in the year in which such costs are incurred.

(b) *Qualified railroad grading and tunnel bores.* The term "qualified railroad grading and tunnel bores" means railroad grading and tunnel bores the original use of which commences after December 31, 1968.

(c) *Original use.* For purposes of paragraph (b) of this section, the term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.

(d) *Placed in service.* For purposes of section 185, the principles set forth in paragraph (d) of § 1.46–3 are applicable in determining when property is placed in service.

(e) *Domestic common carrier by railroad.* For purposes of section 185 the term "domestic common carrier by railroad" means a railroad subject to regulations under part I of the Interstate Commerce Act (49 U.S.C. 1 et seq.) or a railroad which would be subject to regulations under part I of the Interstate Commerce Act if it were engaged in interstate commerce.

§ 1.185–3 Time and manner of making and terminating elections.

(a) *Election of amortization*—(1) *Initial election.* Under section 185(c), an election by the taxpayer to take the amortization deduction provided in section 185(a) shall be made on a statement attached to its income tax return filed for any taxable year beginning after December 31, 1969 during which year the taxpayer has qualified railroad grading or tunnel bores which are eligible for such deduction (see paragraph (a)(2)(i) of § 1.185–1). If the taxpayer does not file a timely return (taking into account extension of the time for filing) for the taxable year for which the election is first to be made, the election shall be filed at the time the taxpayer files his first return for that year. The election may be made with an amended return only if such amended return is filed no later than the time prescribed by law (including extensions thereof) for filing the return for the taxable year of election. If an election is not made within the time and in the manner prescribed in this paragraph, no election may be made (by the filing of an amended return or in any other manner) with respect to such taxable year. The statement required by this subparagraph shall include the following information:

(i) A description clearly identifying each qualified railroad grading or tunnel bore of the taxpayer (see paragraphs (a) and (b) of § 1.185–2);

(ii) The date on which the original use of the property commenced (see paragraph (c) of § 1.185–2);

(iii) The adjusted basis (for determining gain) of each qualified railroad grading and tunnel bore of the taxpayer; and

(iv) The annual amortization deduction allowable with respect to each railroad grading and tunnel bore of the taxpayer.

(2) *Special rule.* In the case of qualified railroad grading and tunnel bores placed in service (as defined in paragraph (d) of § 1.185–2) after the beginning of the first taxable year for which the election made under subparagraph (1) of this paragraph is effective, the statement required by such subparagraph (1) with respect to such additional railroad grading and tunnel bores must be attached to the taxpayer's income tax return filed for the taxable year succeeding the taxable year in which such additional qualified railroad grading and tunnel bores are placed in service. Thus, for example, if a domestic common carrier by railroad attaches the statement required by subparagraph (1) of this paragraph to its income tax return filed for 1972 and during 1975 places in service additional qualified railroad grading and tunnel bores, the statement required by this subparagraph must be attached to its income tax return filed for 1976.

(b) *Revocation of election*—(1) *Revocation with consent.* An application for consent to revoke an election under section 185 shall be in writing and shall be addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224. The application for consent to revoke the election shall set forth the name and address of the taxpayer, state the taxable years for which the election was in effect, and state the reason for revoking the election. The application shall be signed by the taxpayer or a duly authorized officer of the taxpayer and shall be filed at least 90 days prior to the time, but not including extensions thereof, prescribed by law for filing the income tax return for the first taxable year for which the election is to terminate. In the case of a transaction to which paragraph (b)(2)(iii) of § 1.185–1 applies the application required by this paragraph shall be filed at the time provided for in the preceding sentence or 90 days from the date of the distribution or transfer, whichever is later.

(2) *Revocation of elections prior to September 22, 1971.* If before September 22, 1971, an election under section 185 has been made, such election may be revoked (see paragraph (a)(2)(ii) of § 1.185–1) by filing on or before December 21, 1971, a statement of revocation of an election under section 185(a) in accordance with the requirements in subparagraph (1) of this paragraph for filing an application to revoke an election. If such election to revoke is for a period which falls within one or more taxable years for which an income tax return has been filed on or before December 21, 1971, amended income tax returns shall be filed for any such taxable years in which deductions were taken under section 185.

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: September 14, 1971.

EDWIN S. COHEN,
Assistant Secretary of the Treasury.

[FR Doc.71-13885 Filed 9-21-71;8:46 am]

(T.D. 7141)

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

Treatment of Livestock

On January 23, 1971, notice of proposed rule making with respect to the amendments of the Income Tax Regulations (26 CFR Part 1) under sections 1031, 1231, and 1245 of the Internal Revenue Code of 1954 to conform the regulations to the changes made by sections 212 and 704(b)(4) of the Tax Reform Act of 1969 (83 Stat. 571, 670) was published in the FEDERAL REGISTER (36 F.R. 1151). On July 28, 1971, a second notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under section 1231 of the Internal Revenue Code of 1954 to conform the regulation to the change made by section 212(b) of the Tax Reform Act of 1969 (83 Stat. 571) was published in the FEDERAL REGISTER (36 F.R. 13928). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations, as set forth in paragraphs 1, 2, and 4 through 7 of the notice published on January 23, 1971, and in paragraph 1 of the notice published on July 28, 1971, are hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Paragraph (a)(2) of § 1.1245–1, as set forth in paragraph 5 of the appendix of the January 23 notice of proposed rule making, is revised.

PARAGRAPH 2. Paragraph (a) of § 1.1245–2, as set forth in paragraph 6 of the appendix of the January 23 notice of proposed rule making, is amended by revising subparagraphs (2), (6), and (7).

(Sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved: September 16, 1971.

EDWIN S. COHEN,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) to certain amendments made by sections 212 and 704 of the Tax Reform Act of 1969 (83 Stat. 487), relating to livestock, such regulations are amended as follows:

PARAGRAPH 1. The following new sections are added immediately after § 1.1031(d)–2:

§ 1.1031(e) Statutory provisions; exchange of property held for productive use or investment; exchanges of livestock of different sexes.

SEC. 1031. *Exchange of property held for productive use or investment.* * * *

(e) *Exchange of livestock of different sexes.* For purposes of this section, livestock of different sexes are not property of a like kind.

[Sec. 1031(e) as added by sec. 212(c), Tax Reform Act 1969 (83 Stat. 571)]

§ 1.1031(e)–1 Exchanges of livestock of different sexes.

Section 1031(e) provides that livestock of different sexes are not property of like kind. Section 1031(e) and this section are applicable to taxable years to which the Internal Revenue Code of 1954 applies.

PAR. 2. Paragraph (c)(1) of § 1.1231–1 is amended by revising subdivision (iii) to read as follows:

§ 1.1231–1 Gains and losses from the sale or exchange of certain property used in the trade or business.

* * * * *

(c) *Transactions to which section applies.* * * *

(1) * * *

(ii) Livestock held for draft, breeding, dairy, or sporting purposes, except to the extent included under paragraph (4) of this paragraph, or poultry.

* * * * *

PARAGRAPH 2. Section 1.1231–2 is amended by revising paragraphs (a) and (b), by redesignating paragraph (c) as paragraph (b)(2), and by adding a new paragraph (c) immediately following revised paragraph (b). These amended and added provisions read as follows:

§ 1.1231–2 Livestock held for draft, breeding, dairy, or sporting purposes.

(a) (1) In the case of cattle, horses, or other livestock acquired by the taxpayer after December 31, 1969, section 1231 applies to the sale, exchange, or involuntary conversion of such cattle, horses, or other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him—

(i) For 24 months or more from the date of acquisition in the case of cattle or horses, or

(ii) For 12 months or more from the date of acquisition in the case of such other livestock.

(2) In the case of livestock (including cattle or horses) acquired by the taxpayer on or before December 31, 1969, section 1231 applies to the sale, exchange, or involuntary conversion of such livestock, regardless of age, held by the taxpayer for draft, breeding, or dairy purposes, and held by him for 12 months or more from the date of acquisition.

(3) For the purposes of section 1231, the term "livestock" is given a broad, rather than a narrow, interpretation and includes cattle, hogs, horses, mules, donkeys, sheep, goats, fur-bearing animals, and other mammals. However, it does not include poultry, chickens, turkeys, pigeons, geese, other birds, fish, frogs, reptiles, etc.

(b) (1) Whether or not livestock is held by the taxpayer for draft, breeding, dairy, or sporting purposes depends upon all of the facts and circumstances in each case. The purpose for which the animal is held is ordinarily shown by the taxpayer's actual use of the animal. However, a draft, breeding, dairy, or sporting purpose may be present if an animal is disposed of within a reasonable time after its intended use for such purpose is prevented or made undesirable by reason of accident, disease, drought, unfitness of the animal for such purpose, or a similar factual circumstance. Under certain circumstances, an animal held for ultimate sale to customers in the ordinary course of the taxpayer's trade or business may be considered as held for draft, breeding, dairy, or sporting purposes. However, an animal is not held by the taxpayer for draft, breeding, dairy, or sporting purposes merely because it is suitable for such purposes or merely because it is held by the taxpayer for sale to other persons for use by them for such purposes. Furthermore, an animal held by the taxpayer for other purposes is not considered as held for draft, breeding, dairy, or sporting purposes merely because of a negligible use of the animal for such purposes or merely because of the use of the animal for such purposes as an ordinary or necessary incident to the other purposes for which the animal is held. See paragraph (c) of this section for the rules to be used in determining when horses are held for racing purposes and, therefore, are considered as held for sporting purposes.

(2) The application of this paragraph is illustrated by the following examples:

Example (1). An animal intended by the taxpayer for use by him for breeding purposes is discovered to be sterile or unfit for the breeding purposes for which it was held, and is disposed of within a reasonable time thereafter. This animal is considered as held for breeding purposes.

Example (2). The taxpayer retires from the breeding or dairy business and sells his entire herd, including young animals which would have been used by him for breeding or dairy purposes if he had remained in business. These young animals are considered as held for breeding or dairy purposes. The same would be true with respect to young animals which would have been used by the taxpayer for breeding or dairy purposes but which are sold by him in reduction of his breeding or dairy herd, because of, for example, drought.

Example (3). A taxpayer in the business of raising hogs for slaughter customarily breeds sows to obtain a single litter to be raised by him for sale, and sells these brood sows after obtaining the litter. Even though these brood sows are held for ultimate sale to customers in the ordinary course of the taxpayer's trade or business, they are considered as held for breeding purposes.

Example (4). A taxpayer in the business of raising horses for sale to others for use by them as draft horses uses them for draft purposes on his own farm in order to train them. This use is an ordinary or necessary incident to the purpose of selling the animals, and, accordingly, these horses are not considered as held for draft purposes.

Example (5). The taxpayer is in the business of raising registered cattle for sale to others for use by them as breeding cattle. It is the business practice of this particular taxpayer to breed the offspring of his herd which he is holding for sale to others prior to sale in order to establish their fitness for sale as registered breeding cattle. In such case, the taxpayer's breeding of such offspring is an ordinary and necessary incident to his holding them for the purpose of selling them as bred heifers or proven bulls and does not demonstrate that the taxpayer is holding them for breeding purposes. However, those cattle held by the taxpayer as additions or replacements to his own breeding herd to produce calves are considered to be held for breeding purposes, even though they may not actually have produced calves.

Example (6). A taxpayer, engaged in the business of buying cattle and fattening them for slaughter, purchased cows with calf. The calves were born while the cows were held by the taxpayer. These cows are not considered as held for breeding purposes.

(c) (1) For purposes of paragraph (b) of this section, a horse held for racing purposes shall be considered as held for sporting purposes. Whether a horse is held for racing purposes shall be determined in accordance with the following rules:

(i) A horse which has actually been raced at a public race track shall, except in rare and unusual circumstances, be considered as held for racing purposes.

(ii) A horse which has not been raced at a public track shall be considered as held for racing purposes if it has been trained to race and other facts and circumstances in the particular case also indicate that the horse was held for this purpose. For example, assume that the taxpayer maintains a written training record on all horses he keeps in training status, which shows that a particular horse does not meet objective standards (including, but not limited to, such considerations as failure to achieve predetermined standards of performance during training, or the existence of a physical or other defect) established by the taxpayer for determining the fitness and quality of horses to be retained in his racing stable. Under such circumstances, if the taxpayer disposes of the horse within a reasonable time after he determined that it did not meet his objective standards for retention, the horse shall be considered as held for racing purposes.

(iii) A horse which has neither been raced at a public track nor trained for racing shall not, except in rare and unusual circumstances, be considered as held for racing purposes.

(2) This paragraph may be illustrated by the following examples:

Example (1). The taxpayer breeds, raises, and trains horses for the purpose of racing. Every year he culls some horses from his racing stable. In 1971, the taxpayer decided that in order to prevent his racing stable from getting too large to be effectively operated he must cull six horses from it. All six of the horses culled by the taxpayer had been raced at public tracks in 1970. Under subparagraph (1)(i) of this paragraph, all these horses are considered as held for racing purposes.

Example (2). Assume the same facts as in example (1). Assume further that the taxpayer decided to cull four more horses from his racing stable in 1971. All these horses had been trained to race but had not been raced at public tracks. The taxpayer culled these four horses because the training log which the taxpayer maintains on all the horses he trains showed these horses to be unfit to remain in his racing stable. Horse A was culled because it developed shin splints during training. Horses B and C were culled because of poor temperament. B bolted every time a rider tried to mount it, and C became extremely nervous when it was placed in the starting gate. Horse D was culled because it did not qualify for retention under one of the objective standards the taxpayer had established for determining which horses to retain since it was unable to run a specified

distance in a minimum time. These four horses were disposed of within a reasonable time after the taxpayer determined that they were unfit to remain in his stable. Under subparagraph (1)(ii) of this paragraph, all these horses are considered as held for racing purposes.

PAR. 3. Section 1.1245 is amended by revising subsection (a)(2), by adding subparagraphs (C) and (D) to section 1245(a)(2), by revising subsection (a)(3), by adding a subparagraph (D) to section 1245(a)(3), and by amending the historical note. This amended provision reads as follows:

§ 1.1245 Statutory provisions; gain from dispositions of certain depreciable property; recomputed basis.

SEC. 1245. *Gain from dispositions of certain depreciable property*—(a) *General rule.* * * *

(2) *Recomputed basis.* For purposes of this section, the term "recomputed basis" means—

(A) With respect to any property referred to in paragraph (3) (A) or (B), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after December 31, 1961,

(B) With respect to any property referred to in paragraph (3)(C), its adjusted basis recomputed by adding thereto all adjustments, attributable to periods after June 30, 1963,

(C) With respect to livestock, its adjusted basis recomputed by adding thereto all adjustments attributable to periods after December 31, 1969, or

(D) With respect to any property referred to in paragraph (3)(D), its adjusted basis recomputed by adding thereto all adjustments attributable to periods beginning with the first month for which a deduction for amortization is allowed under section 169 or 185,

reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation, or for amortization under section 168, 169, 184, 185, or 187. For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation, or for amortization under section 168, 169, 184, 185, or 187, for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

(3) *Section 1245 property.* For purposes of this section, the term "section 1245 property" means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 (or subject to the allowance of amortization provided in section 185) and is either—

(A) Personal property,

(B) Other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) Was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or

(ii) Constituted research or storage facilities used in connection with any of the activities referred to in clause (i),

(C) An elevator or an escalator, or

(D) So much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under section 169 or 185.

* * * * *

[Sec. 1245 as added by sec. 13(a), Rev. Act 1962 (76 Stat. 1032); amended by sec. 203(d), Rev. Act 1964 (78 Stat. 35); amended by secs. 212(a) and 704(b)(4), Tax Reform Act 1969 (83 Stat. 571, 670)]

PAR. 4. Paragraph (a)(2) of § 1.1245–1 is amended to read as follows:

§ 1.1245–1 General rule for treatment of gain from dispositions of certain depreciable property.

(a) *General.* * * *

(2) Section 1245(a)(1) applies to dispositions of section 1245 property in taxable years beginning after December 31, 1962, except that—

(i) In respect of section 1245 property which is an elevator or escalator, section 1245(a)(1) applies to dispositions after December 31, 1963, and

(ii) In respect of section 1245 property which is livestock (described in subparagraph (4) of § 1.1245–3(a)), section 1245(a)(1) applies to dispositions made in taxable years beginning after December 31, 1969, and (iii) [reserved].

* * * * *

PAR. 6. Paragraph (a) of § 1.1245–2 is amended by revising subparagraphs (2), (6), and (7) to read as follows:

§ 1.1245–2 Definition of recomputed basis.

(a) *General rule.* * * *

(2) *Definition of adjustments reflected in adjusted basis.* The term "adjustments reflected in the adjusted basis" means—

(i) With respect to any property other than property described in subdivision (ii), (iii), or (iv) of this subparagraph, the amount of the adjustments attributable to periods after December 31, 1961,

(ii) With respect to an elevator or escalator, the amount of the adjustments attributable to periods after June 30, 1963,

(iii) With respect to livestock (described in subparagraph (4) of §1.1245–3(a)), the amount of the adjustments attributable to periods after December 31, 1969, or (iv) [reserved]

which are reflected in the adjusted basis of such property on account of deductions allowed or allowable for depreciation or amortization (within the meaning of subparagraph (3) of this paragraph). For cases where the taxpayer can establish that the amount allowed for any period was less than the amount allowable, see subparagraph (7) of this paragraph. For determination of adjusted basis of property in a multiple asset account, see paragraph (c)(3) of § 1.167(a)–8.

* * * * *

(6) *Allocation of adjustments attributable to periods after certain dates.* (i) For purposes of determining recomputed basis, the amount of adjustments reflected in the adjusted basis of property other than property described in subparagraph (2) (ii), (iii), or (iv) of this paragraph are limited to adjustments attributable to periods after December 31, 1961. Accordingly, if depreciation deducted with respect to such property of a calendar year taxpayer is $1,000 a year (the amount allowable) for each of 10 years beginning with 1956, only the depreciation deducted in 1962 and succeeding years shall be treated as reflected in the adjusted basis for purposes of determining recomputed basis. With respect to a taxable year beginning in 1961 and ending in 1962, the deduction for depreciation or amortization shall be ascertained by applying the principles stated in paragraph (c)(3) of § 1.167(a)–8 (relating to determination of adjusted basis of retired asset). The amount of the deduction, determined in such manner, shall be allocated on a daily basis in order to determine the portion thereof which is attributable to a period after December 31, 1961. Thus, for example, if a taxpayer, whose fiscal year ends on May 31, 1962, acquires section 1245 property on November 12, 1961, and the deduction for depreciation attributable to the property for such fiscal year is ascertained (under the principles of paragraph (c)(3) of § 1.167(a)–8) to be $400, then the portion thereof attributable to a period after December 31, 1961, is $302 (151/200 of $400). If, however, the property were acquired by such taxpayer after December 31, 1961, the entire deduction for depreciation attributable to the property for such fiscal year would be allocable to a period after December 31, 1961. For treatment of certain normal retirements described in paragraph (e)(2) of § 1.167(a)–8, see paragraph (c) of § 1.1245–6. For principles of determining the amount of adjustments for depreciation or amortization reflected in the adjusted basis of property upon an abnormal retirement of property in a multiple asset account, see paragraph (c)(3) of § 1.167(a)–8.

* * * * *

(iii) For purposes of determining recomputed basis, the amount of adjustments reflected in the adjusted basis of livestock (described in subparagraph (2)(iii) of this paragraph) are limited to adjustments attributable to periods after December 31, 1969.

(7) *Depreciation or amortization allowed or allowable.* For purposes of determining recomputed basis, generally all adjustments (for periods after Dec. 31, 1961, or, in the case of property described in subparagraph (2) (ii), (iii), or (iv) of this paragraph, for periods after the applicable date) 1969, as the case may be) attributable to allowed or allowable depreciation or amortization must be taken into account. See section 1016(a)(2) and the regulations thereunder for the meaning of "allowed" and "allowable". However, if a taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation or amortization for any period was less than the amount allowable for such period, the amount to be taken into account for such period shall be the amount allowed. See paragraph (b) of this section (relating to records to be kept and information to be filed). For example, assume that in the year 1967 it becomes necessary to determine the recomputed basis

of property, the $500 adjusted basis of which reflects adjustments of $1,000 with respect to depreciation deductions allowable for periods after December 31, 1961. If the taxpayer can establish by adequate records or other sufficient evidence that he had been allowed deductions amounting to only $800 for the period, then in determining recomputed basis the amount added to adjusted basis with respect to the $1,000 adjustments to basis for the period will be only $800.

* * * * *

PAR. 5. Paragraph (a) of § 1.1245–3 is amended by revising so much of subparagraph (1) as precedes subdivision (i) and by revising subparagraph (4). The revised provisions read as follows:

§ 1.1245–3 Definition of section 1245 property.

(a) *In general.* (1) The term "section 1245 property" means any property (other than livestock excluded by the effective date limitation in subparagraph (4) of this paragraph) which is or has been property of a character subject to the allowance for depreciation provided in section 167 and which is either—

* * * * *

(4) Section 1245 property includes livestock, but only with respect to taxable years beginning after December 31, 1969. For purposes of section 1245, the term "livestock" includes horses, cattle, hogs, sheep, goats, and mink and other fur-bearing animals, irrespective of the use to which they are put or the purpose for which they are held.

[FR Doc.71–13886 Filed 9–21–71;8:46 am]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter II—Forest Service, Department of Agriculture

PART 211—ADMINISTRATION

Subpart C—Rules of Procedure of the Board of Forest Appeals

MISCELLANEOUS TECHNICAL AMENDMENTS

The Rules of Procedure of the Board of Forest Appeals in Subpart C of Part 211 (§§ 211.101 to 211.119, 31 F.R. 16357, 34 F.R. 12341, 36 CFR 211.101 to 211.119) are amended pursuant to the authority of 30 Stat. 35, as amended, 16 U.S.C. 551, 50 Stat. 526, 7 U.S.C. 1011(f), R.S. 161 as amended, 5 U.S.C. 22.

The purpose of this amendment is to make technical changes relating to internal management to effect a transfer to the Board of Forest Appeals of certain clerical functions in connection with the filing of appeals, service of documents and maintenance of official files under the Appeal Regulation (36 CFR 211.20 to 211.37). Such functions were previously assigned to the Hearing Clerk. In addition, two cross-references are corrected.

Since these technical amendments relate to internal management, it is hereby found that voluntary compliance with the notice, public procedure and 30-day effective date requirements of 5 U.S.C. 553 is unnecessary and contrary to the public interest. Accordingly, this amendment shall be effective upon publication in the FEDERAL REGISTER.

The Rules of Procedure of the Board of Forest Appeals are amended as follows:

§ 211.101 [Amended]

1. Section 211.101 is amended to change the reference "7 CFR 1.101 et seq." in item (a) of the third sentence to read "41 CFR 4–50.201 et seq.".

§ 211.105 [Amended]

2. Section 211.105(b) is amended to change the reference to "§ 211.119" in the second sentence to read "§ 211.109".

3. Section 211.106(a) is revised to read as follows:

§ 211.106 Notice of appeal and written statement.

(a) *Filing of notice and written statement.* Any decision in either Class 1 or Class 2 which is appealable to the Board under the provisions of §§ 211.20 and 211.21 shall be final unless the person adversely affected by the decision files a written notice of appeal to the Board within 30 days from the date of receipt by him of the decision of the forest officer. Such filing shall be made with the Board of Forest Appeals, U.S. Department of Agriculture, Washington, D.C. 20250. In the case of an appeal from the classification of a case as one within Class 3, the notice of appeal shall be filed as provided in this paragraph within 90 days from the date of receipt by the appellant of the decision of the forest officer. The time for filing such notices of appeal may not be enlarged by the Board. In addition, the party prosecuting the appeal shall file a written statement of reasons why the decision appealed from is contrary to, or in conflict with, the facts, the law, or the regulations of the Secretary of Agriculture, or is otherwise in error. The written statement of reasons shall be filed with the Board within the 30-day or 90-day period, as the case may be, specified as the period in which notice of appeal shall be filed or within such additional time for filing the statement as may be granted by the Chairman.

§§ 211.107, 211.108, 211.110, 211.111, 211.112, 211.116, 211.118, 211.119 [Amended]

4. All references to the "Hearing Clerk" in §§ 211.107(a), 211.108(b), 211.110, 211.111 (a) and (d), 211.112, 211.116 (f), 211.118 (a) and (g), and 211.119 (a), (b), and (d) are hereby deleted and the term "Board" substituted therefor.

Effective date: Upon publication in the FEDERAL REGISTER (9–22–71).

Dated: September 15, 1971.

JOHN A. HARRIS,
Chairman,
Board of Forest Appeals.

Dated: September 17, 1971.

ALFRED L. EDWARDS,
Deputy Assistant Secretary.

[FR Doc.71–13946 Filed 9–21–71;8:51 am]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans' Administration

PART 17—MEDICAL

Charges for Care or Services

In § 17.62, paragraph (c) is amended to read as follows:

§ 17.62 Charges for care or services.

* * * * *

(c) *Furnished beneficiaries of the Department of Defense or other Federal agencies.* Except as provided for in paragraph (f) of this section and the second sentence of this paragraph, charges at rates prescribed by the Office of Management and Budget shall be made for any inpatient or outpatient care or services authorized for a member of the Armed Forces on active duty or for any beneficiary or designee of any other Federal agency. Charges for services provided a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay, will be at rates prescribed by the Administrator (E.O. 11609, dated July 22, 1971, 36 F.R. 13747), or

* * * * *

(72 Stat. 1114; 38 U.S.C. 210)

This VA regulation is effective the date of approval.

Approved: September 15, 1971.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
Deputy Administrator.

[FR Doc.71–13919 Filed 9–21–71;8:49 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

PART 9–7—CONTRACT CLAUSES

Subpart 9–7.50—Use of Standard Clauses

EXAMINATION OF RECORDS

The revision to AECPR Part 9–7 is made in order to conform with Amendment No. 90 of the Federal Procurement Regulations.

1. In Subpart 9–7.50, Use of Standard Clauses, § 9–7.5004–10, *Examination of records,* is revised to read as follows:

* * * * *

§ 9–7.5004–10 Examination of records.

See FPR 1–7.101–10. See Notes A and B below for required addition and modification of the clause set forth in FPR 1–7.101–10.

NOTE A: The following paragraph (e) should be added, whenever possible in prime contracts, both for the protection of the Government and the Contractor. It may be omitted only with the approval of the Director, Division of Contracts, Headquarters,

upon a specific determination, based on consultation with the Office of the Controller and the Office of the General Counsel, that nothing in the contract purports to preclude an audit by the General Accounting Office of any transaction thereunder.

(e) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

NOTE B: In cost-type prime and cost-type subcontracts substitute the words "unless the Commission authorizes their prior disposition" for the words "for such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 120 as appropriate."

NOTE C: Contracts exempt from audit rider. The examination of records clause is not required in contracts with any foreign government or agency thereof or in contracts with foreign producers.

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(Sec. 161, Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205, Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486)

Effective date. These amendments are effective upon publication in the FEDERAL REGISTER (9-22-71).

For the U.S. Atomic Energy Commission.

Dated at Germantown, Md. this 15th day of September 1971.

JOSEPH L. SMITH,
Director, Division of Contracts.

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Title 42—PUBLIC HEALTH

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

SUBCHAPTER F—QUARANTINE, INSPECTION, LICENSING

PART 73—BIOLOGICAL PRODUCTS

STERILITY TESTS AND USE OF SPORE-BEARING ORGANISMS

On February 17, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 3070) proposing to amend Part 73 of the Public Health Service regulations by revising § 73.501(e)(2) *Spore-bearing organisms for supplemental sterilization procedure control test* and § 73.730 *Sterility.*

Views and arguments respecting the proposed standards were invited to be submitted within 30 days after publication of the notice in the FEDERAL REGISTER and notice was given of intention to make any amendments that were adopted effective 30 days after publication in the FEDERAL REGISTER.

After consideration of all comments submitted, the following amendments to Part 73 of the Public Health Service regulations are hereby adopted to become effective 30 days after publication in the FEDERAL REGISTER.

1. Section 73.501(e)(2) is revised to read as follows:

§ 73.501 Physical establishment, equipment, animals and care.

* * * * *

(e) * * *

(2) *Spore-bearing organisms for supplemental sterilization procedure control test.* Spore-bearing organisms used as an additional control in sterilization procedures may be introduced into areas used for the manufacture of products, only for the purposes of the test and only immediately before use for such purposes: *Provided,* That (i) the organism is not pathogenic for man or animals and does not produce pyrogens or toxins, (ii) the culture is demonstrated to be pure, (iii) transfer of test cultures to culture media shall be limited to the sterility test area or areas designated for work with spore-bearing organisms, (iv) each culture be labeled with the name of the microorganism and the statement "Caution: microbial spores. See directions for storage, use and disposition.", and (v) the container of each culture is designed to withstand handling without breaking.

* * * * *

2. Section 73.730 is revised to read as follows:

§ 73.730 Sterility.

Except as provided in paragraphs (f) and (g) of this section, the sterility of each lot of each product shall be demonstrated by the performance of the tests prescribed in paragraphs (a) and (b) of this section for both bulk and final container material.

(a) *The test.* Bulk material shall be tested separately from final container material and material from each final container shall be tested in individual test vessels as follows:

(1) *Using Fluid Thioglycollate Medium*—(i) *Bulk and final container material.* The volume of product, as required by paragraph (d) of this section (hereinafter referred to also as the "inoculum"), from samples of both bulk and final container material, shall be inoculated into test vessels of Fluid Thioglycollate Medium. The inoculum and medium shall be mixed thoroughly and incubated at a temperature of 30° to 32° C. for a test period of no less than 14 days and examined visually for evidence of growth on the third, fourth, or fifth day and on the seventh or eighth day and on the last day of the test period. Results of each examination shall be recorded. If the inoculum renders the medium turbid so that the absence of growth cannot be determined reliably by visual examination, portions of this turbid medium in amounts of no less than 1.0 ml. shall be transferred on the third, fourth, or fifth day of incubation, from each of the test vessels and inoculated into additional vessels of medium. The material in the additional vessels shall be incubated at a temperature of 30° to 32° C. for no less than 14 days. Notwithstanding such transfer of material, examination of the original vessels shall be continued as prescribed above. The additional test vessels shall be examined visually for evidence of growth on the third, fourth, or fifth day of incubation and on the seventh or eighth day and on the last day of the incubation period. If growth appears, repeat tests may be performed as prescribed in paragraph (b) of this section and interpreted as specified in paragraph (c) of this section.

(ii) *Final container material containing a mercurial preservative.* In addition to the test prescribed in subparagraph (1)(i) of this paragraph, final container material containing a mercurial preservative shall be tested using Fluid Thioglycollate Medium following the procedures prescribed in such subparagraph, except that the incubation shall be at a temperature of 20° to 25° C.

(2) *Using Soybean-Casein Digest Medium.* Except for products containing a mercurial preservative, a test shall be made on final container material, following the procedures prescribed in subparagraph (1)(i) of this paragraph, except that the medium shall be Soybean-Casein Digest Medium and the incubation shall be at a temperature of 20° to 25° C.

(b) *Repeat tests*—(1) *Repeat bulk test.* If growth appears in the test of the bulk material, the test may be repeated to rule out faulty test procedures by testing at least the same volume of material.

(2) *First repeat final container test.* If growth appears in any test (Fluid Thioglycollate Medium or Soybean-Casein Digest Medium) of final container material, the test may be repeated to rule out faulty test procedures by testing material from a sample of at least the same number of final containers.

(3) *Second repeat final container test.* If growth appears in any first repeat final container test (Fluid Thioglycollate Medium or Soybean-Casein Digest Medium), that test may be repeated provided there was no evidence of growth in any test of the bulk material and material from a sample of twice the number of final containers used in the first test ir tested by the same method used in the first test.

(c) *Interpretation of test results.* The results of all tests performed on a lot shall be considered in determining whether or not the lot meets the requirements for sterility, except that tests may be excluded when demonstrated by adequate controls to be invalid. The lot meets the test requirements if no growth appears in the tests prescribed in paragraph (a) of this section. If repeat tests are performed, the lot meets the test requirements if no growth appears in the tests prescribed in paragraph (b) (2) or (3) of this section, whichever is applicable.

(d) *Test samples and volumes*—(1) *Bulk.* Each sample for the bulk sterility test shall be representative of the bulk material and the volume tested shall be no less than 10 ml. (Note exceptions in paragraph (g) of this section.)

(2) *Final containers.* The sample for the final container and first repeat final container test shall be no less than 20