to the 20-percent

tolerance. I find no basis in the record for altering this position.

Consequently, I shall continue to apply the 20-percent limitation on nonexempt work, which the regulations now provide, to executive and administrative employees of warehouses, central offices, and other central service units of multi-store operations in the retail industry, whether they are employed in physically separated buildings or in portions of premises where a retail or service establishment is operated by the organization.

Where, however, an executive or administrative employee stationed in the main retail establishment of a multi-store retail operation would fail to qualify for the special tolerance applicable to such an employee of a retail or service establishment solely by reason of the fact that he engages in activities (other than central office functions) which relate not only to the operations of the retail establishment in which he is employed, but also to the operations of one or more physically separated units, such as branch stores, of the same retail operation, I agree that an inequity may be created. This would be particularly true in instances where such an employee works side-by-side with an executive or administrative employee whose similar activities relate solely to the operations of the main retail establishment, and the one is subject to the 20-percent tolerance and the other to the increased special tolerance for nonexempt work. Accordingly, I propose to pursue an enforcement policy under which the special tolerance permitting nonexempt work in any amount less than 40 percent will also be applied with respect to such employees and to include a statement to this effect in the interpretative regulations.

Managers of leased departments. As to the proposal made by employer representatives that the "sole-charge" exception to the percentage tolerance for nonexempt work be made applicable to managers of leased departments in departmentalized retail establishments, I must point out that the Division recognizes that physically separated portions of a business which are located on the same premises and under the same roof may, under certain circumstances, constitute more than one establishment. The present regulations accordingly allow the sole-charge exception to managers of leased departments, provided the leased department is, in fact, "an independent establishment or physically separated branch establishment".

A determination as to the status of any part of a retail or other establishment as "an independent establishment or physically separated branch establishment", however, must be made, as indicated in 29 CFR 779.305 and 779.306, on the basis of the physical and economic facts in the particular situation. A leased department cannot be considered to be a separate establishment where, for example, it and the retail store in which it is located operate under a common trade name and the store may determine, or have the power to determine, the leased department's space location, the

type of merchandise it will sell, its pricing policy, its hours of operation and some or all of its hiring, firing and other personnel policies, and matters such as advertising, adjustment and credit operations, insurance and taxes are handled on a unified basis by the store.

A leased department may qualify as a separate establishment, however, where, among other things, the facts show that the lessee maintains a separate entrance and operates under a separate name, with its own separate employees and records, and in other respects conducts his business independently of the lessor's. In such a case the leased department would enjoy the same status as a physically separated branch store. The interpretative regulations on this exemption will be further clarified to this effect.

I find no basis in the record, however, for eliminating the conditions upon which the "sole-charge" exception rests and therefore reject the proposal that the exception be extended in any blanket way to managers of leased departments, as such.

Exception for certain professional employees. It has been proposed that certain professional groups, such as chemists who hold an academic degree and licensed engineers, be granted an exception from the regulations such as is accorded physicians and lawyers under 29 CFR 541.3(e).

The exception made with respect to physicians and lawyers is administrable because the nature of these professional fields is such that there is generally no question as to whether practicing physicians and lawyers are actually employed in a "professional capacity", within the meaning of the act and regulations. This is not equally true in the many fields of endeavor in which a degree in chemistry or license in engineering may be prerequisite to employment. The application of the section 13(a)(1) exemption depends upon the facts in the particular situation and, in the experience of the Division, holders of such degrees or licenses are not always found actually to be employed in the professional capacity for which their academic background or licensing qualifies them. I must therefore reject this proposal.

On the basis of the foregoing, and pursuant to authority contained in section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and General Order No. 45-A of the Secretary of Labor (15 F.R. 3290), I propose to amend 29 CFR Part 541 as set forth below.

Interested persons who desire to present written views and arguments concerning the proposed amendments to Subpart A of 29 CFR Part 541 may file them with the Administrator of the Wage and Hour and Public Contracts Divisions of the United States Department of Labor, 14th Street and Constitution Avenue NW., Washington 25, D.C., within 30 days following publication of this document in the FEDERAL REGISTER.

The proposed revised Part 541 reads as follows:

PART 541—DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY, OR IN THE CAPACITY OF OUTSIDE SALESMAN"

Subpart A—General Regulations

Sec.	
541.1	Executive.
541.2	Administrative.
541.3	Professional.
541.5	Outside salesman.
541.5a	Special provision for motion picture producing industry.
541.5b	Minimum salary requirements for employees of a retail or service establishment.
541.6	Petition for amendment of regulations.

Subpart B—Interpretations

541.99	Introductory statement.
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EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE CAPACITY

541.100	The definition of "executive".
541.101	General.
541.102	Management.
541.103	Primary duty.
541.104	Department or subdivision.
541.105	Two or more other employees.
541.106	Authority to hire or fire.
541.107	Discretionary powers.
541.108	Work directly and closely related.
541.109	Emergencies.
541.110	Occasional tasks.
541.111	Nonexempt work generally.
541.112	Percentage limitations on nonexempt work.
541.113	Sole-charge exception.
541.114	Exception for owners of 20-percent interest.
541.115	Working foremen.
541.116	Trainees, executive.
541.117	Amount of salary required.
541.118	Salary basis.
541.119	Special proviso for high salaried executives.

EMPLOYEE EMPLOYED IN A BONA FIDE ADMINISTRATIVE CAPACITY

541.200	Definition of "administrative".
541.201	Types of administrative employees.
541.202	Categories of work.
541.203	Nonmanual work.
541.205	Directly related to management policies or general business operations.
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541.207	Discretion and independent judgment.
541.208	Directly and closely related.
541.209	Percentage limitations on nonexempt work.
541.210	Trainees, administrative.
541.211	Amount of salary or fees required.
541.212	Salary basis.
541.213	Fee basis.
541.214	Special proviso for high salaried administrative employees.

EMPLOYEE EMPLOYED IN A BONA FIDE PROFESSIONAL CAPACITY

541.300	Definition of "professional".
541.301	General.
541.302	Learned professions.
541.303	Artistic professions.
541.304	Primary duty.
541.305	Discretion and judgment.
541.306	Predominantly intellectual and varied.
541.307	Essential part of and necessarily incident to.
541.308	Nonexempt work generally.
541.309	20-percent work limitation.

Sec.	
541.310	Trainees, professional.
541.311	Amount of salary or fees required.
541.312	Salary basis.
541.313	Fee basis.
541.314	Exemption for physicians and lawyers.
541.315	Special proviso for high salaried professional employees.

EMPLOYEE EMPLOYED IN THE CAPACITY OF OUTSIDE SALESMAN

541.500	Definition of "outside salesman".
541.501	Making sales or obtaining orders.
541.502	Away from his employer's place of business.
541.503	Incidental to and in conjunction with sales work.
541.504	Promotion work.
541.505	Driver salesmen.
541.506	Nonexempt work generally.
541.507	20-percent limitation on nonexempt work.
541.508	Trainees, outside salesmen.

SPECIAL PROBLEMS

541.600	Combination exemptions.
541.601	Special provision for motion picture producing industry.
541.602	Special proviso concerning executive and administrative employees in multi-store retailing operations.

AUTHORITY: §§ 541.1 to 541.602 issued under sec. 13, 52 Stat. 1067, as amended; 29 U.S.C. 213.

Subpart A—General Regulations

§ 541.1 Executive.

The term "employee employed in a bona fide executive * * * capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; and

(f) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary basis at a rate of not less than \$100 per week (or \$75 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities:

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary basis at a rate of not less than \$150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

§ 541.2 Administrative.

The term "employee employed in a bona fide * * * administrative * * * capacity" in section 13(a) (1) of the act shall mean any employee:

(a) Whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers; and

(b) Who customarily and regularly exercises discretion and independent judgment;

(c) (1) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations in this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary or fee basis at a rate of not less than \$100 per week (or \$75 per week if employed in Puerto Rico, the Virgin Islands or American Samoa) exclusive of board, lodging, or other facilities:

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary or fee basis at a rate of not less than \$150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

§ 541.3 Professional.

The term "employee employed in a bona fide * * * professional capacity" in section 13(a) (1) of the act shall mean any employee:

(a) Whose primary duty consists of the performance of work:

(1) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(2) Original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary or fee basis at a rate of not less than \$115 per week (or \$95 per week if employed in Puerto Rico, the Virgin Islands or American Samoa) exclusive of board, lodging, or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof:

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary or fee basis at a rate of not less than \$150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of work either requiring knowledge of an advanced type in a field of science or learning, which includes work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

§ 541.5 Outside salesman.

The term "employee employed * * * in the capacity of outside salesman" in section 13(a) (1) of the act shall mean any employee:

(a) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(1) Making sales within the meaning of section 3(k) of the act, or

(2) Obtaining orders or contracts for services or for the use of facilities for

which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraph (a) (1) or (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer: *Provided*, That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

§ 541.5a Special provision for motion picture producing industry.

The requirement of §§ 541.1, 541.2 and 541.3 that the employee be paid "on a salary basis" shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$200 a week (exclusive of board, lodging or other facilities).

§ 541.5b Minimum salary requirements for employees of a retail or service establishment.

(a) In the case of an employee of a retail or service establishment, the minimum salary requirements for executive employees, set forth in paragraph (f) of § 541.1 and in the final paragraph of that section, or for administrative employees, set forth in paragraph (e) of § 541.2 and in the final paragraph of that section, or for professional employees, set forth in paragraph (e) of § 541.3 and in the final paragraph of that section, shall not apply until September 3, 1965.

(b) For the period beginning September 3, 1963, and terminating September 2, 1965, the minimum salary rate for an executive or administrative employee of a retail or service establishment shall be not less than \$80 per week (\$55 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa); the minimum salary rate for a professional employee of a retail or service establishment shall be not less than \$95 per week (\$75 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa); and for an executive, administrative or professional employee of a retail or service establishment the minimum salary rate for purposes of the final paragraph of § 541.1, 541.2 or 541.3, respectively, shall be not less than \$125 per week.*

§ 541.6 Petition for amendment of regulations.

Any person wishing a revision of any of the terms of the foregoing regulations may submit in writing to the Administrator a petition setting forth the changes desired and the reasons for proposing them. If, upon inspection of the petition, the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, either in support of

*This special proviso is applicable to all employees covered by the act, including those in Puerto Rico, the Virgin Islands and American Samoa.

or in opposition to the proposed changes. In determining such future regulations, separate treatment for different industries and for different classes of employees may be given consideration.

Subpart B—Interpretations

§ 541.99 Introductory statement.

(a) Section 13(a)(1) of the Fair Labor Standards Act exempts from the wage and hour provisions of the act "any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities)". The requirements of the exemption under this section of the act are contained in Subpart A of this part.

(b) This subpart contains material explaining and illustrating the terms used in the regulations in Subpart A of this part. These statements and illustrations reflect the construction of the regulations in Subpart A which the Divisions will follow. This subpart supercedes and replaces all prior statements, releases, and opinions explaining and interpreting this part and section 13(a)(1) of the act.

(c) A few words of caution are necessary in connection with the use of the illustrations. The exempt or nonexempt status of any particular employee must be determined on the basis of whether his duties, responsibilities, and salary meet all the requirements of the pertinent section of the regulations in Subpart A of this part. The employee's title or class specification is of no significance in determining whether he meets these tests. The use of any job titles in the illustrations contained in this subpart should not be construed to mean that employees holding such titles are either exempt or nonexempt, or that they meet any one of the specific requirements for exemption. In any specific case it is the actual work performance, the responsibilities, and salary of the individual employee which determines whether a particular test has been met or whether the exemption applies.

(d) In determining that an employee's duties, responsibilities, and salary meet the requirements for exemption, it should be borne in mind that a change in the employee's assignment may bring with it a change in his exemption status. For example, an employee may be assigned additional or different duties during a busy period. Such additional or different duties should be considered in ascertaining whether the employee meets the requirements for exemption during those weeks.

(e) Finally, it is a well-established principle that the burden of proving exemption under section 13(a)(1), as well as any other exemption provision of the Fair Labor Standards Act, rests on the employer.

EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE CAPACITY

§ 541.100 The definition of "executive".

Section 541.1 defines the term "bona fide executive" as follows: The term "employee employed in a bona fide executive * * * capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; and

(f) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary basis at a rate of not less than \$100 per week (or \$75 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities;

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary basis at a rate of not less than \$150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

§ 541.101 General.

The duties and responsibilities of an exempt executive employee are described in paragraphs (a) through (d) of § 541.1. Paragraph (e) of § 541.1 contains, among other things, percentage limitations on the amount of time which

an employee may devote to activities "which are not directly and closely related to the performance of the work described in paragraphs (a) through (d)" of that section. For convenience in discussion, the work described in paragraphs (a) through (d) of § 541.1 and the activities directly and closely related to such work will be referred to as "exempt" work, while other activities will be referred to as "nonexempt" work.

§ 541.102 Management.

(a) In the usual situation the determination of whether a particular kind of work is exempt or nonexempt in nature is not difficult. In the vast majority of cases the bona fide executive employee performs managerial and supervisory functions which are easily recognized as within the scope of the exemption.

(b) For example, it is generally clear that work such as the following is exempt work when it is performed by an employee in the management of his department or the supervision of the employees under him: Interviewing, selecting and training of employees; setting and adjusting their rates of pay and hours of work; directing their work; maintaining their production or sales records for use in supervision or control; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status; handling their complaints and grievances and disciplining them when necessary; planning the work; determining the techniques to be used; apportioning the work among the workers; determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety of the men and the property.

§ 541.103 Primary duty.

A determination of whether an employee has management as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the managerial duties is a useful guide in determining whether management is the primary duty of an employee. In the ordinary case it may be taken as a good rule of thumb that primary duty means the major part, or over 50 percent, of the employee's time. Thus, an employee who spends over 50 percent of his time in management would have management as his primary duty. Time alone, however, is not the sole test, and in situations where the employee does not spend over 50 percent of his time in managerial duties, he might nevertheless have management as his primary duty if the other pertinent factors support such a conclusion. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, his relative freedom from supervision, and the relationship between his salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.

§ 541.104 Department or subdivision.

(a) In order to qualify under § 541.1, the employee's managerial duties must be performed with respect to the enterprise in which he is employed or a customarily recognized department or subdivision thereof. The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of men assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. In order properly to classify an individual as an executive he must be more than merely a supervisor of two or more employees; nor is it sufficient that he merely participates in the management of the unit. He must be in charge of and have as his primary duty the management of a recognized unit which has a continuing function.

(b) In the vast majority of cases there is no difficulty in determining whether an individual is in charge of a customarily recognized department or subdivision of a department. For example, it is clear that where an enterprise comprises more than one establishment, the employee in charge of each establishment may be considered in charge of a subdivision of the enterprise. Questions arise principally in cases involving supervisors who work outside the employer's establishment, move from place to place, or have different subordinates at different times.

(c) In such instances, in determining whether the employee is in charge of a recognized unit with a continuing function, it is the Division's position that the unit supervised need not be physically within the employer's establishment and may move from place to place, and that continuity of the same subordinate personnel is not absolutely essential to the existence of a recognized unit with a continuing function, although in the ordinary case a fixed location and continuity of personnel are both helpful in establishing the existence of such a unit. The following examples will illustrate these points.

(d) The projects on which an individual in charge of a certain type of construction work is employed may occur at different locations, and he may even hire most of his work force at these locations. The mere fact that he moves his location would not invalidate his exemption if there are other factors which show that he is actually in charge of a recognized unit with a continuing function in the organization.

(e) Nor will an otherwise exempt employee lose the exemption merely because he draws the men under his supervision from a pool, if other factors are present which indicate that he is in charge of a recognized unit with a continuing function. For instance, if this employee is in charge of the unit which has the continuing responsibility for making all installations for his employer, or all installations in a particular city or a designated portion of a city, he would be in charge of a department or subdivision despite the fact that he draws his subordinates from a pool of available men.

(f) It cannot be said, however, that a supervisor drawn from a pool of supervisors who supervises employees assigned to him from a pool and who is assigned a job or a series of jobs from day to day or week to week has the status of an executive. Such an employee is not in charge of a recognized unit with a continuing function.

§ 541.105 Two or more other employees.

(a) An employee will qualify as an "executive" under § 541.1 only if he customarily and regularly supervises at least two full-time employees or the equivalent. For example, if the "executive" supervises one full-time and two part-time employees of whom one works mornings and one, afternoons; or four part-time employees, two of whom work mornings and two afternoons, this requirement would be met.

(b) The employees supervised must be employed in the department which the "executive" is managing.

(c) It has been the experience of the Divisions that a supervisor of as few as two employees usually performs non-exempt work in excess of the general 20-percent tolerance provided in § 541.1.

(d) In a large machine shop there may be a machine-shop supervisor and two assistant machine-shop supervisors. Assuming that they meet all the other qualifications of § 541.1 and particularly that they are not working foremen, they should certainly qualify for the exemption. A small department in a plant or in an office is usually supervised by one person. Any attempt to classify one of the other workers in the department as an executive merely by giving him an honorific title such as assistant supervisor will almost inevitably fail as there will not be sufficient true supervisory or other managerial work to keep two persons occupied. On the other hand, it is incorrect to assume that in a large department, such as a large shoe department in a retail store which has separate sections for men's, women's and children's shoes, for example, the supervision cannot be distributed among two or three employees, conceivably among more. In such instances, assuming that the other tests are met, especially the one concerning the performance of nonexempt work, each such employee "customarily and regularly directs the work of two or more other employees therein".

(e) An employee who merely assists the manager or buyer of a particular department and supervises two or more employees only in the actual manager's or buyer's absence, however, does not meet this requirement. For example, where a single unsegregated department, such as a women's sportswear department or a men's shirt department in a retail store, is managed by a buyer, with the assistance of one or more assistant buyers, only one employee, the buyer, can be considered an executive, even though the assistant buyers at times exercise some managerial and supervisory responsibilities. A shared responsibility for the supervision of the same two or more employees in the same

department does not satisfy the requirement that the employee "customarily and regularly directs the work of two or more employees therein".

§ 541.106 Authority to hire or fire.

Section 541.1 requires that an exempt executive employee have the authority to hire or fire other employees or that his suggestions and recommendations as to hiring or firing and as to advancement and promotion or any other change of status of the employees whom he supervises will be given particular weight. Thus, no employee, whether high or low in the hierarchy of management, can be considered as employed in a bona fide executive capacity unless he is directly concerned either with the hiring or the firing and other change of status of the employees under his supervision, whether by direct action or by recommendation to those to whom the hiring and firing functions are delegated.

§ 541.107 Discretionary powers.

(a) Section 541.1(d) requires that an exempt executive employee customarily and regularly exercise discretionary powers. A person whose work is so completely routinized that he has no discretion does not qualify for exemption.

(b) The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretionary powers in the day-to-day performance of his duties. The requirement is not met by the occasional exercise of discretionary powers.

§ 541.108 Work directly and closely related.

(a) This phrase brings within the category of exempt work not only the actual management of the department and the supervision of the employees therein, but also activities which are closely associated with the performance of the duties involved in such managerial and supervisory functions or responsibilities. The supervision of employees and the management of a department include a great many directly and closely related tasks which are different from the work performed by subordinates and are commonly performed by supervisors because they are helpful in supervising the employees or contribute to the smooth functioning of the department for which they are responsible. Frequently such exempt work is of a kind which in establishments that are organized differently, or which are larger and have greater specialization of function, may be performed by a nonexempt employee hired especially for that purpose. Illustration will serve to make clear the meaning to be given the phrase "directly and closely related".

(b) Keeping basic records of working time, for example, is frequently performed by a timekeeper employed for that purpose. In such cases the work is clearly not exempt in nature. In other establishments which are not large enough to employ a timekeeper, or in which the timekeeping function has been

decentralized, the supervisor of each department keeps the basic time records of his own subordinates. In these instances, as indicated above, the timekeeping is directly related to the function of managing the particular department and supervising its employees. However, the preparation of a payroll by a supervisor, even the payroll of the employees under his supervision, cannot be considered to be exempt work, since the preparation of a payroll does not aid in the supervision of the employees or the management of the department. Similarly, the keeping by a supervisor of production or sales records of his own subordinates for use in supervision or control would be exempt work, while the maintenance of production records of employees not under his direction would not be exempt work.

(c) Another example of work which may be directly and closely related to the performance of management duties is the distribution of materials or merchandise and supplies. Maintaining control of the flow of materials or merchandise and supplies in a department is ordinarily a responsibility of the managerial employee in charge. In many nonmercantile establishments the actual distribution of materials is performed by nonexempt employees under the supervisor's direction. In other establishments it is not uncommon to leave the actual distribution of materials and supplies in the hands of the supervisor. In such cases it is exempt work since it is directly and closely related to the managerial responsibility of maintaining the flow of materials. In a large retail establishment, however, where the replenishing of stocks of merchandise on the sales floor is customarily assigned to a nonexempt employee, the performance of such work by the manager or buyer of the department is nonexempt. The amount of time the manager or buyer spends in such work must be offset against the statutory tolerance for nonexempt work. The supervision and control of a flow of merchandise to the sales floor, of course, is directly and closely related to the managerial responsibility of the manager or buyer.

(d) Setup work is another illustration of work which may be exempt under certain circumstances if performed by a supervisor. The nature of setup work differs in various industries and for different operations. Some setup work is typically performed by the same employees who perform the "production" work; that is, the employee who operates the machine also "sets it up" or adjusts it for the particular job at hand. Such setup work is part of the production operation and is not exempt. In other instances the setting up of the work is a highly skilled operation which the ordinary production worker or machine tender typically does not perform. In some plants, particularly large ones, such setup work may be performed by employees whose duties are not supervisory in nature. In other plants, however, particularly small plants, such work is a regular duty of the executive and is directly and closely related to his responsibility for the work performance of his subordinates and for the adequacy of the

final product. Under such circumstances it is exempt work.

(e) Similarly, a supervisor who spot checks and examines the work of his subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to his managerial and supervisory functions. However, this kind of examining and checking must be distinguished from the kind which is normally performed by an "examiner", "checker", or "inspector", and which is really a production operation rather than a part of the supervisory function. Likewise, a department manager or buyer in a retail or service establishment who goes about the sales floor, observing the work of sales personnel under his supervision to determine the effectiveness of their sales techniques, checking on the quality of customer service being given, or observing customer preferences and reactions to the lines, styles, types, colors and quality of the merchandise offered, is performing work which is directly and closely related to his managerial and supervisory functions. His actual participation, except for supervisory training or demonstration purposes, in such activities as making sales to customers, replenishing stocks of merchandise on the sales floor, removing merchandise from fitting rooms and returning to stock or shelves, however, is not. The amount of time a manager or buyer spends in the performance of such activities must be included in computing the percentage limitation on nonexempt work.

(f) Watching machines is another duty which may be exempt when performed by a supervisor under proper circumstances. Obviously the mere watching of machines in operation cannot be considered exempt work where as in certain industries in which the machinery is largely automatic, it is an ordinary production function. Thus, an employee who watches machines for the purpose of seeing that they operate properly or for the purpose of making repairs or adjustments is performing nonexempt work. On the other hand, a supervisor who watches the operation of the machinery in his department in the sense that he "keeps an eye out for trouble" is performing work which is directly and closely related to his managerial responsibilities. Making an occasional adjustment in the machinery under such circumstances is also exempt work.

(g) A word of caution is necessary in connection with these illustrations. The recordkeeping, material distributing, setup work, machine watching and adjusting, and inspecting, examining, observing and checking referred to in the examples of exempt work are presumably the kind which are supervisory and managerial functions rather than merely "production" work. Frequently it is difficult to distinguish the managerial type from the type which is a production operation. In deciding such difficult cases it should be borne in mind that it is one of the objectives of § 541.1 to exclude from the definition foremen who

hold "dual" or combination jobs.¹ Thus, if work of this kind takes up a large part of the employee's time it would be evidence that management of the department is not the primary duty of the employee, that such work is a production operation rather than a function directly and closely related to the supervisory or managerial duties, and that the employee is in reality a combination foreman-"setup" man, foreman-machine adjuster (or mechanic), or foreman-examiner, floorman-salesperson, etc., rather than a bona fide executive.

§ 541.109 Emergencies.

(a) Under certain occasional emergency conditions, work which is normally performed by nonexempt employees and is nonexempt in nature will be directly and closely related to the performance of the exempt functions of management and supervision and will therefore be exempt work. In effect, this means that a bona fide executive who performs work of a normally nonexempt nature on rare occasions because of the existence of a real emergency will not, because of the performance of such emergency work, lose the exemption. Bona fide executives include among their responsibilities the safety of the employees under their supervision, the preservation and protection of the merchandise, machinery or other property of the department or subdivision in their charge from damage due to unforeseen circumstances, and the prevention of widespread breakdown in production, sales, or service operations. Consequently, when conditions beyond control arise which threaten the safety of the employees, or a cessation of operations, or serious damage to the employer's property, any manual or other normally nonexempt work performed in an effort to prevent such results is considered exempt work and is not included in computing the percentage limitation on nonexempt work.

(b) The rule in paragraph (a) of this section is not applicable, however, to nonexempt work arising out of occurrences which are not beyond control or for which the employer can reasonably provide in the normal course of business.

(c) A few illustrations may be helpful in distinguishing routine work performed as a result of real emergencies of the kind for which no provision can practically be made by the employer in advance of their occurrence and routine work which is not in this category. It is obvious that a mine superintendent who pitches in after an explosion and digs out the men who are trapped in the mine is still a bona fide executive during that week. On the other hand, the manager of a cleaning establishment who personally performs the cleaning operations on expensive garments because he fears damage to the fabrics if he allows his subordinates to handle them is not performing "emergency" work of the kind which can be considered exempt. Nor is the manager of a department in a retail store performing nonexempt work when he personally waits on a special or

¹ See discussion of working foremen in § 541.115.

impatient customer because he fears the loss of the sale or the customer's good will if he allows a salesperson to serve him. The performance of nonexempt work by executives during inventory-taking, during other periods of heavy workload, or the handling of rush orders are the kinds of activities which the percentage tolerances are intended to cover. For example, pitching in on the production line in a canning plant during seasonal operations is not exempt "emergency" work even if the objective is to keep the food from spoiling. Similarly, pitching in behind the sales counter in a retail store during special sales or during Christmas or Easter or other peak sales periods is not "emergency" work, even if the objective is to improve customer service and the store's sales record. Maintenance work is not emergency work even if performed at night or during weekends. Relieving subordinates during rest or vacation periods cannot be considered in the nature of "emergency" work since the need for replacements can be anticipated. Whether replacing the subordinate at the work bench, or production line, or sales counter during the first day or partial day of an illness would be considered exempt emergency work would depend upon the circumstances in the particular case. Such factors as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly would all have to be weighed.

(d) All the regular cleaning up around machinery, even when necessary to prevent fire or explosion, is not "emergency" work. However, the removal by an executive of dirt or obstructions constituting a hazard to life or property need not be included in computing the percentage limitation if it is not reasonably practicable for anyone but the supervisor to perform the work and it is the kind of "emergency" which has not been recurring. The occasional performance of repair work in case of a breakdown of machinery, or the collapse of a display rack, or damage to or exceptional disarray of merchandise caused by accident or a customer's carelessness may be considered exempt work if the breakdown is one which the employer cannot reasonably anticipate. However, recurring breakdowns or disarrays requiring frequent attention, such as that of an old belt or machine which breaks down repeatedly or merchandise displays constantly requiring re-sorting or straightening, are the kind for which provision could reasonably be made and repair of which must be considered as nonexempt.

§ 541.110 Occasional tasks.

(a) In addition to the type of work which by its very nature is readily identifiable as being directly and closely related to the performance of the supervisory and management duties, there is another type of work which may be considered directly and closely related to the performance of these duties. In many establishments the proper man-

agement of a department requires the performance of a variety of occasional, infrequently recurring tasks which cannot practically be performed by the production workers and are usually performed by the executive. These small tasks when viewed separately without regard to their relationship to the executive's overall functions might appear to constitute nonexempt work. In reality they are the means of properly carrying out the employee's management functions and responsibilities in connection with men, materials, and production. The particular tasks are not specifically assigned to the "executive" but are performed by him in his discretion.

(b) It might be possible for the executive to take one of his subordinates away from his usual tasks, instruct and direct him in the work to be done, and wait for him to finish it. It would certainly not be practicable, however, to manage a department in this fashion. With respect to such occasional and relatively inconsequential tasks, it is the practice in industry generally for the executive to perform them rather than to delegate them to other persons. When any one of these tasks is done frequently, however, it takes on the character of a regular production function which could be performed by a nonexempt employee and must be counted as nonexempt work. In determining whether such work is directly and closely related to the performance of the management duties, consideration should be given to whether it is (1) the same as the work performed by any of the subordinates of the executive; or (2) a specifically assigned task of the executive employee; or (3) practically delegable to nonexempt employees in the establishment; or (4) repetitive and frequently recurring.

§ 541.111 Nonexempt work generally.

(a) As indicated in § 541.101 the term "nonexempt work", as used in this subpart, includes all work other than that described in § 541.1 (a) through (d) and the activities directly and closely related to such work.

(b) Nonexempt work is easily identifiable where, as in the usual case, it consists of work of the same nature as that performed by the nonexempt subordinates of the "executive." It is more difficult to identify in cases where supervisory employees spend a significant amount of time in activities not performed by any of their subordinates and not consisting of actual supervision and management. In such cases careful analysis of the employee's duties with reference to the phrase "directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section" will usually be necessary in arriving at a determination.

§ 541.112 Percentage limitations on nonexempt work.

(a) An employee will not qualify for exemption as an executive if he devotes more than 20 percent, or, in the case of an employee of a retail or service establishment if he devotes as much as 40 percent, of his hours worked in the workweek to nonexempt work. This test is

applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

(b) There are two special exceptions to these limitations—that relating to the employee in "sole charge" of an independent or branch establishment and that relating to an employee owning a 20-percent interest in the enterprise in which he is employed. These except the employee only from the percentage limitations on nonexempt work. They do not except the employee from any of the requirements of § 541.1. Thus while the percentage limitations on nonexempt work are not applicable, it is clear that the employee would not qualify for the exemption if he performs so much nonexempt work that he could no longer meet the requirement of § 541.1(a) that his primary duty must consist of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof.

§ 541.113 Sole-charge exception.

(a) An exception from the percentage limitations on nonexempt work is provided in § 541.1(e) for "an employee who is in sole charge of an independent establishment or a physically separated branch establishment * * *". Such an employee is considered to be employed in a bona fide executive capacity even though he exceeds the applicable percentage limitation on nonexempt work.

(b) The term "independent establishment" must be given full weight. The establishment must have a fixed location and must be geographically separated from other company property. The management of operations within one among several buildings located on a single or adjoining tracts of company property does not qualify for the exemption under this heading. In the case of a branch, there must be a true and complete physical separation from the main office.

(c) (1) A determination as to the status as "an independent establishment or a physically separated branch establishment" of any part of the business operations on the premises of a retail or other establishment, however, must be made on the basis of the physical and economic facts in the particular situation. (See 29 CFR 779.305, 779.306, 779.225.) A leased department cannot be considered to be a separate establishment where, for example, it and the retail store in which it is located operate under a common trade name and the store may determine, or have the power to determine, the leased department's space location, the type of merchandise it will sell, its pricing policy, its hours of operation and some or all of its hiring, firing and other personnel policies, and matters such as advertising, adjustment and credit operations, insurance and taxes, are handled on a unified basis by the store.

(2) A leased department may qualify as a separate establishment, however, where, among other things, the facts show that the lessee maintains a separate entrance and operates under a separate name, with its own separate employees and records, and in other re-

spects conducts his business independently of the lessor's. In such a case the leased department would enjoy the same status as a physically separated branch store.

(d) Since the employee must be in "sole" charge, only one person in any establishment can qualify as an executive under this exception, and then only if he is the top person in charge at that location.² Thus, it would not be applicable to an employee who is in charge of a branch establishment but whose superior makes his office on the premises. An example is a district manager who has overall supervisory functions in relation to a number of branch offices, but makes his office at one of the branches. The branch manager at the branch where the district manager's office is located is not in "sole charge" of the establishment and does not come within the exception. This does not mean that the "sole-charge" status of an employee will be considered lost because of an occasional visit to the branch office of the superior of the person in charge, or, in the case of an independent establishment, by the visit for a short period on 1 or 2 days a week of the proprietor or principal corporate officer of the establishment. In these situations, the sole-charge status of the employee in question will appear from the facts as to his functions, particularly in the intervals between visits. If, during these intervals, the decisions normally made by an executive in charge of a branch or an independent establishment are reserved for the superior, the employee is not in sole charge. If such decisions are not reserved for the superior, the sole-charge status will not be lost merely because of the superior's visits.

(e) In order to qualify for the exception the employee must ordinarily be in charge of all the company activities at the location where he is employed. If he is in charge of only a portion of the company's activities at his location, then he cannot be said to be in sole charge of an independent establishment or a physically separated branch establishment. In exceptional cases the Divisions have found that an executive employee may be in sole charge of all activities at a branch office except that one independent function which is not integrated with those managed by the executive is also performed at the branch. This one function is not important to the activities managed by the executive and constitutes only an insignificant portion of the employer's activities at that branch. A typical example of this type of situation is one in which "desk space" in a warehouse otherwise devoted to the storage and shipment of parts is assigned a salesman who reports to the sales manager or other company official located at the home office. Normally only one employee (at most two or three, but in any event an insignificant number when compared with the total number of persons

² It is possible for other persons in the same establishment to qualify for exemption as executive employees, but not under the exception from the nonexempt work limitation.

employed at the branch) is engaged in the nonintegrated function for which the executive whose sole-charge status is in question is not responsible. Under such circumstances the employee does not lose his "sole charge" status merely because of the desk-space assignment.

§ 541.114 Exception for owners of 20-percent interest.

(a) An exception from the percentage limitations on nonexempt work is provided in § 541.1(e) for an employee "who owns at least a 20-percent interest in the enterprise in which he is employed". This provision recognizes the special status of a shareholder of an enterprise who is actively engaged in its management.

(b) The exception is available to an employee owning a bona fide 20-percent equity in the enterprise in which he is employed regardless of whether the business is a corporate or other type of organization.

§ 541.115 Working foremen.

(a) The primary purpose of the exclusionary language placing a limitation on the amount of nonexempt work is to distinguish between the bona fide executive and the "working" foreman³ or "working" supervisor who regularly performs "production" work or other work which is unrelated or only remotely related to his supervisory activities.

(b) One type of working foreman or working supervisor most commonly found in industry works alongside his subordinates. Such employees, sometimes known as strawbosses, or gang or group leaders perform the same kind of work as that performed by their subordinates, and also carry on supervisory functions. Clearly, the work of the same nature as that performed by the employee's subordinates must be counted as nonexempt work and if the amount of such work performed is substantial⁴ the exemption does not apply. A foreman in a dress shop, for example, who operates a sewing machine to produce the product is performing clearly nonexempt work. However, this should not be confused with the operation of a sewing machine by a foreman to instruct his subordinates in the making of a new product, such as a garment, before it goes into production.

(c) Another type of working foreman or working supervisor who cannot be classed as a bona fide executive is one who spends a substantial amount of time in work which, although not performed by his own subordinates, consists of ordinary production work or other routine, recurrent, repetitive tasks which are a regular part of his duties. Such an employee is in effect holding a dual job. He may be, for example, a combination foreman-production worker,

³ The term "working" foreman is used in this subpart in the sense indicated in the text and should not be construed to mean only one who performs work similar to that performed by his subordinates.

⁴ "Substantial", as used in this section, means more than 20 percent. See discussion of the 20-percent limitation on nonexempt work in § 541.112.

supervisor-clerk, or foreman combined with some other skilled or unskilled occupation. His nonsupervisory duties in such instances are unrelated to anything he must do to supervise the employees under him or to manage the department. They are in many instances mere "fill-in" tasks performed because the job does not involve sufficient executive duties to occupy an employee's full time. In other instances the nonsupervisory, nonmanagerial duties may be the principal ones and the supervisory or managerial duties are subordinate and are assigned to the particular employee because it is more convenient to rest the responsibility for the first line of supervision in the hands of the person who performs these other duties. Typical of employees in dual jobs which may involve a substantial amount of nonexempt work are: (1) Foremen or supervisors who also perform one or more of the "production" or "operating" functions, though no other employees in the plant perform such work. An example of this kind of employee is the foreman in a millinery or garment plant who is also the cutter, or the foreman in a garment factory who operates a multiple-needle machine not requiring a full-time operator; (2) foremen or supervisors who have as a regular part of their duties the adjustment, repair, or maintenance of machinery or equipment. Examples in this category are the foreman-fixer in the hosiery industry who devotes a considerable amount of time to making adjustments and repairs to the machines of his subordinates, or the planer-mill foreman who is also the "machine man" who repairs the machines and grinds the knives; (3) foremen or supervisors who perform clerical work other than the maintenance of the time and production records of their subordinates; for example, the foreman of the shipping room who makes out the bills of lading and other shipping records, the warehouse foreman who also acts as inventory clerk, the head shipper who also has charge of a finished goods stock room, assisting in placing goods on shelves and keeping perpetual inventory records, or the office manager, head bookkeeper, or chief clerk who performs routine bookkeeping. There is no doubt that the head bookkeeper, for example, who spends a substantial amount of his time keeping books of the same general nature as those kept by the other bookkeepers, even though his books are confidential in nature or cover different transactions from the books maintained by the under bookkeepers, is not primarily an executive employee and should not be so considered.

§ 541.116 Trainees, executive.

The exemption is applicable to an employee employed in a bona fide executive capacity and does not include employees training to become executives and not actually performing the duties of an executive.

§ 541.117 Amount of salary required.

(a) Compensation on a salary basis at a rate of not less than \$100 per week is

required for exemption as an executive.⁵ The \$100 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the employee is compensated biweekly on a salary basis of \$200, semi-monthly on a salary basis of \$216.67 or monthly on a salary basis of \$433.33. (In the case of an employee of a retail or service establishment, the salary rate, until September 3, 1965, is \$80 per week on a salary basis. This requirement will be met if the employee is compensated on a salary basis of \$160 biweekly, \$173.33 semimonthly, or \$346.67 monthly.) However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

(b) In Puerto Rico, the Virgin Islands and American Samoa, the salary test for exemption as an "executive" is \$75 per week (\$55 per week, until September 3, 1965, in the case of an employee of a retail or service establishment).

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in Subpart A of this part do not prohibit the sale of such facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.118 Salary basis.

(a) An employee will be considered to be paid "on a salary basis" within the meaning of the regulations if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any workweek in which he performs no work.

(1) An employee will not be considered to be "on a salary basis" if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(2) Deductions may be made, however, when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, his salaried status will not be affected if

deductions are made from his salary for such absences.

(3) Deductions may also be made for absences of a day or more occasioned by sickness or disability (including industrial accidents), if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under such plan, policy or practice, and after he has exhausted his leave allowance thereunder. It is not required that the employee be paid any portion of his salary for such day or days for which he receives compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a State sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of an industrial accident, the "salary basis" requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.

(4) Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(5) Penalties imposed in good faith for infractions of safety rules of major significance will not affect the employee's salaried status. Safety rules of major significance include only those relating to the prevention of serious danger to the plant or other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

(6) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In such a case the exemption would not be applicable to him during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.

(b) *Minimum guarantee plus extras.* It should be noted that the salary may consist of a predetermined amount con-

stituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of \$100 or more per week (\$80 per week, until September 3, 1965, in the case of an employee of a retail or service establishment) and, in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of his branch if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that he will receive not less than the amount specified in the regulations in any week in which he performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis". For example, a salary of \$145 a week may not arbitrarily be divided into a guaranteed minimum of \$100 paid in each week in which any work is performed, and an additional \$45 which is made subject to deductions which are not permitted under paragraph (a) of this section.

(c) *Initial and terminal weeks.* Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary basis within the meaning of the regulations if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed. Moreover, even payment of the full weekly salary under such circumstances would not meet the requirement, since casual or occasional employment for a few days at a time is inconsistent with employment on a salary basis within the meaning of the regulations.

§ 541.119 Special proviso for high salaried executives.

(a) Section 541.1 contains a special proviso for managerial employees who are compensated on a salary basis at a rate of not less than \$150 per week (\$125 per week, until September 3, 1965, in the case of an employee of a retail or service establishment) exclusive of board, lodging or other facilities. Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of § 541.1 if his primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof and includes the customary

⁵ The validity of including a salary requirement in the regulations in Subpart A of this part has been sustained in a number of appellate court decisions. See, for example, *Walling v. Yeakley*, 140 F. (2d) 830 (CCA 10); *Helliwell v. Haberman*, 140 F. (2d) 833 (CCA 2); and *Walling v. Morris*, 155 F. (2d) 832 (CCA 6) (reversed on another point in 332 U.S. 442).

and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under paragraphs (a) through (f) of § 541.1.*

(b) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

EMPLOYEE EMPLOYED IN A BONA FIDE ADMINISTRATIVE CAPACITY

§ 541.200 Definition of "Administrative".

Section 541.2 defines the term "bona fide * * * administrative" as follows: The term "employee employed in a bona fide * * * administrative * * * capacity" in section 13(a) (1) of the act shall mean any employee:

(a) Whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers; and

(b) Who customarily and regularly exercises discretion and independent judgment;

(c) (1) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations in this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary or fee basis at a rate of not less than \$100 per week (or \$75 per week if employed in Puerto Rico, the Virgin Islands or American Samoa) exclusive of board, lodging, or other facilities:

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary or fee basis at a rate of not less than \$150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

* This special proviso is applicable to all employees covered by the act, including those in Puerto Rico, the Virgin Islands and American Samoa.

§ 541.201 Types of administrative employees.

(a) Three types of employees are described in § 541.2(c) who, if they meet the other tests in § 541.2, qualify for exemption as "administrative" employees.

(1) *Executive and administrative assistants.* The first type is the assistant to a proprietor or to an executive or administrative employee. In modern industrial practice there has been a steady and increasing use of persons who assist an executive in the performance of his duties without themselves having executive authority. Typical titles of persons in this group are executive assistant to the president, confidential assistant, executive secretary, assistant to the general manager, administrative assistant and, in retail or service establishments, assistant manager and assistant buyer. Generally speaking, such assistants are found in large establishments where the official assisted has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence, and interviews must be delegated.

(2) *Staff employees.* (i) Employees included in the second alternative in the definition are those who can be described as staff rather than line employees, or as functional rather than departmental heads. They include among others employees who act as advisory specialists to the management. Typical examples of such advisory specialists are tax experts, insurance experts, sales research experts, wage-rate analysts, investment consultants, foreign exchange consultants, and statisticians.

(ii) Also included are persons who are in charge of a so-called functional department, which may frequently be a one-man department. Typical examples of such employees are credit managers, purchasing agents, buyers, safety directors, personnel directors, and labor relations directors.

(3) *Those who perform special assignments.* (i) The third group consists of persons who perform special assignments. Among them are to be found a number of persons whose work is performed away from the employer's place of business. Typical titles of such persons are lease buyers, field representatives of utility companies, location managers of motion picture companies, and district gaugers for oil companies. It should be particularly noted that this is a field which is rife with honorific titles that do not adequately portray the nature of the employee's duties. The field representative of a utility company, for example, may be a "glorified serviceman".

(ii) This classification also includes employees whose special assignments are performed entirely or partly inside their employer's place of business. Examples are special organization planners, customers' brokers in stock exchange firms, so-called account executives in advertising firms and contact or promotion men of various types.

(b) *Job titles insufficient as yardsticks.* (1) The employees for whom exemption is sought under the term "administrative" have extremely diverse

functions and a wide variety of titles. A title alone is of little or no assistance in determining the true importance of an employee to the employer or his exempt or nonexempt status under the regulations in Subpart A of this part. Titles can be had cheaply and are of no determinative value. Thus, while there are supervisors of production control (whose decisions affect the welfare of large numbers of employees) who qualify for exemption under section 13(a) (1), it is not hard to call a rate setter (whose functions are limited to timing certain operations and jotting down times on a standardized form) a "methods engineer" or a "production-control supervisor".

(2) Many more examples could be cited to show that titles are insufficient as yardsticks. As has been indicated previously, the exempt or nonexempt status of any particular employee must be determined on the basis of whether his duties, responsibilities and salary meet all the requirements of the appropriate section of the regulations in Subpart A of this part.

§ 541.202 Categories of work.

(a) The work generally performed by employees who perform administrative tasks may be classified into the following general categories for purposes of the definition: (1) the work specifically described in paragraphs (a), (b), and (c) of § 541.2; (2) routine work⁸ which is directly and closely related to the performance of the work which is described in paragraphs (a), (b), and (c) of § 541.2; and (3) routine work which is not related or is only remotely related to the administrative duties.

(b) The work in category 1, that which is specifically described in § 541.2 as requiring the exercise of discretion and independent judgment, is clearly exempt in nature.

(c) Category 2 consists of work which if separated from the work in category 1, would appear to be routine, or on a fairly low level, and which does not itself require the exercise of discretion and independent judgment, but which has a direct and close relationship to the performance of the more important duties. The directness and closeness of this relationship may vary depending upon the nature of the job and the size and organization of the establishment in which the work is performed. This "directly and closely related" work includes routine work which necessarily arises out of the administrative duties, and routine work without which the employee's more important work cannot be performed properly. It also includes a variety of routine tasks which may not be essential to the proper performance of the more important duties but which are func-

⁸ This classification is without regard to whether the work is manual or nonmanual. The problem of manual work as it affects the exemption of administrative employees is discussed in § 541.203.

⁹ As used in this subpart the phrase "routine work" means work which does not require the exercise of discretion and independent judgment. It is not necessarily restricted to work which is repetitive in nature.

tionally related to them directly and closely. In this latter category are activities which an administrative employee may reasonably be expected to perform in connection with carrying out his administrative functions including duties which either facilitate or arise incidentally from the performance of such functions and are commonly performed in connection with them.

(d) These "directly and closely related" duties are distinguishable from the last group, category 3, those which are remotely related or completely unrelated to the more important tasks. The work in this last category is nonexempt and must not exceed the 20-percent limitation for nonexempt work (up to 40 percent in the case of an employee of a retail or service establishment) if the exemption is to apply.

§ 541.203 Nonmanual work.

(a) The requirement that the work performed by an exempt administrative employee must be office work or nonmanual work restricts the exemption to "white-collar" employees who meet the tests. If the work performed is "office" work it is immaterial whether it is manual or nonmanual in nature. This is consistent with the intent to include within the term "administrative" only employees who are basically white-collar employees since the accepted usage of the term "white-collar" includes all office workers. Persons employed in the routine operation of office machines are engaged in office work within the meaning of § 541.2 (although they would not qualify as administrative employees since they do not meet the other requirements of § 541.2).

(b) Section 541.2 does not completely prohibit the performance of manual work by an "administrative" employee. The performance by an otherwise exempt administrative employee of some manual work which is directly and closely related to the work requiring the exercise of discretion and independent judgment is not inconsistent with the principle that the exemption is limited to "white-collar" employees. However, if the employee performs so much manual work (other than office work) that he cannot be said to be basically a "white-collar" employee he does not qualify for exemption as a bona fide administrative employee, even if the manual work he performs, is directly and closely related to the work requiring the exercise of discretion and independent judgment. Thus, it is obvious that employees who spend most of their time in using tools, instruments, machinery, or other equipment, or in performing repetitive operations with their hands, no matter how much skill is required, would not be bona fide administrative employees within the meaning of § 541.2. An office employee, on the other hand, is a "white-collar" worker, and would not lose the exemption on the grounds that he is not primarily engaged in "nonmanual" work, although he would lose the exemption if he failed to meet any of the other requirements.

§ 541.205 Directly related to management policies or general business operations.

(a) The phrase "directly related to management policies or general business operations of his employer or his employer's customers" describes those types of activities relating to the administrative operations of a business as distinguished from "production" or, in a retail or service establishment, "sales" work. In addition to describing the types of activities, the phrase limits the exemption to persons who perform work of substantial importance to the management or operation of the business of his employer or his employer's customers.

(b) The administrative operations of the business include the work performed by so-called white-collar employees engaged in "servicing" a business as, for example, advising the management, planning, negotiating, representing the company, purchasing, promoting sales, and business research and control. An employee performing such work is engaged in activities relating to the administrative operations of the business notwithstanding that he is employed as an administrative assistant to an executive in the production department of the business.

(c) As used to describe work of substantial importance to the management or operation of the business, the phrase "directly related to management policies or general business operations" is not limited to persons who participate in the formulation of management policies or in the operation of the business as a whole. Employees whose work is "directly related" to management policies or to general business operations include those whose work affects policy or whose responsibility it is to execute or carry it out. The phrase also includes a wide variety of persons who either carry out major assignments in conducting the operations of the business, or whose work affects business operations to a substantial degree, even though their assignments or tasks relate to the operation of a particular segment of the business.

(1) It is not possible to lay down specific rules that will indicate the precise point at which work becomes of substantial importance to the management or operation of a business. It should be clear that the cashier of a bank performs work at a responsible level and may therefore be said to be performing work directly related to management policies or general business operations. On the other hand, the bank teller does not. Likewise it is clear that bookkeepers, secretaries, and clerks of various kinds hold the run-of-the-mine positions in any ordinary business and are not performing work directly related to management policies or general business operations. On the other hand, a tax consultant employed either by an individual company or by a firm of consultants is ordinarily doing work of substantial importance to the management or operation of a business.

(2) An employee performing routine clerical duties obviously is not perform-

ing work of substantial importance to the management or operation of the business even though he may exercise some measure of discretion and judgment as to the manner in which he performs his clerical tasks. A messenger boy who is entrusted with carrying large sums of money or securities cannot be said to be doing work of importance to the business even though serious consequences may flow from his neglect. An employee operating very expensive equipment may cause serious loss to his employer by the improper performance of his duties. An inspector, such as, for example, an inspector for an insurance company, may cause loss to his employer by the failure to perform his job properly. But such employees, obviously, are not performing work of such substantial importance to the management or operation of the business that it can be said to be "directly related to management policies or general business operations" as that phrase is used in § 541.2.

(3) Some firms employ persons whom they describe as "statisticians". If all such a person does, in effect, is to tabulate data, he is clearly not exempt. However, if such an employee makes analyses of data and draws conclusions which are important to the determination of, or which, in fact, determine financial, merchandising, or other policy, clearly he is doing work directly related to management policies or general business operations. Similarly, a personnel employee may be a clerk at a hiring window of a plant, or he may be a man who determines or affects personnel policies affecting all the workers in the establishment. In the latter case, he is clearly doing work directly related to management policies or general business operations. These examples illustrate the two extremes. In each case, between these extreme types there are many employees whose work may be of substantial importance to the management or operation of the business, depending upon the particular facts.

(4) Another example of an employee whose work may be important to the welfare of the business is a buyer of a particular article or equipment in an industrial plant or personnel commonly called assistant buyers in retail or service establishments. Where such work is of substantial importance to the management or operation of the business, even though it may be limited to purchasing for a particular department of the business, it is directly related to management policies or general business operations.

(5) The test of "directly related to management policies or general business operations" is also met by many persons employed as advisory specialists and consultants of various kinds, credit managers, safety directors, claim agents and adjusters, wage-rate analysts, tax experts, account executives of advertising agencies, customers' brokers in stock exchange firms, promotion men, and many others.

(6) It should be noted in this connection that an employer's volume of activ-

ities may make it necessary to employ a number of employees in some of these categories. The fact that there are a number of other employees of the same employer carrying out assignments of the same relative importance or performing identical work does not affect the determination of whether they meet this test so long as the work of each such employee is of substantial importance to the management or operation of the business.

(d) Under § 541.2 the "management policies or general business operations" may be those of the employer or the employer's customers. For example, many bona fide administrative employees perform important functions as advisors and consultants but are employed by a concern engaged in furnishing such services for a fee. Typical instances are tax experts, labor relations consultants, financial consultants, or resident buyers. Such employees, if they meet the other requirements of § 541.2, qualify for exemption regardless of whether the management policies or general business operations to which their work is directly related are those of their employer's clients or customers, or those of their employer.

§ 541.206 Primary duty.

(a) The definition of "administrative" exempts only employees who are primarily engaged in the responsible work which is characteristic of employment in a bona fide administrative capacity. Thus, the employee must have as his primary duty office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers. The words "primary duty" have the effect of placing major emphasis on the character of the employee's job as a whole.

(b) In determining whether an employee's exempt work meets the "primary duty" requirement, the principles explained in § 541.103 in the discussion of "primary duty" under the definition of "executive" are applicable.

§ 541.207 Discretion and independent judgment.

(a) In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term as used in the regulations in Subpart A of this part, moreover, implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.⁹

(b) The term must be applied in the light of all the facts involved in the particular employment situation in which the question arises. It has been most frequently misunderstood and misapplied

by employers and employees in cases involving the following: (1) Confusion between the exercise of discretion and independent judgment, and the use of skill in applying techniques, procedures, or specific standards; and (2) misapplication of the term to employees making decisions relating to matters of little consequence.

(c) Distinguished from skills and procedures.

(1) Perhaps the most frequent cause of misapplication of the term "discretion and independent judgment" is the failure to distinguish it from the use of skill in various respects. An employee who merely applies his knowledge in following prescribed procedures or determining which procedure to follow, or who determines whether specified standards are met or whether an object falls into one or another of a number of definite grades, classes, or other categories, with or without the use of testing or measuring devices, is not exercising discretion and independent judgment within the meaning of § 541.2. This is true even if there is some leeway in reaching a conclusion, as when an acceptable standard includes a range or a tolerance above or below a specific standard.

(2) A typical example of the application of skills and procedures is ordinary inspection work of various kinds. Inspectors normally perform specialized work along standardized lines involving well established techniques and procedures which may have been catalogued and described in manuals or other sources. Such inspectors rely on techniques and skills acquired by special training or experience. They may have some leeway in the performance of their work but only within closely prescribed limits. Employees of this type may make recommendations on the basis of the information they develop in the course of their inspections (as for example to accept or reject an insurance risk or a product manufactured to specifications), but these recommendations are based on the development of the facts as to whether there is conformity with the prescribed standards. In such cases a decision to depart from the prescribed standards or the permitted tolerance is typically made by the inspector's superior. The inspector is engaged in exercising skill rather than discretion and independent judgment within the meaning of the regulations in Subpart A of this part.

(3) A related group of employees usually called examiners or graders perform similar work involving the comparison of products with established standards which are frequently catalogued. Often, after continued reference to the written standards, or through experience, the employee acquires sufficient knowledge so that reference to written standards is unnecessary. The substitution of the employee's memory for the manual of standards does not convert the character of the work performed to work requiring the exercise of discretion and independent judgment as required by the regulations in Subpart A of this part. The mere fact that the employee uses his knowledge and experi-

ence does not change his decision, i.e., that the product does or does not conform with the established standard, into a real decision in a significant matter.

(4) For example, certain "graders" of lumber turn over each "stick" to see both sides, after which a crayon mark is made to indicate the grade. These lumber grades are well established and the employee's familiarity with them stems from his experience and training. Skill rather than discretion and independent judgment is exercised in grading the lumber. This does not necessarily mean, however, that all employees who grade lumber or other commodities are not exercising discretion and independent judgment. Grading of commodities for which there are no recognized or established standards may require the exercise of discretion and independent judgment as contemplated by the regulations in Subpart A of this part. In addition, in those situations in which an otherwise exempt buyer does grading, the grading, even though routine work, may be considered exempt if it is directly and closely related to the exempt buying.

(5) Another type of situation where skill in the application of techniques and procedures is sometimes confused with discretion and independent judgment is the "screening" of applicants by a personnel clerk. Typically such an employee will interview applicants and obtain from them data regarding their qualifications and fitness for employment. These data may be entered on a form specially prepared for the purpose. The "screening" operation consists of rejecting all applicants who do not meet standards for the particular job or for employment by the company. The standards are usually set by the employee's superior or other company officials, and the decision to hire from the group of applicants who do meet the standards is similarly made by other company officials. It seems clear that such a personnel clerk does not exercise discretion and independent judgment as required by the regulations in Subpart A of this part. On the other hand an exempt personnel manager will often perform similar functions; that is, he will interview applicants to obtain the necessary data and eliminate applicants who are not qualified. The personnel manager will then hire one of the qualified applicants. Thus, when the interviewing and screening are performed by the personnel manager who does the hiring they constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(6) Similarly, comparison shopping performed by an employee of a retail store who merely reports to the buyer his findings as to the prices at which a competitor's store is offering merchandise of the same or comparable quality does not involve the exercise of discretion and judgment as required in the regulations. Discretion and judgment are exercised, however, by the buyer who evaluates the assistants' reports and on the basis of their findings directs that certain items be re-priced. When performed by the buyer who actually makes the decisions

⁹ Without actually attempting to define the term, the courts have given it this meaning in applying it in particular cases. See for example, *Walling v. Sterling Ice Co.*, 69 F. Supp. 665, reversed on other grounds, 165 F. (2d) 265 (CCA 10). See also *Connell v. Delaware Aircraft Industries*, 55 Atl. (2d) 637.

which effect the buying or pricing policies of the department he manages, the comparison shopping, although in itself a comparatively routine operation, is directly and closely related to his managerial responsibility.

(d) Decisions in significant matters:

(1) The second type of situation in which some difficulty with this phrase has been experienced relates to the level or importance of the matters with respect to which the employee may make decisions. In one sense almost every employee is required to use some discretion and independent judgment. Thus, it is frequently left to a truck driver to decide which route to follow in going from one place to another; the shipping clerk is normally permitted to decide the method of packing and the mode of shipment of small orders; and the bookkeeper may usually decide whether he will post first to one ledger rather than another. Yet it is obvious that these decisions do not constitute the exercise of discretion and independent judgment at the level contemplated by the regulations in Subpart A of this part. The Divisions have consistently taken the position that decisions of this nature concerning relatively unimportant matters are not those intended by the regulations in Subpart A of this part, but that the discretion and independent judgment exercised must be real and substantial, that is, they must be exercised with respect to matters of consequence. This interpretation has also been followed by courts in decision involving the application of the regulations in this part, to particular cases.

(2) It is not possible to state a general rule which will distinguish in each of the many thousands of possible factual situations between the making of real decisions in significant matters and the making of choices involving matters of little or no consequence. It should be clear, however, that the term "discretion and independent judgment," within the meaning of the regulations in Subpart A of this part, does not apply to the kinds of decisions normally made by clerical and similar types of employees. The term does apply to the kinds of decisions normally made by persons who formulate or participate in the formulation of policy within their spheres of responsibility or who exercise authority within a wide range to commit their employer in substantial respects financially or otherwise. The regulations in Subpart A of this part, however, do not require the exercise of discretion and independent judgment at so high a level. The regulations in Subpart A of this part also contemplate the kind of discretion and independent judgment exercised by an administrative assistant to an executive, who without specific instructions or prescribed procedures, arranges interviews and meetings, and handles callers and meetings himself where the executive's personal attention is not required. It includes the kind of discretion and independent judgment exercised by a customer's man in a brokerage house in deciding what recommendations to make to a customer for the purchase of securities. It may in-

clude the kind of discretion and judgment exercised by buyers, certain wholesale salesmen, representatives, and other contact persons who are given reasonable latitude in carrying on negotiations on behalf of their employers.

(e) Final decisions not necessary:

(1) The term "discretion and independent judgment" as used in the regulations in Subpart A of this part does not necessarily imply that the decisions made by the employee must have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment within the meaning of the regulations in Subpart A of this part. For example, the assistant to the president of a large corporation may regularly reply to correspondence addressed to the president. Typically, such an assistant will submit the more important replies to the president for review before they are sent out. Upon occasion, after review, the president may alter or discard the prepared reply and direct that another be sent instead. This action by the president would not, however, destroy the exempt character of the assistant's function, and does not mean that he does not exercise discretion and independent judgment in answering correspondence and in deciding which replies may be sent out without review by the president.

(2) The policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization, may have the plan reviewed or revised by his superiors before it is submitted to the client. The purchasing agent may be required to consult with top management officials before making a purchase commitment for raw materials in excess of the contemplated plant needs for a stated period, say 6 months. These employees exercise discretion and independent judgment within the meaning of the regulations despite the fact that their decisions or recommendations are reviewed at a higher level.

(f) Distinguished from loss through neglect: A distinction must also be made between the exercise of discretion and independent judgment with respect to matters of consequence and the cases where serious consequences may result from the negligence of an employee, the failure to follow instructions or procedures, the improper application of skills, or the choice of the wrong techniques. The operator of a very intricate piece of machinery, for example, may cause a complete stoppage of production or a breakdown of his very expensive machine merely by pressing the wrong button. A bank teller who is engaged

in receipt and disbursement of money at a teller's window and in related routine bookkeeping duties may, by crediting the wrong account with a deposit, cause his employer to suffer a large financial loss. An inspector charged with responsibility for loading oil onto a ship may, by not applying correct techniques, fail to notice the presence of foreign ingredients in the tank with resulting contamination of the cargo and serious loss to his employer. In these cases, the work of the employee does not require the exercise of discretion and independent judgment within the meaning of the regulations in Subpart A of this part.

(g) Customarily and regularly: The work of an exempt administrative employee must require the exercise of discretion and independent judgment customarily and regularly. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretion and independent judgment in the day-to-day performance of his duties. The requirement is not met by the occasional exercise of discretion and independent judgment.

§ 541.208 Directly and closely related.

(a) As indicated in § 541.202, work which is directly and closely related to the performance of the work described in § 541.2 is considered exempt work. Some illustrations may be helpful in clarifying the differences between such work and work which is unrelated or only remotely related to the work described in § 541.2.

(b) (1) For purposes of illustration, the case of a high-salaried management consultant about whose exempt status as an administrative employee there is no doubt will be assumed. The particular employee is employed by a firm of consultants and performs work in which he customarily and regularly exercises discretion and independent judgment. The work consists primarily of analyzing, and recommending changes in, the business operations of his employer's client. This work falls in the category of exempt work described in § 541.2.

(2) In the course of performing that work, the consultant makes extensive notes recording the flow of work and materials through the office and plant of the client. Standing alone or separated from the primary duty such note-making would be routine in nature. However, this is work without which the more important work cannot be performed properly. It is "directly and closely related" to the administrative work and is therefore exempt work. Upon his return to the office of his employer the consultant personally types his report and draws, first in rough and then in final form, a proposed table of organization to be submitted with it. Although all this work may not be essential to the proper performance of his more important work, it is all directly and closely related to that work and should be considered exempt. While it

is possible to assign the typing and final drafting to nonexempt employees and in fact it is frequently the practice to do so, it is not required as a condition of exemption that it be so delegated.

(3) Finally, if because this particular employee has a special skill in such work, he also drafts tables of organization proposed by other consultants, he would then be performing routine work wholly unrelated, or at best only remotely related, to his more important work. Under such conditions, the drafting is nonexempt.

(c) Another illustration is the credit manager who makes and administers the credit policy of his employer. Establishing credit limits for customers and authorizing the shipment of orders on credit, including the decisions to exceed or otherwise vary these limits in the case of particular customers, would be exempt work of the kind specifically described in § 541.2. Work which is directly and closely related to these exempt duties may include such activities as checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis and writing letters giving credit data and experience to other employers or credit agencies. On the other hand, any general office or bookkeeping work is nonexempt work. For instance, posting to the accounts receivable ledger would be only remotely related to his administrative work and must be considered nonexempt.

(d) One phase of the work of an administrative assistant to a bona fide executive or administrative employee provides another illustration. The work of determining whether to answer correspondence personally, call it to his superior's attention, or route it to someone else for reply requires the exercise of discretion and independent judgment and is exempt work of the kind described in § 541.2. Opening the mail for the purpose of reading it to make the decisions indicated will be directly and closely related to the administrative work described. However, merely opening mail and placing it unread before his superior or some other person would be related only remotely, if at all, to any work requiring the exercise of discretion and independent judgment.

(e) The following additional examples may also be of value in applying these principles. A traffic manager is employed to handle the company's transportation problems. The exempt work performed by such an employee would include planning the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise in transit and making the necessary rearrangements resulting from delays, damages, or irregularities in transit. This employee may also spend part of his time taking "city orders" (for local deliveries) over the telephone. The order-taking is a routine function not "directly and closely related" to the exempt work and must be considered nonexempt.

(f) An office manager who does not supervise two or more employees would not meet the requirements for exemption as an executive employee but may possibly qualify for exemption as an administrative employee. Such an employee may perform administrative duties, such as the execution of the employer's credit policy, the management of the company's traffic, purchasing, and other responsible office work requiring the customary and regular exercise of discretion and judgment, which are clearly exempt. On the other hand, this office manager may perform all the bookkeeping, prepare the confidential or regular payrolls, and send out monthly statements of account. These latter activities are not "directly and closely related" to the exempt functions and are not exempt.

§ 541.209 Percentage limitations on nonexempt work.

(a) Under § 541.2(d), an employee will not qualify for exemption as an administrative employee if he devotes more than 20 percent, or, in the case of an employee of a retail or service establishment if he devotes as much as 40 percent, of his hours worked in the workweek to nonexempt work; that is, to activities which are not directly and closely related to the performance of the work described in § 541.2 (a) through (c).

(b) This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

(c) The tolerance for nonexempt work allows the performance of nonexempt manual or nonmanual work within the percentages allowed for all types of non-exempt work.

§ 541.210 Trainees, administrative.

The exemption is applicable to an employee employed in a bona fide administrative capacity and does not include employees training for employment in an administrative capacity who are not actually performing the duties of an administrative employee.

§ 541.211 Amount of salary or fees required.

(a) Compensation on a salary or fee basis at a rate of not less than \$100 a week (exclusive of board, lodging, or other facilities) is required for exemption as an "administrative" employee. The requirement will be met if the employee is compensated biweekly on a salary basis of \$200, semimonthly on a salary basis of \$216.67 or monthly on a salary basis of \$433.33. (In the case of an employee of a retail or service establishment, the salary rate, until September 3, 1965, is \$80 per week on a salary basis. This requirement will be met if the employee is compensated on a salary basis of \$160 biweekly, \$173.33 semimonthly, or \$346.67 monthly.)

(b) In Puerto Rico, the Virgin Islands and American Samoa, the required compensation is \$75 per week (\$55 per week, until September 3, 1965, in the case of an employee of a retail or service establishment), exclusive of board, lodging, or other facilities, on a salary or fee basis.

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations do not prohibit the sale of such facilities to administrative employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.212 Salary basis.

The explanation of the salary basis of payment made in § 541.118 in connection with the definition of "executive" is also applicable in the definition of "administrative".

§ 541.213 Fee basis.

The requirements for exemption as an administrative employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis. For a discussion of payment on a fee basis, see § 541.313.

§ 541.214 Special proviso for high salaried administrative employees.

Section 541.2 contains a special proviso including within the definition of "administrative" an employee who is compensated on a salary or fee basis at a rate of not less than \$150 per week (\$125 per week, until September 3, 1965, in the case of an employee of a retail or service establishment) exclusive of board, lodging, or other facilities, and "whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, which includes work requiring the exercise of discretion and independent judgment * * *". Such a highly paid employee is deemed to meet all the requirements in § 541.2 (a) through (e). If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under § 541.2 (a) through (e).¹⁰

EMPLOYEE EMPLOYED IN A BONA FIDE PROFESSIONAL CAPACITY

§ 541.300 Definition of "professional".

Section 541.3 defines the term "bona fide * * * professional" as follows: The term "employee employed in a bona fide * * * professional capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of the performance of work:

(1) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(2) Original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and

¹⁰ This special proviso is applicable to all employees covered by the act, including those in Puerto Rico, the Virgin Islands and American Samoa.

training), and the result of which depends primarily on the invention, imagination, or talent of the employee; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the work-week to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who (except as provided in § 541.5b of this part) is compensated for his services on a salary or fee basis at a rate of not less than \$115 per week (or \$95 per week if employed in Puerto Rico, the Virgin Islands or American Samoa) exclusive of board, lodging, or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof:

Provided, That an employee who (except as provided in § 541.5b of this part) is compensated on a salary or fee basis at a rate of not less than \$150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of work either requiring knowledge of an advanced type in a field of science or learning, which includes work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

§ 541.301 General.

The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions which have a recognized status and which are based on the acquirement of professional knowledge through prolonged study. It also includes the artistic professions, such as acting or music. Since the test of the bona fide professional capacity of such employment is different in character from the test for persons in the learned professions, an alternative test for such employees is contained in the regulations, in addition to the requirements common to both groups.

§ 541.302 Learned professions.

(a) The "learned" professions are described in § 541.3(a) (1) as those requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual or physical processes.

(b) The first element in the requirement is that the knowledge be of an advanced type. Thus, generally speaking, it must be knowledge which cannot be attained at the high-school level.

(c) Second, it must be knowledge in a field of science or learning. This serves to distinguish the professions from the mechanical arts where in some instances the knowledge is of a fairly advanced type, but not in a field of science or learning.

(d) The requisite knowledge, in the third place, must be customarily acquired by a prolonged course of specialized intellectual instruction and study. Here it should be noted that the word "customarily" has been used to meet a specific problem occurring in many industries. As is well known, even in the classical profession of law, there are still a few practitioners who have gained their knowledge by home study and experience. Characteristically, the members of the profession are graduates of law schools, but some few of their fellow professionals whose status is equal to theirs, whose attainments are the same, and whose work is the same did not enjoy that opportunity. Such persons are not barred from the exemption. The word "customarily" implies that in the vast majority of cases the specific academic training is a prerequisite for entrance into the profession. It makes the exemption available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry, etc., but it does not include the members of such quasiprofessions as journalism in which the bulk of the employees have acquired their skill by experience rather than by any formal specialized training. It should be noted also that many employees in these quasiprofessions may qualify for exemption under other sections of the regulations in Subpart A of this part or under the alternative paragraph of the "professional" definition applicable to the artistic fields.

(e) No need appears to translate the word "prolonged" into arithmetical terms. Generally speaking, the professions which meet this requirement will include law, medicine, accountancy, actuarial computation, engineering, architecture, various types of physical, chemical and biological sciences, teaching, and so forth. The typical symbol of the professional training and the best prima facie evidence of its possession is, of course, the appropriate academic degree, and in these professions an advanced academic degree is a standard (if not absolutely universal) prerequisite.

(f) Many accountants are exempt as professional employees¹¹ (regardless of whether they are employed by public accounting firms or by other types of enterprises). However, exemption of accountants, as in the case of other occupational groups (see § 541.308), must be determined on the basis of the individual employee's duties and the other criteria in the regulations. It has been the Divisions' experience that certified

public accountants who meet the salary requirement of the regulations will, except in unusual cases, meet the requirements of the professional exemption since they meet the tests contained in § 541.3. Similarly, accountants who are not certified public accountants may also be exempt as professional employees if they actually perform work which requires the consistent exercise of discretion and judgment and otherwise meet the tests prescribed in the definition of "professional" employee. Accounting clerks, junior accountants, and other accountants, on the other hand, normally perform a great deal of routine work which is not an essential part of and necessarily incident to any professional work which they may do. Where these facts are found such accountants are not exempt. The title "Junior Accountant," however, is not determinative of failure to qualify for exemption any more than the title "Senior Accountant" would necessarily imply that the employee is exempt.

§ 541.303 Artistic professions.

(a) The requirements concerning the character of the artistic type of professional work are contained in § 541.3(a) (2). Work of this type is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee.

(b) The work must be "in a recognized field of artistic endeavor." This includes such fields as music, writing, the theater, and the plastic and graphic arts.

(c) (1) The work must be original and creative in character, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training. In the field of music there should be little difficulty in ascertaining the application of this requirement. Musicians, composers, conductors, soloists, all are engaged in original and creative work within the sense of this definition. In the plastic and graphic arts the requirement is, generally speaking, met by painters who at most are given the subject matter of their painting. It is similarly met by cartoonists who are merely told the title or underlying concept of a cartoon and then must rely on their own creative powers to express the concept. It would not normally be met by a person who is employed as a copyist or as an "animator" of motion-picture cartoons, or as a retoucher of photographs since it is not believed that such work is properly described as creative in character.

(2) In the field of writing the distinction is perhaps more difficult to draw. Obviously the requirement is met by essayists or novelists or scenario writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed). The requirement would also be met, generally speaking, by persons holding the more responsible writing positions in advertising agencies.

¹¹ Some accountants may qualify for exemption as bona fide administrative employees.

(d) Another requirement is that the employee be engaged in work "the result of which depends primarily on the invention, imagination, or talent of the employee." This requirement is easily met by a person employed as an actor, or a singer, or a violinist, or a short-story writer. In the case of newspaper employees the distinction here is similar to the distinction observed above in connection with the requirement that the work be "original and creative in character." Obviously the majority of reporters do work which depends primarily on intelligence, diligence, and accuracy. It is the minority whose work depends primarily on "invention, imagination, or talent." On the other hand, this requirement will normally be met by actors, musicians, painters, and other artists.

(e)(1) The determination of the exempt or nonexempt status of radio announcers as professional employees has been relatively difficult because the radio broadcasting industry is comparatively new in the field of entertainment and because of the merging of the artistic aspects of the job with the commercial. There is considerable variation in the type of work performed by various radio announcers, ranging from predominantly routine to predominantly exempt work. The wide variation in earnings as between individual radio announcers, from the highly paid "name" announcer on a national network who is greatly in demand by sponsors to the staff announcer paid a comparatively small salary in a small station, indicates not only great differences in personality, voice and manner, but also in some inherent special ability or talent which, while extremely difficult to define, is nevertheless real.

(2) The duties which many announcers are called upon to perform include: Functioning as a master of ceremonies; playing dramatic, comedy or straight parts in a program; interviewing; conducting farm, fashion, and home economics programs; covering public events, such as sports programs, in which the announcer may be required to "ad lib" and describe current changing events; and acting as narrator and commentator. Such work is generally exempt. Work such as giving station identification and time signals, announcing the names of programs, and similar routine work is nonexempt work. In the field of radio entertainment as in other fields of artistic endeavor, the status of an employee as a bona fide professional under § 541.3 is in large part dependent upon whether his duties are original and creative in character, and whether they require invention, imagination or talent. The determination of whether a particular announcer is exempt as a professional employee must be based upon his individual duties and the amount of exempt and nonexempt work performed, as well as his compensation.

(f) The field of journalism also employs many exempt as well as many nonexempt employees under the same or similar job titles. Newspaper writers and reporters are the principal categories of employment in which this is found.

(1) Newspaper writers, with possible rare exceptions in certain highly technical fields, do not meet the requirements of § 541.3(a)(1) for exemption as professional employees of the "learned" type. Exemption for newspaper writers as professional employees is normally available only under the provisions for professional employees of the "artistic" type. Newspaper writing of the exempt type must, therefore, be "predominantly original and creative in character." Only writing which is analytical, interpretative or highly individualized is considered to be creative in nature. (The writing of fiction to the extent that it may be found on a newspaper would also be considered as exempt work.) Newspaper writers commonly performing work which is original and creative within the meaning of § 541.3 are editorial writers, columnists, critics, and "top-flight" writers of analytical and interpretative articles.

(2) The reporting of news, the rewriting of stories received from various sources, or the routine editorial work of a newspaper is not predominantly original and creative in character within the meaning of § 541.3 and must be considered as nonexempt work. Thus, a reporter or news writer ordinarily collects facts about news events by investigation, interview, or personal observation and writes stories reporting these events for publication, or submits the facts to a rewrite man or other editorial employees for story preparation. Such work is nonexempt work. The leg man, the reporter covering a police beat, the reporter sent out under specific instructions to cover a murder, fire, accident ship arrival, convention, sport event, etc., are normally performing duties which are not professional in nature within the meaning of the act and § 541.3.

(3) Incidental interviewing or investigation, when it is performed as an essential part of and is necessarily incident to an employee's professional work, however, need not be counted as nonexempt work. Thus, if a dramatic critic interviews an actor and writes a story around the interview, the work of interviewing him and writing the story would not be considered as nonexempt work. However, a dramatic critic who is assigned to cover a routine news event such as a fire or a convention would be doing nonexempt work since covering the fire or the convention would not be necessary and incident to his work as a dramatic critic.

§ 541.304 Primary duty.

For an explanation of the term "primary duty" see the discussion of this term under "executive" in § 541.103, and under "administrative" in § 541.206.

§ 541.305 Discretion and judgment.

(a) Under § 541.3 a professional employee must perform work which requires the consistent exercise of discretion and judgment in its performance.

(b) A prime characteristic of professional work is the fact that the employee does apply his special knowledge or talents with discretion and judgment.

Purely mechanical or routine work is not professional.

§ 541.306 Predominantly intellectual and varied.

Section 541.3 requires that the employee be engaged in work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work. This test applies to the type of thinking which must be performed by the employee in question. While a doctor may make 20 physical examinations in the morning and perform in the course of his examinations essentially similar tests, it requires not only judgment and discretion on his part but a continual variety in his interpretation of the tests to perform satisfactory work. Likewise, although a professional chemist may make a series of similar tests, the problems presented will vary as will the deductions to be made therefrom. The work of the true professional is inherently varied even though similar outward actions may be performed.

§ 541.307 Essential part of and necessarily incident to.

(a) Section 541.3(d), it will be noted, has the effect of including within the exempt work activities which are an essential part of and necessarily incident to the professional work described in § 541.3(a) through (c). This provision recognizes the fact that there are professional employees whose work necessarily involves some of the actual routine physical tasks also performed by obviously nonexempt employees. For example, a chemist performing important and original experiments frequently finds it necessary to perform himself some of the most menial tasks in connection with the operation of his experiments, even though at times these menial tasks can be conveniently or properly assigned to laboratory assistants. See also the example of incidental interviewing or investigation in § 541.303(f)(3).

(b) It should be noted that the test of whether routine work is exempt work is different in the definition of "professional" from that in the definition of "executive" and "administrative". Thus, while routine work will be exempt if it is "directly and closely related" to the performance of executive or administrative duties, work which is directly and closely related to the performance of the professional duties will not be exempt unless it is also "an essential part of and necessarily incident to" the professional work.

§ 541.308 Nonexempt work generally

(a) It has been the Divisions' experience that some employers erroneously believe that anyone employed in the field of accountancy, engineering, or other professional fields, will qualify for exemption as a professional employee by virtue of such employment. While there are many exempt employees in these fields, the exemption of any individual depends upon his duties and other qualifications.

(b) It is necessary to emphasize the fact that section 13(a)(1) exempts "any

employee employed in a bona fide * * * professional capacity". It does not exempt all employees of professional employers, or all employees in industries having large numbers of professional members, or all employees in any particular occupation. Nor does it exempt, as such, those learning a profession. Moreover, it does not exempt persons with professional training, who are working in professional fields, but performing subprofessional or routine work. For example, in the field of library science there are large numbers of employees who are trained librarians but who, nevertheless, do not perform professional work or receive salaries commensurate with recognized professional status. The field of "engineering" has many persons with "engineer" titles, who are not professional engineers, as well as many who are trained in the engineering profession, but are actually working as trainees, junior engineers, or draftsmen.

§ 541.309 20-percent nonexempt work limitation.

Time spent in nonexempt work, that is, work which is not an essential part of and necessarily incident to the exempt work, is limited to 20 percent of the time worked by the employee in the work-week.

§ 541.310 Trainees, professional.

The exemption applies to an employee employed in a bona fide professional capacity and does not include trainees who are not actually performing the duties of a professional employee.

§ 541.311 Amount of salary or fees required.

(a) Compensation on a salary or fee basis at a rate of not less than \$115 per week (exclusive of board, lodging, or other facilities) is required for exemption as a "professional" employee. An employee will meet the requirement if he is paid a biweekly salary of \$230, a semimonthly salary of \$249.17, or a monthly salary of \$498.33. (In the case of an employee of a retail or service establishment, the rate, until September 3, 1965, is \$95 per week. This requirement will be met if the employee is compensated on a salary basis of \$190 biweekly, \$205.83 semimonthly, or \$411.67 monthly.)

(b) In Puerto Rico, the Virgin Islands and American Samoa, the required salary is \$95 per week (\$75 per week, until September 3, 1965, in the case of an employee of a retail or service establishment) exclusive of board, lodging or other facilities, on a salary or fee basis.

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in Subpart A of this part do not prohibit the sale of such facilities to professional employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.312 Salary basis.

The salary basis of payment is explained in § 541.118 in connection with the definition of "executive".

§ 541.313 Fee-basis.

(a) The requirements for exemption as a professional (or administrative) employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis.

(b) Little or no difficulty arises in determining whether a particular employment arrangement involves payment on a fee basis. Such arrangements are characterized by the payment of an agreed sum for a single job regardless of the time required for its completion. These payments in a sense resemble piecework payments with the important distinction that generally speaking a fee payment is made for the kind of job which is unique rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis. The type of payment contemplated in the regulations in Subpart A of this part is thus readily recognized.

(c) The adequacy of a fee payment—whether it amounts to payment at a rate of not less than \$115 per week—can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate specified in the regulations in Subpart A of this part the amount paid to the employee will be tested by reference to a standard work-week of 40 hours. Thus, compliance will be tested in each case of a fee payment by determining whether the payment made is at a rate which would amount to at least \$115 if 40 hours were worked.

(d) The following examples will illustrate the principle stated above:

(1) A singer receives \$25 for a song on a 15-minute program (no rehearsal time is involved). Obviously the requirement will be met since the employee would earn \$115 at this rate of pay in far less than 40 hours.

(2) An artist is paid \$60 for a picture. Upon completion of the assignment, it is determined that the artist worked 20 hours. Since earnings at this rate would yield the artist \$120 if 40 hours were worked, the requirement is met.

(3) An illustrator is assigned the illustration of a pamphlet at a fee of \$120. When the job is completed, it is determined that the employee worked 60 hours. If he worked 40 hours at this rate, the employee would have earned only \$80. The fee payment of \$120 for work which required 60 hours to complete therefore does not meet the requirement of payment at a rate of \$115 per week and the employee must be considered nonexempt. It follows that if in the performance of this assignment the illustrator worked in excess of 40 hours in any week, overtime rates must be paid. Whether or not he worked in excess of 40 hours in any week, records for such an employee would have to be kept in accordance with the regulations covering records for nonexempt employees (Part 516 of this chapter).

§ 541.314 Exception for physicians and lawyers.

A holder of a valid license or certificate permitting the practice of law or medicine or any of their branches, who is actually engaged in practicing the profession, is excepted from the salary or fee requirement. This exception applies only to the traditional professions of law and medicine and not to employees in related professions which merely service the professions of law or medicine. For example, in the case of medicine, the exception applies to physicians and other practitioners in the field of medical science and healing, such as dentists, or any of the medical specialties, but it does not include pharmacists, nurses, or other professions which service the medical profession.

§ 541.315 Special proviso for high salaried professional employees.

The definition of "professional" contains a special proviso for employees who are compensated on a salary or fee basis (exclusive of board, lodging, or other facilities) at a rate of at least \$150 per week (\$125 per week, until September 3, 1965, in the case of an employee of a retail or service establishment). Under this proviso, the requirements for exemption in § 541.3 (a) through (e) will be deemed to be met by an employee who receives the higher salary or fees and "whose primary duty consists of the performance of work either requiring knowledge of an advanced type in a field of science or learning, which includes work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor". Thus, the exemption will apply to highly paid employees employed either in one of the "learned" professions or in an "artistic" profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under § 541.3 (a) through (e)."

EMPLOYEE EMPLOYED IN THE CAPACITY OF OUTSIDE SALESMAN

§ 541.500 Definition of "outside salesman".

Section 541.5 defines the term "outside salesman" as follows:

The term "employee employed * * * in the capacity of outside salesman" in section 13(a)(1) of the act shall mean any employee:

(a) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(1) Making sales within the meaning of section 3(k) of the act; or

(2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraph

¹² This special proviso is applicable to all employees covered by the act, including those in Puerto Rico, the Virgin Islands and American Samoa.

(a) (1) or (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer: *Provided*, That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

§ 541.501 Making sales or obtaining orders.

(a) Section 541.5 requires that the employee be engaged in (1) making sales within the meaning of section 3(k) of the act or (2) obtaining orders or contracts for services or for the use of facilities.

(b) Generally speaking, the Divisions have interpreted section 3(k) of the act to include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Thus sales of automobiles, coffee, shoes, cigars, stocks, bonds, and insurance are construed as sales within the meaning of section 3(k).

(c) It will be noted that the exempt work includes not only the sales of commodities, but also "obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer". "Obtaining orders or contracts * * * for the use of facilities" includes the selling of time on the radio, the solicitation of advertising for newspapers and other periodicals and the solicitation of freight for railroads and other transportation agencies.

(d) The word "services" extends the exemption as outside salesmen to employees who sell or take orders for a service, which is performed for the customer by someone other than the person taking the order. For example, it includes the salesman of a typewriter repair service who does not himself do the repairing. It also includes otherwise exempt outside salesmen who obtain orders for the laundering of the customer's own linens as well as those who obtain orders for the rental of the laundry's linens.

(e) The inclusion of the word "services" is not intended to exempt persons who, in a very loose sense, are sometimes described as selling "services". For example, it does not include persons such as service men even though they may sell the service which they themselves perform. Selling the service in such cases would be incidental to the servicing rather than the reverse. Nor does it include outside buyers, who in a very loose sense are sometimes described as selling their employer's "service" to the person from whom they obtain their goods. It is obvious that the relationship here is the reverse of that of salesman-customer.

§ 541.502 Away from his employer's place of business.

(a) Section 541.5 requires that an outside salesman be customarily and regularly engaged "away from his employer's place or places of business". This requirement is based on the obvious connotation of the word "outside" in the term "outside salesman". It would ob-

viously lie beyond the scope of the Administrator's authority that "outside salesman" should be construed to include inside salesmen. Inside sales and other inside work (except such as is directly in conjunction with and incidental to outside sales and solicitations, as explained in paragraph (b) of this section) is nonexempt.

(b) Characteristically the outside salesman is one who makes his sales at his customer's place of business. This is the reverse of sales made by mail or telephone (except where the telephone is used merely as an adjunct to personal calls). Thus any fixed site, whether home or office, used by a salesman as a headquarters or for telephonic solicitation of sales must be construed as one of his employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. It should not be inferred from the foregoing that an outside salesman loses his exemption by displaying his samples in hotel sample rooms as he travels from city to city; these sample rooms should not be considered as his employer's places of business.

§ 541.503 Incidental to and in conjunction with sales work.

Work performed "incidental to and in conjunction with the employee's own outside sales or solicitations" includes not only incidental deliveries and collections which are specifically mentioned in § 541.5(b), but also any other work performed by the employee in furthering his own sales efforts. Work performed incidental to and in conjunction with the employee's own outside sales or solicitations would include, among other things, the writing of his sales reports, the revision of his own catalogue, the planning of his itinerary and attendance at sales conferences.

§ 541.504 Promotion work.

(a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt work, depending upon the circumstances under which it is performed. Promotion men are not exempt as "outside salesmen".¹³ However, any promotional work which is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is clearly exempt work. On the other hand, promotional work which is incidental to sales made, or to be made, by someone else cannot be considered as exempt work. Many persons are engaged in certain combinations of sales and promotional work or in certain types of promotional work having some of the characteristics of sales work while lacking others. The types of work involved include activities in borderline areas in which it is difficult to determine whether the work is sales or promotional. Where the work is promotional in nature it is sometimes difficult to determine whether

it is incidental to the employee's own sales work.

(b) (1) Typically, the problems presented involve distribution through jobbers (who employ their own salesmen) or through central warehouses of chain-store organizations or cooperative retail buying associations. A manufacturer's representative in such cases visits the retailer, either alone or accompanied by the jobber's salesman. In some instances the manufacturer's representative may sell directly to the retailer; in others, he may urge the retailer to buy from the jobber.

(2) This manufacturer's representative may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such persons can be considered salesmen only if they are actually employed for the purpose of and are engaged in making sales or obtaining orders or contracts. To the extent that they are engaged in promotional activities designed to stimulate sales which will be made by someone else the work must be considered nonexempt. With such variations in the methods of selling and promoting sales each case must be decided upon its facts. In borderline cases the test is whether the person is actually engaged in activities directed toward the consummation of his own sales, at least to the extent of obtaining a commitment to buy from the person to whom he is selling. If his efforts are directed toward stimulating the sales of his company generally rather than the consummation of his own specific sales his activities are not exempt. Incidental promotional activities may be tested by whether they are "performed incidental to and in conjunction with the employee's own outside sales or solicitations" or whether they are incidental to sales which will be made by someone else.

(c) (1) A few illustrations of typical situations will be of assistance in determining whether a particular type of work is exempt or nonexempt under § 541.5. One situation involves a manufacturer's representative who visits the retailer for the purpose of obtaining orders for his employer's product, but transmits any orders he obtains to the local jobber to be filled. In such a case the employee is performing sales work regardless of the fact that the order is filled by the jobber rather than directly by his own employer. The sale in this instance has been "consummated" in the sense that the salesman has obtained a commitment from the customer.

(2) Another typical situation involves facts similar to those described in the preceding illustration with the difference that the jobber's salesman accompanies the representative of the company whose product is being sold. The order in this instance is taken by the jobber's salesman after the manufacturer's representative has done the preliminary work which may include arranging the stock, putting up a display or poster, and talking to the retailer for the purpose of getting him to place the order for the

¹³ This discussion relates solely to the exemption under § 541.5, dealing with outside salesmen. Promotion men who receive the required salary and otherwise qualify, may be exempt as administrative employees.

product with the jobber's salesman. In this instance the sale is consummated by the jobber's salesman. The work performed by the manufacturer's representative is not incidental to sales made by himself and is not exempt work. Moreover, even if in a particular instance the sale is consummated by the manufacturer's representative it is necessary to examine the nature of the work performed by the representative to determine whether his promotional activities are directed toward paving the way for his own present and future sales, or whether they are intended to stimulate the present and future sales of the jobber's salesman. If his work is related to his own sales it would be considered exempt work, while if it is directed toward stimulating sales by the jobber's representative it must be considered non-exempt work.

(3) Another type of situation involves representatives employed by utility companies engaged in furnishing gas or electricity to consumers. In a sense these representatives are employed for the purpose of "selling" the consumer an increased volume of the product of the utility. This "selling" is accomplished indirectly by persuading the consumer to purchase appliances which will result in a greater use of gas or electricity. Different methods are used by various companies. In some instances the utility representative after persuading the consumer to install a particular appliance may actually take the order for the appliance which is delivered from stock by his employer, or he may forward the order to an appliance dealer who then delivers it. In such cases the sales activity would be exempt, since it is directed at the consummation of a specific sale by the utility representative, the employer actually making the delivery in the one case, while in the other the sale is consummated in the sense that the representative obtains an order or commitment from the customer. In another type of situation the utility representative persuades the consumer to buy the appliance and he may even accompany the consumer to an appliance store where the retailer shows the appliance and takes the order. In such instances the utility representative is not an outside salesman since he does not consummate the sale or direct his efforts toward making the sale himself. Similarly, the utility representative is not exempt as an outside salesman if he merely persuades the consumer to purchase an appliance and the consumer then goes to an appliance dealer and places his order.

(4) Still another type of situation involves the company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, consults with the manager as to the requirements of the store, fills out a requisition for the quantity wanted and leaves it with the store manager to be transmitted to the central warehouse of the chain-store company which later ships the quantity requested. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in

conjunction with the employee's own outside sales. Since the manufacturer's representative in this instance does not consummate the sale nor direct his efforts toward the consummation of a sale (the store manager often has no authority to buy) this work must be counted as nonexempt.

§ 541.505 Driver salesmen.

(a) A large group of employees known generally as "route salesmen", "distributor salesmen", or "driver salesmen" are commonly employed by distributors of carbonated beverages and beer, cigars, and numerous dairy and other food products. Typically, the driver salesman carries an assortment of the articles he sells and calls on the same customers at frequent and regular intervals. He confers with the customers, replenishes the customer's stock of goods and if he is introducing new varieties or new lines, endeavors to persuade the customer to buy the new products. He removes the empty bottles, cases, and other containers if these are to be returned to his employer and delivers the articles sold to the customer. The exemption is not defeated by the fact that the employee combines deliveries, collections, and other incidental work with his sales activities. It is clear that such an employee is employed for the purpose of making sales.

(b) On the other hand, an employee who is basically a truck driver and only incidentally or occasionally a salesman does not qualify for the exemption. Some employees occasionally described as outside salesmen, merely deliver orders in an amount exactly or approximately prearranged by customer or contractual arrangement and frequently make collections for the goods they deliver. Such employees are clearly not salesmen. Moreover, driving a truck or making collections is not exempt work when the truck is being used to deliver goods sold by someone else or when the collections are for sales made by another employee.

(c) In borderline cases, a determination of whether a driver salesman is employed for the purpose of making sales or is primarily a truck driver and only incidentally or occasionally a salesman, can be made in the light of facts that will illustrate the actual nature of the employee's work. Among factors to be considered are: the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; method of payment; proportion of earnings directly attributable to sales effort; description of occupation in union contracts; comparison of duties of employees in question and of other employees engaged as (1) truck drivers and (2) salesmen; possession of a salesman's or solicitor's license when such license is required by law or ordinance; and presence or absence of customary or contractual prearrangements concerning amount to be delivered.

§ 541.506 Nonexempt work generally.

Nonexempt work is that work which is not sales work and is not performed incidental to and in conjunction with the outside sales activities of the employee. It includes outside activities

like meter-reading, which are not part of the sales process. Inside sales and all work incidental thereto are also non-exempt work. So is clerical warehouse work which is not related to the employee's own sales. Similarly, the training of other salesmen is not exempt as outside sales work, with one exception. In some concerns it is the custom for the salesman to be accompanied by the trainee while actually making sales. Under such circumstances it appears that normally the trainer-salesman and the trainee make the various sales jointly, and both normally receive a commission thereon. In such instances, since both are engaged in making sales, the work of both is considered exempt work. However, the work of a helper who merely assists the salesman in transporting goods or samples and who is not directly concerned with effectuating the sale is nonexempt work.

§ 541.507 20-percent limitation on non-exempt work.

Nonexempt work in the definition of "outside salesman" is limited to "20 percent of the hours worked in the workweek by nonexempt employees of the employer". The 20 percent is computed on the basis of the hours worked by non-exempt employees of the employer who perform the kind of nonexempt work performed by the outside salesman. If there are no employees of the employer performing such nonexempt work, the base to be taken is 40 hours a week, and the amount of nonexempt work allowed will be 8 hours a week.

§ 541.508 Trainees, outside salesmen.

The exemption is applicable to an employee employed in the capacity of outside salesman and does not include employees training to become outside salesmen who are not actually performing the duties of an outside salesman (see also § 541.506).

SPECIAL PROBLEMS

§ 541.600 Combination exemptions.

(a) The Divisions' position under the regulations in Subpart A of this part permits the "tacking" of exempt work under one section of the regulations in Subpart A to exempt work under another, so that a person who, for example, performs a combination of executive and professional work may qualify for exemption. In combination exemptions, however, the employee must meet the stricter of the requirements on salary and nonexempt work. For instance, if the employee performs a combination of an executive's and an outside salesman's functions (regardless of which occupies most of his time) he must meet the salary requirement for executives (\$100 a week). Also, the total hours of nonexempt work under the definition of "executive" together with the hours of work which would not be exempt if he were clearly an outside salesman, must not exceed either 20 percent of his own time or 20 percent of the "hours worked in the workweek by the nonexempt employees of the employer", whichever is the smaller amount.

(b) Under the principles in paragraph (a) of this section combinations of ex-

emptions under the other sections of the regulations in Subpart A of this part are also permissible. In short, under the regulations in Subpart A, work which is "exempt" under one section of the regulations in Subpart A will not defeat the exemption under any other section.

§ 541.601 Special provision for motion picture producing industry.

Under § 541.5a, the requirement that the employee be paid "on a salary basis" does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$200 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under §§ 541.1, 541.2, or 541.3 and who is employed at a base rate of at least \$200 a week is exempt if he is paid at least pro rata (based on a week of not more than 6 days) for any week when he does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if he is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and his daily base rate would yield at least \$200 if 6 days were worked; or (b) the employee is in a job category having a

weekly base rate of at least \$200 and his daily base rate is at least one-sixth of such weekly base rate.

§ 541.602 Special proviso concerning executive and administrative employees in multi-store retailing operations.

(a) The tolerance of up to 40 percent of the employee's time which is allowed for nonexempt work performed by an executive or administrative employee of a retail or service establishment does not apply to employees of a multi-unit retailing operation, such as a chain-store system or a retail establishment having one or more branch stores, who perform central functions for the organization in physically separated establishments such as warehouses, central office buildings, or other central service units or by traveling from store to store. Nor does this special tolerance apply to employees who perform central office, warehousing, or service functions in a multi-unit retailing operation by reason of the fact that the space provided for such work is located in a portion or portions of the building in which the main retail or service establishment or another retail outlet of the organization is also situated. Such employees are subject to the 20-percent limitation on nonexempt work.

(b) With respect to executive or administrative employees stationed in the main store of a multi-store retailing operation who engage in activities (other than central office functions) which relate to the operations of the main store, and also to the operations of one or more physically separate units, such as branch stores, of the same retailing operation, the Divisions will, as an enforcement policy, assert no disqualification of such an employee for the section 13(a)(1) exemption by reason of nonexempt activities if the employee devotes less than 40 percent of his time to such nonexempt activities. Under the enforcement policy also, such employees will be deemed subject to the salary test provided in § 541.5b. This enforcement policy would apply, for example, in the case of a buyer who works in the main store of a multi-store retailing operation and who not only manages the millinery department in the main store, but is also responsible for buying some or all of the merchandise sold in the millinery departments of the branch stores.

Signed this 3rd day of July 1963.

CLARENCE T. LUNDQUIST,
Administrator.

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