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TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

FEDERAL AVIATION AGENCY

Effective upon publication in the Federal Register, § 6.364 (a) is added as set out below.

§ 6.364 *Federal Aviation Agency.*
(a) One Legislative Liaison Officer.
(R. S. 1753, sec. 2, 22 Stat. 403, as amended;
5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 58-9790; Filed, Nov. 25, 1958;
8:49 a. m.]

TITLE 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter I of Title 8 of the Code of Federal Regulations is amended as indicated below. The purposes of the amendments are: (1) To effect a rearrangement of portions of the regulations now contained in Chapter I, and (2) to make desired changes in the form and language of the regulations without material change in substance. Except as to Part 6 and the first section of Part 9, which are, in effect, re-prescribed by this order as Parts 3 and 2, respectively, the substance of the parts revoked by this order is re-prescribed as portions of Chapter I by the order of the Commissioner of Immigration and Naturalization published simultaneously herewith.

1. A new Part 1 is prescribed to read as follows:

PART 1—DEFINITIONS

§ 1.1 *Definitions.* As used in this chapter:

(a) The terms defined in section 101 of the Immigration and Nationality Act

(66 Stat. 163) shall have the meanings ascribed to them in that section and as supplemented, explained, and further defined in this chapter.

(b) The term "act" means the Immigration and Nationality Act (66 Stat. 163).

(c) The term "Service" means the Immigration and Naturalization Service.

(d) The term "Commissioner" means the Commissioner of Immigration and Naturalization.

(e) The term "Board" means the Board of Immigration Appeals.

(f) The term "attorney" means any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State, territory, insular possession, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law.

(g) Unless the context otherwise requires, the term "case" means any proceeding arising under any immigration law, Executive order, or Presidential proclamation, except that for the purposes of Part 292 of this chapter, a proceeding under Part 332 of this chapter shall not be regarded as a case.

(h) The term "day" when computing the period of time for taking any action provided in this chapter, including the taking of an appeal, shall include Sundays and legal holidays, except that when the last day of the period so computed falls on a Sunday or a legal holiday, the period shall run until the end of the next day which is neither a Sunday nor a legal holiday.

(i) The term "practice" means the act or acts of an attorney or representative in appearing in any case, either in person or through the filing of a brief or other document, paper, application, or petition on behalf of a client before an officer of the Service or the Board.

(j) The term "representative" means a person representing a religious, charitable, social-service, or similar organization established in the United States and recognized as such by the Board, or a person described in § 292.1 (b), (d), or (h) of this chapter.

(Sec. 103, 66 Stat. 173; 8 U. S. C. 1103)

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FEDERAL REGISTER

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2. A new Part 2 is prescribed to read as follows:

PART 2—AUTHORITY OF THE COMMISSIONER

§ 2.1 *Authority of the Commissioner.* Without divesting the Attorney General of any of his powers, privileges, or duties under the immigration and naturalization laws, and except as to the Board, there is delegated to the Commissioner the authority of the Attorney General to direct the administration of the Service and to enforce the act and all other laws relating to the immigration and naturalization of aliens. The Commissioner may issue regulations as deemed necessary or appropriate for the exercise of any authority delegated to him by the Attorney General, and may redelegate any such authority to any other officer or employee of the Service.

(Sec. 201, 66 Stat. 173; 8 U. S. C. 1103, Reorg. Plan No. 2 of 1950, 15 F. R. 3173, 3 CFR, 1950 Supp.)

3. A new Part 3 is prescribed to read as follows:

PART 3—BOARD OF IMMIGRATION APPEALS

- Sec.
- 3.1 Board of Immigration Appeals; organization, jurisdiction, and powers.
- 3.2 Reopening or reconsideration.
- 3.3 Notice of appeal.
- 3.4 Withdrawal of appeal.
- 3.5 Forwarding of record on appeal.
- 3.6 Stay of execution of decision.
- 3.7 Notice of certification.
- 3.8 Motion to reopen or motion to reconsider.

AUTHORITY: §§ 3.1 to 3.8 issued under sec. 103, 66 Stat. 173; 8 U. S. C. 1103, sec. 2, Reorg. Plan No. 2 of 1950, 15 F. R. 3173, 3 CFR, 1950 Supp. Interpret or apply sec. 292, 66 Stat. 235; 8 U. S. C. 1362.

§ 3.1 *Board of Immigration Appeals—*
(a) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, which shall be under the supervision and direction of the Attorney General and shall be responsible solely to him. The Board shall consist of a chairman and four other members and shall have attached to it an executive assistant-chief examiner who shall have authority to act as an alternate member. It shall also have attached to it such number of attorneys and other employees as the Attorney General, upon recommendation of the Board, shall from time to time direct. In the absence of the Chairman, a member designated by him shall act as chairman.

(b) *Appellate jurisdiction.* Appeals shall lie to the Board of Immigration Appeals from the following:

(1) Decisions of special inquiry officers in exclusion cases, as provided in Part 236 of this chapter.

(2) Decisions of special inquiry officers in deportation cases, as provided in Part 242 of this chapter.

(3) Decisions on applications for the exercise of the discretionary authority contained in section 212 (c) of the act, as provided in Part 212 of this chapter.

(4) Decisions involving administrative fines and penalties, including mitigation thereof, as provided in Part 280 of this chapter.

(5) Decisions on petitions filed in accordance with section 205 of the act or decisions revoking the approval of such petitions in accordance with section 206 of the act, as provided in Parts 205 and 206, respectively, of this chapter.

(6) Decisions on applications for the exercise of the discretionary authority contained in section 212 (d) (3) of the act as provided in Part 212 of this chapter.

(7) Determinations relating to bond, parole, or detention of an alien as provided in Part 242 of this chapter.

(c) *Jurisdiction by certification.* The Commissioner, or any other duly authorized officer of the Service, or the Board may in any case arising under paragraph (b) of this section require certification of such case to the Board.

(d) *Powers of the Board—*(1) *Generally.* Subject to any specific limitation prescribed by this chapter, in considering and determining cases before it as provided in this part the Board shall exercise such discretion and authority

conferred upon the Attorney General by law as is appropriate and necessary for the disposition of the case, except that the Board shall have no authority to consider or determine the manner in which, or at whose expense, or to which country, an alien shall be deported.

(2) *Finality of decision.* The decision of the Board shall be final except in those cases reviewed by the Attorney General in accordance with paragraph (h) of this section. The Board may return a case to the Service for such further action as may be appropriate, without entering a final decision on the merits of the case.

(3) *Rules of practice; discipline of attorneys and representatives.* The Board shall have authority, with the approval of the Attorney General, to prescribe rules governing proceedings before it. It shall also determine whether any organization desiring representation is of a kind described in § 1.1 (j) of this chapter, and shall regulate the conduct of, and may disbar for cause, attorneys, representatives of organizations, and others who appear in a representative capacity before the Board or the Service.

(e) *Oral argument.* Oral argument shall be heard by the Board, upon request, in any case over which the Board acquires jurisdiction by appeal or certification as provided in this part. If an appeal has been taken, request for oral argument, if desired, shall be included in the Notice of Appeal. The Board shall have authority to fix any date or change any date upon which oral argument is to be heard. The Service may be represented in argument before the Board by an officer of the Service designated by the Commissioner. The Board shall convene for the purpose of hearing oral argument at its office in Washington, D. C., at 2:00 p. m., or such other time as it may designate on every day except Saturdays, Sundays, and legal holidays.

(f) *Service of Board decisions.* The decision of the Board shall be in writing and copies thereof shall be transmitted by the Board to the Service and a copy shall be served upon the alien or party affected as provided in Part 292 of this chapter.

(g) *Decisions of the Board as precedents.* Except as they may be modified or overruled by the Board or the Attorney General, decisions of the Board shall be binding on all officers and employees of the Service in the administration of the act, and selected decisions designated by the Board shall serve as precedents in all proceedings involving the same issue or issues.

(h) *Referral of cases to the Attorney General.* (1) The Board shall refer to the Attorney General for review of its decision all cases which:

(i) The Attorney General directs the Board to refer to him.

(ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(iii) The Commissioner requests be referred to the Attorney General for review.

(2) In any case in which the Attorney General reviews the decision of the

Board, the decision of the Attorney General shall be stated in writing and shall be transmitted to the Board for transmittal and service as provided in paragraph (f) of this section.

§ 3.2 Reopening or reconsideration. The Board may on its own motion reopen or reconsider any case in which it has rendered a decision. Reconsideration or reopening of any case in which a decision has been made by the Board, whether requested by the Commissioner or any other duly authorized officer of the Service, or by the party affected by the decision, shall be only upon written motion to the Board. A motion to reopen or a motion to reconsider shall not be made by or in behalf of a person who is the subject of deportation proceedings subsequent to his departure from the United States. Any departure from the United States of a person who is the subject of deportation proceedings occurring after the making of a motion to reopen or a motion to reconsider shall constitute a withdrawal of such motion. For the purpose of this section, any final decision made by the Commissioner prior to the effective date of the act with respect to any case within the classes of cases enumerated in § 3.1 (b) (1), (2), (3), (4), or (5) shall be regarded as a decision of the Board.

§ 3.3 Notice of appeal. (a) A party affected by a decision who is entitled under this chapter to appeal to the Board shall be given notice of his right to appeal. An appeal shall be taken by filing Notice of Appeal, Form I-290A, in triplicate, with the officer of the Service having administrative jurisdiction over the case, within the time specified in the governing sections of this chapter. The Commissioner, or any other duly authorized officer of the Service, or the Board, in his or its discretion, for good cause shown, may extend the time within which to submit a brief in support of such appeal. The certification of a case as provided in this part shall not relieve the party affected from compliance with the provisions of this section in the event that he is entitled, and desires, to appeal from an initial decision, nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal. Departure from the United States of a person under deportation proceedings prior to the taking of an appeal from a decision in his case shall constitute a waiver of his right to appeal.

(b) **Fees.** Except as otherwise provided in this section, a notice of appeal or a motion filed under this part by any person other than an officer of the Service shall be accompanied by the appropriate fee specified by, and remitted in accordance with, the provisions of § 103.7 of this chapter. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or a motion, he shall file with the notice of appeal or the motion his affidavit stating the nature of the motion or appeal, his belief that he is entitled to redress, and his inability to pay the required fee, and

shall request permission to prosecute the appeal or motion without prepayment of such fee. When such an affidavit is filed with the officer of the Service from whose decision the appeal is taken or with respect to whose decision the motion is addressed, such officer shall, if he believes that the appeal or motion is not taken or made in good faith, certify in writing his reasons for such belief for consideration by the Board. The Board may, in its discretion, authorize the prosecution of any appeal or motion without prepayment of fee.

§ 3.4 Withdrawal of appeal. In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the officer with whom the notice of appeal was filed. If the record in the case has not been forwarded to the Board on appeal in accordance with § 3.5 the decision made in the case shall be final to the same extent as though no appeal had been taken. If the record has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the Board and, if no decision in the case has been made on the appeal, the record shall be returned, and the initial decision shall be final to the same extent as though no appeal had been taken. If a decision on the appeal shall have been made by the Board in the case, further action shall be taken in accordance therewith. Departure from the United States of a person who is the subject of deportation proceedings subsequent to the taking of an appeal but prior to a decision thereon shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

§ 3.5 Forwarding of record on appeal. If an appeal is taken from a decision, as provided in this chapter, the entire record of the proceeding shall be forwarded to the Board by the officer of the Service having administrative jurisdiction over the case upon timely receipt of the brief in support of the appeal, or upon expiration of the time allowed for the submission of the brief.

§ 3.6 Stay of execution of decision. The decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification.

§ 3.7 Notice of certification. Whenever in accordance with the provisions of § 3.1 (c) a case is required to be certified to the Board, the alien or other party affected shall be given notice of certification. A case shall be certified only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is made that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be

required. If it is not known until after the initial decision is made that the case will be certified, the officer of the Service having administrative jurisdiction over the case shall cause a Notice of Certification (Form I-290C) to be served upon the party affected. In either case the notice shall inform the party affected that the case is required to be certified to the Board and that he has the right to make representation before the Board, including the making of oral argument and the submission of a brief. If the party affected desires to submit a brief, it shall be submitted to the officer of the Service having administrative jurisdiction over the case for transmittal to the Board within ten days from the date of receipt of the notice of certification, unless for good cause shown such officer or the Board extends the time within which the brief may be submitted. The case shall be certified and forwarded to the Board by the officer of the Service having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief.

§ 3.8 Motion to reopen or motion to reconsider—(a) Form. Motions to reopen and motions to reconsider shall be submitted in triplicate. A request for oral argument, if desired, shall be incorporated in the motion. The Board in its discretion may grant or deny oral argument. Motions to reopen shall state the new facts to be proved at the reopened hearing and shall be supported by affidavits or other evidentiary material. Motions to reconsider shall state the reasons upon which the motion is based and shall be supported by such precedent decisions as are pertinent. In any case in which a deportation order is in effect, there shall be included in the motion to reopen or reconsider such order a statement by or on behalf of the moving party declaring whether the subject of the deportation order is also the subject of any pending criminal proceeding under section 242 (e) of the act, and, if so, the current status of that proceeding. If the motion to reopen or reconsider is for the purpose of seeking discretionary relief, there shall be included in the motion a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution. The filing of a motion to reopen or a motion to reconsider shall not serve to stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board or the officer of the Service having administrative jurisdiction over the case.

(b) **Distribution of motion papers when alien is moving party.** In any case in which a motion to reopen or a motion to reconsider is made by the alien or other party affected, the three copies of the motion papers shall be submitted to

the officer of the Service having administrative jurisdiction over the place where the proceedings were conducted. Such officer shall retain one copy, forward one copy to the officer of the Service who made the initial decision in the case, and submit the third copy with the case to the Board.

(c) *Distribution of motion papers when the Commissioner, or any other duly authorized officer of the Service is the moving party.* Whenever a motion to reopen or a motion to reconsider is made by the Commissioner or any other duly authorized officer of the Service, he shall cause one copy of the motion to be served upon the alien or party affected, as provided in Part 292 of this chapter, and shall cause the record in the case and one copy of the motion to be filed directly with the Board, together with proof of service upon the alien or other party affected. Such alien or party shall have a period of ten days from the date of service upon him of the motion within which he may, if he so desires, submit a brief in opposition to the motion. If such a brief is submitted, two copies thereof shall be filed directly with the Board and one copy directly with the Commissioner. The Board, in its discretion, for good cause shown may extend the time within which such brief may be submitted.

(d) *Ruling on motion.* Rulings upon motions to reopen or motions to reconsider shall be by written order. If the order directs a reopening, the record shall be returned to the officer of the Service having administrative jurisdiction over the place where the reopened proceedings are to be conducted. If the motion to reconsider is granted, the decision upon such reconsideration shall affirm, modify, or reverse the original decision made in the case.

4. The following designated Parts of Chapter I are revoked: Part 1—General; Part 2—Service Records; Fees; Part 3—Immigration Bonds; Part 4—Lawful Admission for Permanent Residence; Special Classes; When Presumed; Part 5—Revocation of Certificates, Documents, or Records Issued or Made by Administrative Officers; Part 6—Board of Immigration Appeals; Appeals; Reopening and Reconsideration; Part 7—Regional Commissioners; Appeals; Part 8—Reopening and Reconsideration; Part 9—Authority of Commissioner, Regional Commissioners, and Assistant Commissioners; Part 10—Formal Applications and Petitions.

This order shall become effective on the date of its publication in the FEDERAL REGISTER. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003) as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the regulations prescribed by this order are, in effect, a re-statement of existing regulations without material change in substance, and the substance of the parts revoked by this order is to the extent not restated therein, re-prescribed as portions of Chapter I by the Commissioner

of Immigration and Naturalization in an order published simultaneously herewith.

Dated: November 18, 1958.

WILLIAM P. ROGERS,
Attorney General.

Recommended: November 14, 1958.

J. M. SWING,
Commissioner of Immigration
and Naturalization.

Recommended: November 14, 1958.

THOS. G. FINUCANE,
Chairman,
Board of Immigration Appeals.

[F. R. Doc. 58-9798; Filed, Nov. 25, 1958;
8:51 a. m.]

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following amendments to Chapter I of Title 8 of the Code of Federal Regulations are hereby prescribed:

Subchapter B—Immigration Regulations is amended by adding Parts 101 and 103 to read as follows:

PART 101—PRESUMPTION OF LAWFUL ADMISSION

§ 101.1 *Presumption of lawful admission.* A member of the following classes shall be presumed to have been lawfully admitted for permanent residence even though a record of his admission cannot be found, except as otherwise provided in this section, unless he abandoned his lawful permanent resident status or subsequently lost that status by operation of law:

(a) *Prior to June 30, 1906.* An alien who establishes that he entered the United States prior to June 30, 1906.

(b) *United States land borders.* An alien who establishes that, while a citizen of Canada or Newfoundland, he entered the United States across the Canadian border prior to October 1, 1906; an alien who establishes that while a citizen of Mexico he entered the United States across the Mexican border prior to July 1, 1908; an alien who establishes that, while a citizen of Mexico, he entered the United States at the port of Presidio, Texas, prior to October 21, 1918; and an alien for whom a record of his actual admission to the United States does not exist but who establishes that he gained admission to the United States prior to July 1, 1924, pursuant to pre-examination at a United States immigration station in Canada and that a record of such pre-examination exists.

(c) *Virgin Islands.* An alien who establishes that he entered the Virgin Islands of the United States prior to July 1, 1938, even though a record of his admission prior to that date exists as a non-immigrant under the Immigration Act of 1924.

(d) *Asiatic barred zone.* An alien who establishes that he is of a race indigenous to, and a native of a country within, the Asiatic zone defined in section 3 of the Act of February 5, 1917, as amended, that he was a member of a class of aliens exempted from exclusion by the provisions of that section, and that he entered

the United States prior to July 1, 1924, provided that a record of his admission exists.

(e) *Chinese and Japanese aliens—(1) Prior to July 1, 1924.* A Chinese alien for whom there exists a record of his admission to the United States prior to July 1, 1924, under the laws and regulations formerly applicable to Chinese and who establishes that at the time of his admission he was a merchant, teacher, or student, and his son or daughter under 21 or wife accompanying or following to join him; a traveler for curiosity or pleasure and his accompanying son or daughter under 21 or accompanying wife; a wife of a United States citizen; a returning laborer; and a person erroneously admitted as a United States citizen under section 1993 of the Revised Statutes of the United States, as amended, his father not having resided in the United States prior to his birth.

(2) *On or after July 1, 1924.* A Chinese alien for whom there exists a record of his admission to the United States as a member of one of the following classes, and who establishes that he was, at that time, an alien readmitted between July 1, 1924, and December 16, 1943, inclusive, as a returning Chinese laborer who acquired lawful permanent residence prior to July 1, 1924; a person erroneously admitted between July 1, 1924, and June 6, 1927, inclusive, as a United States citizen under section 1993 of the Revised Statutes of the United States, as amended, his father not having resided in the United States prior to his birth; an alien admitted at any time after June 30, 1924, under section 4 (b) or (d) of the Immigration Act of 1924; an alien wife admitted between June 13, 1930, and December 16, 1943, inclusive, and after August 9, 1946, under section 4 (a) of the Immigration Act of 1924; an alien admitted on or after December 17, 1943, under section 4 (f) of the Immigration Act of 1924; an alien admitted on or after December 17, 1943, under section 317 (c) of the Nationality Act of 1940, as amended; an alien admitted on or after December 17, 1943, as a preference or nonpreference quota immigrant pursuant to section 2 of that act; and a Chinese or Japanese alien admitted to the United States between July 1, 1924, and December 23, 1952, both dates inclusive, as the wife or minor son or daughter of a treaty merchant admitted before July 1, 1924, if the husband-father was lawfully admitted to the United States as a treaty merchant before July 1, 1924, or, while maintaining another status under which he was admitted before that date, had his status changed to that of a treaty merchant or treaty trader after that date, and was maintaining the changed status at the time his wife or minor son or daughter entered the United States.

(f) *Citizens of the Philippine Islands—*

(1) *Entry prior to May 1, 1934.* An alien who establishes that he entered the United States prior to May 1, 1934, and that he was on the date of his entry a citizen of the Philippine Islands, provided that for the purpose of petitioning for naturalization he shall not be regarded as

having been lawfully admitted for permanent residence unless he was a citizen of the Commonwealth of the Philippines on July 2, 1946.

(2) *Entry between May 1, 1934, and July 3, 1946.* An alien who establishes that he entered Hawaii between May 1, 1934, and July 3, 1946, inclusive, under the provisions of the last sentence of section 8 (a) (1) of the Act of March 24, 1934, as amended, that he was a citizen of the Philippine Islands when he entered, and that a record of such entry exists.

(3) *Travel restrictions.* Notwithstanding the provisions of this paragraph, an alien of the class described in subparagraph (2) of this paragraph, and an alien of the class described in subparagraph (1) of this paragraph, who entered the United States at Hawaii prior to May 1, 1934, shall be subject to the travel restrictions imposed by the proviso to section 212 (d) (7) of the Act.

(g) *Temporarily admitted aliens.* The following aliens who when admitted expressed an intention to remain in the United States temporarily or to pass in transit through the United States, for whom records of admission exist, but who remained in the United States: an alien admitted prior to June 3, 1921, except if admitted temporarily under the 9th proviso to section 3 of the Immigration Act of 1917; an alien admitted as an accredited official of a foreign government, his suite, family, or guest, and a seaman admitted in pursuit of his calling; an alien admitted under the Act of May 19, 1921, as amended, who was admissible for permanent residence under that Act notwithstanding the quota limitations thereof and his accompanying wife or unmarried son or daughter under 21 who was admissible for permanent residence under that act notwithstanding the quota limitations thereof; and an alien admitted under the Act of May 19, 1921, as amended, who was charged under that act to the proper quota at the time of his admission or subsequently and who remained so charged.

(h) *Citizens of the Trust Territory of the Pacific Islands who entered Guam prior to December 24, 1952.* An alien who establishes that while a citizen of the Trust Territory of the Pacific Islands he entered Guam prior to December 24, 1952, by records, such as Service records subsequent to June 15, 1952, records of the Guamanian Immigration Service, records of the Navy or Air Force, or records of contractors of those agencies, and was residing in Guam on December 24, 1952.

(i) *Aliens admitted to Guam.* An alien who establishes that he was admitted to Guam prior to December 24, 1952, by records, such as Service records subsequent to June 15, 1952, records of the Guamanian Immigration Service, records of the Navy or Air Force, or records of contractors of those agencies; that he was not excludable under the Act of February 5, 1917, as amended; and that he continued to reside in Guam until December 24, 1952, and thereafter was not admitted or readmitted into Guam as a nonimmigrant, provided that the provisions of this paragraph shall not

apply to an alien who was exempted from the contract laborer provisions of section 3 of the Immigration Act of February 5, 1917, as amended, through the exercise, expressly or impliedly, of the 4th or 9th provisos to section 3 of that act.

(j) *Erroneous admission as United States citizens or as children of citizens.* An alien for whom there exists a record of admission prior to September 11, 1957, as a United States citizen, who as a minor was erroneously issued a United States passport or was included in the United States passport of his parent, stepparent, or adoptive parent who accompanied him or to whom he was destined, shall, if otherwise admissible at the time of entry except for failure to meet visa or passport requirements, be regarded as having been lawfully admitted for permanent residence as of the date of his admission, provided that fraud or misrepresentation was not practiced by him in the issuance of the passport or in gaining admission, and he has maintained a residence in the United States since the date of admission; an alien admitted to the United States before July 1, 1948, in possession of a section 4 (a) 1924 act non-quota immigration visa issued in accordance with State Department regulations, including a child of a United States citizen after he reached the age of 21, in the absence of fraud or misrepresentation; a member of a naturalized person's family who was admitted to the United States as a United States citizen or as a section 4 (a) 1924 act non-quota immigrant on the basis of that naturalization, unless he knowingly participated in the unlawful naturalization of the parent or spouse rendered void by cancellation, or knew at any time prior to his admission to the United States of the cancellation; and a member of a naturalized person's family who knew at any time prior to his admission to the United States of the cancellation of the naturalization of his parent or spouse but was admitted to the United States as a United States citizen pursuant to a State Department or Service determination based upon a then prevailing administrative view, provided the State Department or Service knew of the cancellation.

(Sec. 103, 66 Stat. 173; 8 U. S. C. 1103)

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS

- Sec.
103.1 Delegations of authority.
103.2 Formal applications and petitions.
103.3 Appeals.
103.4 Certifications.
103.5 Reopening or reconsideration.
103.6 Immigration bonds.
103.7 Records and fees.

AUTHORITY: §§ 103.1 to 103.7 issued under sec. 501, 65 Stat. 290, sec. 103, 66 Stat. 173; 5 U. S. C. 140, 8 U. S. C. 1103. Interpret or apply secs. 281, 332, 343, 344, 405, 66 Stat. 230, 252, 263, 264, 280; 8 U. S. C. 1351, 1443, 1454, 1455, 1101, and note.

§ 103.1 *Delegations of authority.* Without divesting the Commissioner of any of the powers, privileges, and duties delegated to him by the Attorney General under the immigration and naturalization laws of the United States, co-extensive authority is hereby delegated

to the following-described officers of the Service:

(a) *Associate Commissioner, Operations.* All of the operational activities of the Service.

(1) *Deputy Associate Commissioner, Domestic Control.* The operational activities of the Service relating to investigations and enforcement.

(i) *Assistant Commissioner, Investigations.* The investigations and administrative prosecution activities of the Service.

(ii) *Assistant Commissioner, Enforcement.* The border patrol activities of the Service.

(2) *Deputy Associate Commissioner, Travel Control.* The operational activities of the Service relating to authorizations, Service activities outside the United States, and inspections at ports of entry.

(i) *Assistant Commissioner, Examinations.* The authorization activities of the Service.

(ii) *Assistant Commissioner, Special Projects.* The Service activities outside the United States, including those in Guam.

(iii) *Assistant Commissioner, Inspections.* The inspection activities of the Service at ports of entry.

(b) *Associate Commissioner, Management.* All of the management activities of the Service.

(1) *Deputy Associate Commissioner, Security.* The management activities of the Service, relating to field inspections, security, intelligence, and naturalization.

(i) *Assistant Commissioner, Field Inspection and Security.* The field inspection, intelligence, and security activities of the Service.

(ii) *Assistant Commissioner, Naturalization.* The naturalization activities of the Service.

(2) *Deputy Associate Commissioner, Administrative Services.* The management activities of the Service relating to administration, detention, and deportation.

(i) *Assistant Commissioner, Administration.* The personnel, budget, fiscal, statistics, procurement, and records activities of the Service.

(ii) *Assistant Commissioner, Detention and Deportation.* The detention and deportation activities of the Service.

(c) *General Counsel.* The legal advisory, legislative, and litigation activities of the Service.

(d) *Chief Special Inquiry Officer.* The exclusion and expulsion hearing activities of the Service.

(e) *Regional commissioners.* The operational activities of the Service within their respective regional areas, including all appellate jurisdiction specified in this chapter not reserved to the Board of Immigration Appeals or to district directors outside the United States.

(f) *District directors.* Under the executive direction of a regional commissioner (except district directors outside the United States who operate under the executive direction of the Assistant Commissioner, Special Projects), the grant or denial of any application or petition submitted to the Service or the initiation of

any authorized proceeding in their respective districts.

(g) *Officers in charge.* The supervision of inspection at ports of entries and the authorizations of extensions of nonimmigrant admission periods and of voluntary departure prior to the commencement of deportation hearings. Officers in charge outside the United States have the same powers with respect to petitions and applications submitted by citizens or aliens residing in their respective areas as are conferred on district directors in the United States and final appeals from their decisions on applications for waiver of grounds of excludability and ineligibility for visas under the authority of sections 5 and 7 of the Act of September 11, 1957, are vested in the several district directors outside the United States.

(h) *Special inquiry officers.* Following selection by the Commissioner, the exercise of the powers and duties specified in this chapter regarding the conduct of exclusion and expulsion hearings.

§ 103.2 *Formal applications and petitions.* Every formal application or petition shall be filed in accordance with the instructions contained thereon, such instructions being hereby incorporated into the particular section of the regulations requiring its submission. A person or guardian may file on behalf of a son, daughter, or ward under 14 years of age. Any required oath may be administered by an immigration officer or person generally authorized to administer oaths. The decision-rendering Service officer may, in his discretion, require the submission of additional evidence, including blood tests, may require the taking of testimony, and may direct the making of any necessary investigation. Any allegations made in addition to, or in substitution for, those originally made shall be made under oath and filed in the same manner as the original application or petition or noted on the original application or petition and acknowledged under oath thereon. Formal applications or petitions received in any Service office shall be stamped to show the time and date of their actual receipt and shall be regarded as filed when so stamped unless returned because they are improperly executed. Foreign language documents submitted shall be accompanied by certified English translations.

§ 103.3 *Appeals.* When an alien or other party affected is entitled to appeal to another Service officer, he shall be given written notice that he may appeal from such decision, and that such appeal may be taken within 15 days after the mailing of the notification of decision, accompanied by a supporting brief and a fee of \$10, by filing Notice of Appeal Form I-290B, which shall be furnished with the written notice. For good cause shown, the time within which the brief may be submitted may be extended. The party taking the appeal may, prior to appellate decision, file a written withdrawal of such appeal.

§ 103.4 *Certifications.* The Commissioner, regional commissioners, associate commissioners, deputy associate com-

missioners, and assistant commissioners within their respective areas of responsibility, may direct that any case or class of cases be certified for decision. The alien or other party affected shall be given notice on Form I-290C of such certification and of his right to submit a brief within 10 days from receipt of the notice. The record of the case shall be certified and forwarded upon receipt of the brief, or the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief.

§ 103.5 *Reopening or reconsideration—(a) General.* A proceeding provided for in this chapter may be reopened or the decision made therein reconsidered for proper cause upon motion made by the party affected and granted by the officer who has jurisdiction over the proceeding or who made the decision. When the alien is the moving party, a motion to reopen or to reconsider shall be filed in duplicate, accompanied by a supporting brief, if any, and a fee of \$10, with the district director where the proceeding was conducted for transmittal to the officer having jurisdiction. When an officer of the Service is the moving party, a copy of the motion shall be served on the alien or other party in interest and the motion, together with proof of service, shall be filed directly with the officer having jurisdiction. The party opposing the motion shall have 10 days from the date of service thereof within which he may submit a brief, which period may be extended. If the officer who originally decided the case is unavailable, the motion may be referred to another officer. A motion to reopen shall state the new facts to be proved at the reopened hearing and shall be supported by affidavits or other evidentiary material. A motion to reconsider shall state the reasons for reconsideration and shall be supported by such precedent decisions as are pertinent. Rulings upon motions to reopen or motions to reconsider shall be by written decision.

§ 103.6 *Immigration bonds—(a) Acceptable sureties.* Except when cash is deposited pursuant to Part 213 of this chapter, only a company holding a certificate from the Secretary of the Treasury under 6 U. S. C. 6-13 as an acceptable surety on Federal bonds, or a surety who deposits United States bonds or notes of the class described in 6 U. S. C. 15 and Treasury Department regulations issued pursuant thereto and which are not redeemable within one year from the date they are offered for deposit is an acceptable surety.

(b) *Extension agreements; consent of surety; collateral security.* A district director is authorized to approve a bond which is prepared on a form approved by the Commissioner, a formal agreement to extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on Form I-312 or Form I-313. All other matters relating to bonds, including a power of attorney not executed on Form I-312 or Form I-313 and a request for delivery of col-

lateral security to other than the depositor or his approved attorney in fact, shall be forwarded to the regional commissioner for approval.

(c) *Violation of conditions; cancellation.* The district director having jurisdiction over the place where the bond is retained shall finally determine whether a bond shall be declared breached or cancelled, and shall notify the obligors in writing on Form I-391 or Form I-323 of his decision.

§ 103.7 *Records and fees—(a) Authority to release information and certify records.* The Commissioner, regional commissioners, associate commissioners, deputy associate commissioners, assistant commissioners, the General Counsel, and district directors may furnish, upon application therefor, copies of Service records, or information therefrom, and may certify that any record is a true copy. The Chief, Records Administration and Information Branch, Central Office, may certify as to the nonexistence in the records of the Service of an official record. There shall be paid in advance for furnishing any person or agency (other than an officer or agency of the United States or of any State or any subdivision thereof for official use) copies of any part of, or information from, the records of the Service, a fee of 25 cents per folio of one hundred words or fraction thereof, with a minimum fee of 50 cents for any such service; an additional fee of \$1.00 is required for certification under seal.

(b) *Remittances.* Fees shall be submitted with any formal application or petition prescribed in this chapter and shall be in the amount prescribed by law or regulation. When any discretionary relief in exclusion or deportation proceedings is granted absent an application and fee therefor, the district director having jurisdiction over the place where the original proceeding was conducted shall require the filing of the application and the payment of the fee. Every remittance shall be accepted subject to collection. A receipt issued by a Service officer for any such remittance shall not be binding if the remittance is found uncollectible. Fees in the form of postage stamps shall not be accepted. Remittances shall be made payable to the "Immigration and Naturalization Service, Department of Justice," except that in the case of applicants residing in the Virgin Islands of the United States, the remittances shall be made payable to the "Commissioner of Finance of the Virgin Islands," and, in the case of applicants residing in Guam, the remittances shall be made payable to the "Treasurer, Guam."

(c) *Additional fees.* In addition to the fees enumerated in sections 281 and 344 of the act, the following fees and charges are prescribed:

For an annual table on "Passenger Travel Reports via Sea and Air".....	\$0.20
For set of six annual tables entitled "Passenger Travel Reports via Sea and Air".....	1.00
For filing application for alien laborer's permit in lieu of one lost, mutilated, or destroyed.....	1.00
For search of arrival record for personal benefit.....	3.00

For filing application for alien registration receipt card in lieu of one lost, mutilated, or destroyed, or in changed name, or in lieu of form other than Form I-151.....	\$5.00
For filing application for permission to reapply for excluded or deported aliens, aliens who have fallen into distress and have been removed, aliens who have been removed as alien enemies, or aliens who have been removed at Government expense in lieu of deportation.....	5.00
For filing application for certificate of citizenship under section 309 (c)....	5.00
For filing application for passport or visa waiver prior to or at the time application is made for temporary admission to the United States.....	10.00
For filing application for visa waiver when application is made for admission as a returning resident.....	10.00
For filing application for passport waiver prior to or at the time application is made for permanent admission.....	10.00
For filing application for section 316 (b) or 317 benefits.....	10.00
For filing appeal from, or motion to reopen or reconsider, any decision under the immigration laws, except an exclusion or deportation proceeding. (The minimum fee of \$10 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision.).....	10.00
For filing application for waiver of grounds for exclusion contained in section 212 (a) (14) of the act.....	10.00
For annual subscription for "Passenger Travel Reports via Sea and Air".....	10.00
For filing appeal from, or a motion to reopen or reconsider, a decision in an exclusion or deportation proceeding. (The minimum fee of \$25 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision.).....	25.00
For filing application for school approval.....	25.00
For filing application for discretionary relief under section 212 (c).....	25.00
For filing application for discretionary relief under section 212 (d) (3), except in an emergency case, or the granting of the application is in the interest of the United States Government.....	25.00
For filing application for stay of deportation under Part 243 of this chapter, except when made concurrently with a motion to reopen or reconsider a decision in a deportation proceeding.....	25.00
For filing application for adjustment of status under section 9 or 13 of the act of September 11, 1957. (The fee is not required of an alien who has paid the fee for filing an application for preexamination.).....	25.00
For special statistical tabulations a charge will be made to cover the cost of the work involved.	

¹ Plus communication costs.

PART 204—PETITION FOR IMMIGRANT STATUS AS A MINISTER OR AS A PERSON WHOSE SERVICES ARE NEEDED URGENTLY

The last sentence of § 204.2 *Petition* is amended to read as follows: "The petitioner shall be notified of the decision and if the petition is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter."

PART 205—PETITION FOR IMMIGRANT STATUS AS RELATIVE OF UNITED STATES CITIZEN, LAWFUL RESIDENT ALIEN, OR ELIGIBLE ORPHAN

1. The last sentence of § 205.1 *Petition* is amended to read as follows: "The petitioner shall be notified of the decision and if the petition is denied of the reasons therefor and of his right to appeal to the Board within 15 days after the mailing of the notification of decision in accordance with the provisions of Part 3 of this chapter."

2. The last sentence of § 205.2 *Eligible orphan* is amended to read as follows: "The petitioners shall be notified of the decision and if the petition is denied of the reasons therefor and of their right to appeal in accordance with the provisions of Part 103 of this chapter."

PART 206—REVOCATION OF APPROVAL OF PETITIONS

The last sentence of § 206.3 *Procedure* is amended to read as follows: "If upon reconsideration the approval previously granted is revoked, the petitioner shall be informed of the decision with the reasons therefor and shall have 15 days after the mailing of the notification of decision within which to appeal as provided in Part 3 of this chapter if the petition initially was approved for classification under section 205 of the Act, or as provided in Part 103 of this chapter if the petition initially was approved for classification under section 204 or 214 (c) of the Act, and the consular office having jurisdiction over the visa application shall be notified of the revocation."

PART 211—DOCUMENTARY REQUIREMENTS; IMMIGRANTS; WAIVERS

Section 211.2 is amended to read as follows:

§ 211.2 *Passports*. A valid unexpired passport valid for the bearer's entry into a foreign country at least 60 days beyond the expiration date of his immigrant visa shall be presented by each arriving immigrant alien except an immigrant who (a) is the spouse, parent or unmarried son or daughter of a United States citizen, or (b) is the spouse or unmarried son or daughter of an alien lawful permanent resident of the United States, or (c) is returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad, or (d) is a stateless person or a person who because of his opposition to Communism is unwilling or unable to obtain a passport from the country of his nationality, or (e) is a first-preference quota immigrant, or (f) satisfies the district director in charge of the port of entry that there is good cause for failure to present the required document, in which case an application for waiver shall be made on Form I-193.

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The introductory material to § 212.1 is amended to read as follows:

§ 212.1 *Documentary requirements for nonimmigrants*. A valid unexpired visa and an unexpired passport, valid for the period set forth in section 212 (a) (26) of the act, shall be presented by each arriving nonimmigrant alien except that the passport validity period for an applicant for admission who is a member of a class described in section 102 of the act is not required to extend beyond the date of his application for admission if so admitted, and except as otherwise provided in the act, this chapter, and for the following classes:

2. The second sentence of § 212.2 *Consent to reapply for admission after deportation, removal, or departure at Government expense* is amended to read as follows: "The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter."

3. The second sentence of § 212.3 *Applications for the exercise of discretion under section 212 (c)* is amended to read as follows: "The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal to the Board within 15 days after the mailing of the notification of decision in accordance with the provisions of Part 3 of this chapter."

4. The fourth sentence of § 212.4 *Applications for the exercise of discretion under section 212 (d) (3)* is amended to read as follows: "The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal to the Board within 15 days after the mailing of the notification of decision in accordance with the provisions of Part 3 of this chapter."

5. The last sentence of paragraph (a) of § 212.7 *Waiver of certain grounds of excludability* is amended to read as follows: "The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter."

PART 212a—ADMISSION OF CERTAIN ALIENS TO PERFORM SKILLED OR UNSKILLED LABOR

Section 212a.1 is amended to read as follows:

§ 212a.1 *Application*. The person, institution, firm, organization, or governmental agency for whom the excludable alien will perform skilled or unskilled labor may apply for a waiver under section 212 (a) (14) of the act. The application shall contain information under oath or affirmation and shall be supported by documentary evidence attesting to the alien's education, training, experience, and ability. In addition, there shall be submitted with the application a statement containing a complete description of the services to be performed, and information regarding the efforts made to secure persons in the United States to perform such services, and in what manner the alien's services will be substantially beneficial prospectively to the national economy, cultural interest,

or welfare of the United States. The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

PART 214—NONIMMIGRANT CLASSES

1. The second sentence of § 214.1 *General requirements for admission, extension, and maintenance of status* is amended to read as follows: "Nonimmigrants, other than of the classes defined in section 101 (a) (15) (C) or (D) of the act (members of which classes are ineligible for extensions of stay), in Title V of the Agricultural Act of 1949, as amended, or in section 201 of the United States Information and Educational Exchange Act of 1948, as amended, and whose period of admission has not expired shall apply on Form I-539 and may be granted or denied, without appeal, extensions of their periods of temporary admission, and, in the case of a non-immigrant alien of the class defined in section 101 (a) (15) (F) of the act, authorization of employment or practical training by an officer in charge of a sub-office or a district director."

2. The second and fifth sentences of § 214.3 *Petitions for approval of schools* are amended to read as follows: "The petitioner shall be notified of the decision, and, if the petition is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter. * * * After consideration of the facts presented, the district director shall notify the institution or place of study in writing of his decision and if said decision is to withdraw the approval previously granted the reasons therefor and of its right to appeal in accordance with the provisions of Part 103 of this chapter."

3. The last sentence of § 214.4 *Petitions for temporary workers* is amended to read as follows: "The petitioner shall be notified of the decision and if the petition is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter."

PART 223—REENTRY PERMITS

1. The last sentence of § 223.1 *Application* is amended to read as follows: "The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter."

2. Paragraph (b) *Limited reentry permit* of § 223.2 *Reentry permit* is amended by deleting the reference "§ 4.2 (g)" and inserting in lieu thereof the reference "§ 101.1 (f)".

PART 231—ARRIVAL—DEPARTURE MANIFESTS AND LISTS; SUPPORTING DOCUMENTS

Paragraph (a) *Presentation* of § 231.1 *Arrival manifests, lists, and arrival-departure cards* is amended in the following respects:

1. The fifth sentence is amended to read as follows: "In lieu of Form I-418 or Form I-94, the master or agent of a

vessel or aircraft arriving in the United States without touching at a foreign port on a voyage or flight originating in Hawaii, Guam, Puerto Rico, or the Virgin Islands of the United States, shall submit a list containing the surname, given name, and middle initial of each passenger on board."

2. A sentence is added at the end thereof to read as follows: "For the purpose of this section any coming to a United States port from a foreign port, from an outlying possession of the United States, from Hawaii, Guam, Puerto Rico, or the Virgin Islands of the United States shall be regarded as an arrival."

PART 235—INSPECTION OF ALIENS APPLYING FOR ADMISSION

Section 235.1 *General qualifications* is amended by adding the following sentences at the end thereof to read as follows: "For the purpose of this part, any coming to a United States port from a foreign port, from an outlying possession of the United States, from Hawaii, Guam, Puerto Rico, or the Virgin Islands of the United States or from another port of the United States at which examination under this part was not completed shall be regarded as an arrival. Any persons (including an alien crewman) passing through the Canal Zone on board a vessel which enters and clears at a Canal Zone port only to transit that Zone, to refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage."

PART 235a—PREEXAMINATION OF ALIENS WITHIN THE UNITED STATES

The last sentence of § 235a.1 *Application* is amended by deleting the references "Part 6 or 7" and inserting in lieu thereof the references "Part 3 or 103", respectively.

PART 236—EXCLUSION OF ALIENS

1. Paragraphs (c) *Certification for mental condition*; *medical appeal* and (d) *Record of § 236.2 Hearing* are redesignated as paragraphs (d) and (e), respectively, and new paragraph (c) is added to read as follows:

(c) *Examining officer*. The district director in his discretion may assign an immigration officer to a proceeding under this part to perform the duties of an examining officer in behalf of the Government. Such duties shall include, but are not limited to, the presentation of evidence and the interrogation, examination, and cross-examination of the applicant and other witnesses. Nothing contained herein shall be construed to diminish the authority conferred upon the special inquiry officer in conducting proceedings under this part.

2. Paragraph (c) *Written decision* of § 236.3 *Decision of the special inquiry officer*; notice to the applicant is amended by deleting the reference "§ 6.11" and inserting in lieu thereof the reference "§ 3.3."

3. Section 236.4 *Finality of order* is amended by deleting the references

"§ 6.1 (c)" and "§ 7.1 (b)" and inserting in lieu thereof the references "Part 3" and "Part 103", respectively.

4. Paragraph (b) of § 236.5 *Appeals* is amended to read as follows:

(b) *By applicant*. When the applicant states that he wishes to appeal from the special inquiry officer's oral decision, he shall be required then and there to submit completed Form I-290A. At his request, the applicant shall be allowed 10 days from the date of the oral decision in which to file a brief. An appeal from the special inquiry officer's written decision shall be taken within 10 days after mailing.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. Paragraphs (a) and (c) of § 242.5 are amended to read as follows:

§ 242.5 *Voluntary departure prior to commencement of hearing*—(a) *Authorized officers*. The authority contained in section 242 (b) of the act to permit aliens to depart voluntarily from the United States may be exercised by district directors, district officers who are in charge of investigations, officers in charge, and chief patrol inspectors.

(c) *Revocation*. If, subsequent to the granting of an application for voluntary departure under this section, it is ascertained that the application should not have been granted, that grant may be revoked without notice by any district director, district officer in charge of investigations, officer in charge, or chief patrol inspector.

2. The last sentence of paragraph (a) *Authority of § 242.9 Examining officers* is amended by deleting the reference "Part 8" and inserting in lieu thereof the reference "§ 103.5".

3. Paragraph (a) *Written decision* of § 242.19 *Notice of decision* is amended by deleting the reference "§ 6.11" and inserting in lieu thereof the reference "§ 3.3".

4. Section 242.20 *Finality of order* is amended by deleting the references "§ 6.1 (c)" and "§ 7.1 (b)" and inserting in lieu thereof the references "Part 3" and "Part 103", respectively.

5. The first sentence of paragraph (b) *Cases appealable* of § 242.21 *Appeals* is amended by deleting the reference "Part 6" and inserting in lieu thereof the reference "Part 3".

PART 243—DEPORTATION OF ALIENS IN THE UNITED STATES

1. Subparagraph (3) of paragraph (b) *Stay of deportation* of § 243.3 *Execution of warrants of deportation* is amended by deleting the reference "§ 6.21 (a)" and inserting in lieu thereof the reference "Part 3".

2. The first sentence of § 243.31 *Fees* is amended to read as follows: "Except as otherwise provided in this section and Part 103 of this chapter, a stay of deportation requested by an alien under this part shall be accompanied by a fee

of \$25 as prescribed by, and remitted in accordance with, the provisions of Part 103."

PART 245—ADJUSTMENT OF STATUS OF NON-IMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The last sentence of § 245.1 *Application* is amended to read as follows: "In all cases the applicant shall be notified of the decision and if the application is denied of the reasons therefore and of his right to appeal in accordance with the provisions of Part 103 of this chapter."

2. The last sentence of § 245.3 *Medical examination* is amended by deleting the reference "§ 236.2 (c)" and inserting in lieu thereof the reference "Part 236".

PART 245a—ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE IN ACCORDANCE WITH REFUGEE RELIEF ACT OF 1953, AS AMENDED

Part 245a is revoked.

PART 246—RESCISSION OF ADJUSTMENT OF STATUS

The sixth and last sentences of paragraph (b) *Answer filed; personal appearance of § 246.12 Disposition of case* are amended to read as follows: "If the decision of the district director is that the matter be terminated, the alien shall be notified thereof and no further action shall be taken unless the case in certified to the regional commissioner as provided in § 103.4 of this chapter. * * * From the decision of the district director an appeal may be taken as provided in Part 103 of this chapter."

PART 247—ADJUSTMENT OF STATUS OF CERTAIN RESIDENT ALIENS

The eighth sentence of paragraph (b) *Answer filed; personal appearance of § 247.12 Disposition of case* is amended to read as follows: "The alien shall be informed of such decision and of the reasons therefor, and of his right to appeal in accordance with the provisions of Part 103 of this chapter."

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

The last sentence of § 248.2 *Application* is amended to read as follows: "The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter."

PART 249—CREATION OF RECORD OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

The second sentence of § 249.1 *Application* is amended to read as follows: "The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter."

PART 251—ARRIVAL MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

1. Section 251.1 is amended to read as follows:

§ 251.1 *Arrival manifests and lists—*
(a) *Presentation.* The master or agent of every vessel arriving in the United States from a foreign port, from an outlying possession of the United States, or from Hawaii, Guam, Puerto Rico, or the Virgin Islands of the United States shall present to the immigration officer at the port of first arrival a manifest of all crewmen on board on Form I-418 in accordance with the instructions contained thereon. A manifest shall not be required for crewmen aboard a vessel of United States, Canadian, or British registry engaged solely in traffic on the Great Lakes, or the St. Lawrence River, and connecting waterways herewith designated as a Great Lakes vessel, except crewmen of other than United States, Canadian, or British citizenship and, after submission of a manifest on the first voyage of a calendar year, a manifest shall not be required on subsequent arrivals unless there is employed on the vessel at the time of such arrival an alien crewman of other than United State, British, or Canadian citizenship who was not aboard and listed on the occasion of the submission of the last prior manifest. The master or agent of every aircraft arriving in the United States shall present to the immigration officer at the port of first arrival a manifest on Customs Form 7507 of all crewmen on board, except that a manifest shall not be required of an aircraft arriving in the continental United States or Alaska directly from Canada on a flight originating in that country.

(b) *Additional documents.* The master or agent of every vessel or aircraft arriving in the United States from a foreign port, from an outlying possession of the United States, or from Hawaii, Guam, Puerto Rico, or the Virgin Islands of the United States shall prepare as a part of the manifest when one is required for presentation to the immigration officer, a completely executed set of Forms I-95 for each alien crewman on board, except (1) an alien immigrant crewman in possession of a valid immigrant visa, reentry permit, or alien registration receipt card on Form I-151; (2) a Canadian or British citizen crewman serving on a vessel plying solely between Canada and the United States; or (3) a crewman seeking conditional landing privileges under section 252 (a) (1) of the act who is in possession of an unutilized alien crewman landing permit and identification card (Form I-184) or an unutilized conditional landing permit (Form I-95) with space for additional endorsements previously issued to him as a member of the crew of the same vessel or an aircraft of the same line.

2. Paragraph (c) of § 251.3 *Notification of changes in crew* is amended to read as follows:

(c) *No changes in crew.* When there are no added and separated crewmen as described in this section, the master or agent of every vessel departing from the United States shall submit to the immigration officer at the port from which such vessel is to depart directly to a foreign port or place an executed Form I-418 bearing the notation "Arrival crewlist filed at _____ No changes in nonresident alien crew upon departure."

PART 252—LANDING OF ALIEN CREWMEN

Paragraph (f) of § 252.1 *Examination of crewmen* is amended to read as follows:

(f) *Change of status.* An alien non-immigrant crewman landed pursuant to the provisions of this part shall be ineligible for any extension of stay or for a change of nonimmigrant classification under Part 248 of this chapter. A crewman admitted under paragraph (d) (1) of this section may, if still maintaining status, apply for a conditional landing permit under paragraph (d) (2) of this section. If the application is approved, he shall be given a copy of a new Form I-95 endorsed to show landing authorized under paragraph (d) (2) of this section for the period necessary to accomplish his scheduled reshipment, which shall not exceed 29 days from the date of his landing, upon surrendering any conditional landing permit previously issued to him on Form I-95.

PART 250—IMPOSITION AND COLLECTION OF FINES

1. The last sentence of paragraph (b) *Answer filed; personal appearance of § 280.13 Disposition of case* is amended to read as follows: "From the decision of the district director an appeal may be taken to the Board within 15 days after the mailing of the notification of decision as provided in Part 3 of this chapter."

2. The last sentence of paragraph (c) *Disposition of application of § 280.51 Application for mitigation or remission* is amended to read as follows: "In any other case the application shall be considered and decided by the district director from whose decision an appeal may be taken to the Board within 15 days after the mailing of the notification of decision as provided in Part 3 of this chapter."

PART 292—REPRESENTATION AND APPEARANCES

1. Paragraphs (a) *Attorneys in the United States* and (e) *Attorneys outside the United States* of § 292.1 *Representation of others* are amended by deleting the reference "§ 1.1 (a) (3)" and inserting in lieu thereof the reference "§ 1.1 (f)".

2. Paragraphs (c) *Accredited representatives* and (h) *Persons formerly authorized to practice of § 292.1 Representation of others*; paragraphs (a) *Form G-27* and (b) *Accreditations of § 292.2 Requests by organizations for recognition*, and subparagraph (1) of paragraph (a) *Grounds of § 292.3 Suspension or*

disbarment are amended by deleting the reference "§ 1.1 (a) (14)" wherever it appears and inserting in lieu thereof the reference "§ 1.1 (j)".

3. Paragraph (b) *Procedure of § 292.3 Suspension or disbarment* is amended by deleting the references "§ 6.1 (e)" and "§ 6.1 (h)" and inserting in lieu thereof the references "§ 3.1 (e)" and "§ 3.1 (h)", respectively.

PART 299—IMMIGRATION FORMS

Section 299.1 *Prescribed forms* is amended by deleting the following form and reference thereto:

Form No., Title and Description

I-129C Application for Waiver of Excludability and Ineligibility to Obtain an Immigrant Visa Under Section 212 (a) (14) of the Immigration and Nationality Act.

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

Paragraph (c) of § 316a.21 *Application for benefits with respect to absences; appeal* is amended to read as follows:

(c) The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

PART 339—FUNCTIONS AND DUTIES OF CLERKS OF NATURALIZATION COURTS

Section 339.5 is amended to read as follows:

§ 339.5 *Numbering and indexing and filing of petitions for naturalization and declarations of intention.* See §§ 334.3 and 334a.1 of this chapter.

PART 341—CERTIFICATES OF CITIZENSHIP

Part 341 is amended to read as follows:

§ 341.1 *Application.* A person who claims to have derived United States citizenship through the naturalization of a parent or parents or through the naturalization or citizenship of a husband, or who claims to be a citizen at birth outside the United States under the provisions of any of the statutes or acts specified in section 341 of the Act, or who claims to be a citizen at birth outside the United States under the provisions of section 309 (c) of the Act, shall apply for a certificate of citizenship on Form N-600. If the application is granted, a certificate of citizenship shall be issued and the applicant shall, unless he is too young to understand the meaning thereof, take and subscribe to, before an officer or employee of the Service authorized to administer oaths, the oath of renunciation and allegiance prescribed by Part 337 of this chapter. Thereafter, delivery of the certificate shall be made to the applicant, or to his parent or guardian, either personally or by certified mail, and the recipient's signed receipt therefor shall be obtained. If the application is denied, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

(Sec. 103, 66 Stat. 173; 8 U. S. C. 1103. Interpret or apply secs. 309 (c), 332, 333, 337, 341, 344, 66 Stat. 238, 252, 254, 258, 263, 264; 8 U. S. C. 1409 (c), 1443, 1444, 1448, 1452, 1455)

PART 342—ADMINISTRATIVE CANCELLATION

Part 342 is added to read as follows:

§ 342.1 *Cancellation.* (a) *Notification.* The district director having jurisdiction over a person of the class described in section 342 of the Act shall serve the required statutory notice, indicating therein that such person may, on request, appear in support or in lieu of his written answer, and that he may have present at that time any attorney or other representative qualified under Part 292 of this chapter.

(b) *Failure to answer; admission of allegations.* If a written answer is not filed within the statutory period or the written answer admits the allegations in the notice and a personal appearance is not requested, the district director shall cancel the certificate, document, or record and written notification of the district director's decision, which is not appealable, shall be served on the person.

(c) *Answer filed; personal appearance.* When an answer asserting a defense is filed or a personal appearance is requested, the person shall be given a reasonable time not to exceed 10 days to submit a brief and supporting evidence. If the district director orders the matter terminated, he shall so notify the person in writing. Should the district director find that the certificate, document, or record was obtained through illegality or fraud, he shall order that it be cancelled ab initio and surrendered. Written notification of such action and the reasons therefor shall be given to the person, and he shall be informed of his right to appeal in accordance with the provisions of Part 103 of this chapter.

(Sec. 103, 66 Stat. 173; 8 U. S. C. 1103. Interpret or apply sec. 342, 66 Stat. 263; 8 U. S. C. 1453)

PART 343—CERTIFICATE OF NATURALIZATION OR REPATRIATION; PERSONS WHO RESUMED CITIZENSHIP UNDER SECTION 323 OF THE NATIONALITY ACT OF 1940, AS AMENDED, OR SECTION 4 OF THE ACT OF JUNE 29, 1906

Part 343 is amended to read as follows:

§ 343.1 *Application.* A person who lost citizenship of the United States incidental to service in one of the allied armies during World War I or II, or by voting in a political election in a country not at war with the United States during World War II, and who was naturalized under the provisions of section 323 of the Nationality Act of 1940, as amended, or a person who, before January 13, 1941, resumed United States citizenship under the twelfth subdivision of section 4 of the act of June 29, 1906, may obtain a certificate evidencing such citizenship by making application therefor on Form N-580. When the application is approved, a certificate of naturalization or repatriation shall be issued and delivered in person, in the United States only,

upon the applicant's signed receipt therefor. If the application is denied, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

(Sec. 103, 66 Stat. 173; 8 U. S. C. 1103. Interpret or apply secs. 332, 343, 344, 405, 66 Stat. 252, 263, 264, 280; 8 U. S. C. 1443, 1454, 1455, 1101)

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

Part 343a is amended to read as follows:

§ 343a.1 *Application for replacement of or for new naturalization or citizenship paper.* (a) *Lost, mutilated, or destroyed naturalization papers.* A person whose declaration of intention, certificate of naturalization, citizenship, or repatriation, or whose certified copy of proceedings under the act of June 25, 1936, as amended, or under section 317 (b) of the Nationality Act of 1940, or under section 324 (c) of the Immigration and Nationality Act, or under the provisions of any private law, has been lost, mutilated, or destroyed, shall apply on Form N-565 for a new paper in lieu thereof.

(b) *New certificate in changed name.* A naturalized citizen whose name has been changed after naturalization by order of court or by marriage shall apply on Form N-565 for a new certificate of naturalization, or of citizenship, in the changed name.

(c) *Disposition.* If an application for a new certificate of naturalization, citizenship, or repatriation is approved, the new certificate shall be issued and delivered in person upon the applicant's signed receipt therefor. When an application for a new declaration of intention is approved, the new declaration of intention shall be issued and the original delivered to the applicant upon his signed receipt therefor. If an application for a new certified copy of the proceedings under the act of June 25, 1936, as amended, or under section 317 (b) of the Nationality Act of 1940, or under section 324 (c) of the Immigration and Nationality Act, or under the provisions of any private law is approved, there shall be issued a certified positive photocopy of the record of the proceedings filed with the Service. When subsequent to the naturalization or repatriation the applicant's name has been changed by marriage, the certification of the positive photocopy shall show both the name in which the proceedings were had and the changed name. The new certified copy shall be personally delivered to the applicant, upon his signed receipt therefor. If the application is denied, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

(Sec. 103, 66 Stat. 173; 8 U. S. C. 1103. Interpret or apply secs. 324, 332, 343, 344, 405, 66 Stat. 246, 247, 252, 263, 264, 265, 280; 8 U. S. C. 1435, 1443, 1454, 1455, 1101 note)

PART 343b—SPECIAL CERTIFICATE OF NATURALIZATION FOR RECOGNITION BY FOREIGN STATE

Paragraph (b) of § 343b.11 *Disposition of application* is amended to read as follows:

(b) *Application denied.* If the application is denied, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

PART 344a—COPIES OF AND INFORMATION FROM RECORDS

Part 344a is revoked.

PART 499—NATIONALITY FORMS

Section 499.1 *Prescribed forms* is amended by deleting the following forms and references thereto:

Form No., Title and Description

- N-240 Form letter concerning issuance of new certificate of naturalization.
- N-321 Declaration of Intention (in lieu of old edition lost, mutilated or destroyed).
- N-325 Declaration of Intention (in lieu of one lost, mutilated or destroyed).
- N-560 Certificate of Citizenship.
- N-561 Certificate of Citizenship.
- N-562 Certificate of Citizenship.
- N-570 Certificate of Naturalization.
- N-581 Certificate of Repatriation.
- N-582 Certificate of Naturalization.

(Sec. 103, 66 Stat. 173; 8 U. S. C. 1103)

This order shall become effective on the date of its publication in the *FEDERAL REGISTER*. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U. S. C. 1003), as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the rules prescribed by the order, other than those which are editorial in nature, relate to agency procedure and management.

Dated: November 14, 1958.

J. M. SWING,
Commissioner of
Immigration and Naturalization.

[F. R. Doc. 58-9799; Filed, Nov. 25, 1958; 8:51 a.m.]

TITLE 7—AGRICULTURE

Chapter III—Agricultural Research Service, Department of Agriculture

PART 330—FEDERAL PLANT PEST REGULATIONS

REGULATIONS TO PREVENT ENTRY AND INTERSTATE MOVEMENT OF PLANT PESTS

Correction

In F. R. Doc. 58-8840, appearing at page 8173 of the issue for Friday, October 24, 1958, the last sentence of § 330.300 (c) should read: "A permit without conditions may be issued orally."

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

PART 969—AVOCADOS GROWN IN SOUTH FLORIDA

MISCELLANEOUS AMENDMENTS

Notice is hereby given of an amendment, as hereinafter set forth, to the rules and regulations (7 CFR 969.110 et seq.; Subpart—Rules and Regulations) of the Avocado Administrative Committee, currently in effect pursuant to the marketing agreement, as amended, and Order No. 69, as amended (7 CFR Part 969), regulating the handling of avocados grown in south Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

It is hereby found and determined that the said amendment of the rules and regulations is in accordance with the provisions of the said amended marketing agreement and order and will tend to effectuate the declared purposes of the Agricultural Marketing Agreement Act of 1937, as amended. The said rules and regulations are amended as follows:

1. Delete § 969.130 *Quality regulations*.
2. Revise § 969.140 to read as follows:

§ 969.140 *Avocados not subject to regulation*—(a) *Minimum quantity.* During any one day any handler may handle not to exceed 55 pounds total of avocados exempt from the provisions of §§ 969.41, 969.51, and 969.54 and the regulations issued thereunder: *Provided*, That such exempted quantity shall not be included as part of a shipment exceeding 55 pounds.

(b) *Gift shipments.* During the period November 1 through January 31 of each fiscal year any handler may, exempt from the provisions of §§ 969.41, 969.51, and 969.54 and the regulations issued thereunder, handle avocados in individually addressed gift containers not exceeding 20 pounds net weight for use by the addressee other than for resale: *Provided*, That the net weight of avocados in each such container shall not exceed three-fourths of the total, and the balance of the contents of such container shall be an agricultural product, or products, other than avocados.

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 hereof until 30 days after publication in the *FEDERAL REGISTER* (60 Stat. 237; 5 U. S. C. 1001 et seq.) and good cause exists for making the provisions hereof effective no later than the date hereinafter set forth. Shipment of the current crop of avocados is now in progress, and avocados are currently subject to quality, maturity, and container restrictions established pursuant to the said marketing agreement and order; the amendment establishes an exemption from such restrictions for gift shipments; and it is essential that

the amendment be made effective as soon as practicable to be of maximum benefit during the current marketing season. The grades set forth in § 969.130 were developed as interim grades and adopted for use until United States Standards for Florida avocados could be developed and issued; such standards have been issued (21 F. R. 6205), and the grade regulation currently effective for south Florida avocados is based upon the U. S. grades set forth therein, hence, no useful purpose would be served by continuing § 969.130 in effect. Producers and handlers have been notified of the proposed adoption and recommendation to the Secretary of the said amendment, and the procedures established by such amendment of the rules and regulations will not require any preparation which cannot be completed by the effective time hereof.

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

Dated, November 21, 1958, to become effective upon publication in the *FEDERAL REGISTER*.

[SEAL]

S. R. SMITH,
Director,
Fruit and Vegetable Division.

[F. R. Doc. 58-9819; Filed, Nov. 25, 1958; 8:54 a.m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration, Department of Commerce

[Amdt. 19]

PART 600—DESIGNATION OF CIVIL AIRWAYS

ALTERATIONS

The civil airway alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy and the Air Force, through the Air Coordinating Committee, Airspace Division, and are adopted to become effective when indicated in order to promote safety. Compliance with the notice, procedures and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to public interest and therefore is not required.

Part 600 is amended as follows:

1. Section 600.12 *Green civil airway No. 2 (Seattle, Wash., to Boston, Mass.)* is amended by changing the name of the facility "Clear Creek, Ontario, Canada, radio range" to read: "Clear Creek, Ontario, Canada, RBN" wherever it appears.
2. Section 600.208 *Red civil airway No. 3 (Dayton, Ohio, to Newark, N. J.)* is amended by changing the portion which reads: "to the intersection of the east course of the Wright-Patterson AFB radio range and the south course of the Columbus, Ohio, radio range." to read: "to the INT of the east course of the Wright-Patterson AFB RR and the northeast course of the Cincinnati, Ohio, RR."

3. Section 600.232 is amended to read: § 600.232 *Red civil airway No. 32 (Austin, Tex., to Houston, Tex.).* From